

Biennial Report  
of the  
**ATTORNEY GENERAL**  
of the  
**STATE OF COLORADO**



Years 1951-1952

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**DUKE W. DUNBAR**  
Attorney General

Publication Approved by James A. Noonan, Controller

## ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

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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
Duke W. Dunbar.....	1951-1952

PERSONNEL  
DEPARTMENT OF LAW

DIVISION OF LEGAL AFFAIRS

DUKE W. DUNBAR, Attorney General  
H. LAWRENCE HINKLEY, Deputy Attorney General  
FRANK A. WACHOB, First Assistant

Assistant Attorneys General

ROBERT F. CARR	WILBUR ROCCHIO
NORMAN H. COMSTOCK	RALPH SARGENT, JR. (resigned 8/30/52)
PETER L. DYE	WILLIAM T. SECOR (appointed 9/1/52)
EDWARD L. HIGEE	CHARLES M. SOLLER
RICHARD F. HITE	JOHN H. WINCHELL (resigned 2/28/51; appointed P. U. C. Com.)
JAMES D. PARRIOTT, JR.	HENRY E. ZARLENGO
WILBUR M. PRYOR, JR.	
JACK E. KENNEDY (appointed 12/1/52)	
DONALD B. ROBERTSON	

Administrative Secretary, ANN G. LANDY

Stenographers

JOSEPHINE J. BARROWS  
WILMA F. CROSKY (transferred to Parole Board 5/7/51)  
EDITH HEZMALHALCH  
ELIZABETH V. KITTO  
ELIZABETH T. PICKARD (certified to office 6/1/51)  
MARY D. POPE

INHERITANCE TAX DEPARTMENT

NEIL TASHER, Assistant Attorney General and Inheritance Tax  
Commissioner  
OMER GRIFFIN, Assistant Attorney General  
CATHERINE H. COURSEY, Administrative Assistant

Inheritance Tax Analysts

DAVID CREGER      MICHAEL J. O'HARA

Inheritance Tax Appraisers

CHARLES GAST      SAMUEL TELEP      FRED G. HUNT

Clerks and Stenographers

ANN COGAN    VERA B. DECOU    DOROTHY KUTA  
SALLY GRAY    MARGARET HARDY

LEGISLATIVE REFERENCE OFFICE

RICHARD F. HITE, Director (reappointed Assistant 1/1/53)  
JACK E. KENNEDY, Director (appointed 1/1/53)  
CLAIR T. SIPPEL, Secretary

DIVISION OF SECURITIES

CURTIS WHITE, Commissioner  
RHODA SON, Stenographer

January 10, 1953

To His Excellency  
HONORABLE DAN THORNTON  
Governor of Colorado

Dear Governor Thornton:

In compliance with statutes relating thereto, I herewith transmit the Biennial Report of the Attorney General, covering the period beginning January 10, 1951, and ending December 31, 1952.

Respectfully submitted,  
DUKE W. DUNBAR,  
Attorney General.



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

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**REPORT OF THE INHERITANCE TAX DIVISION**

The Inheritance Tax Division of the Department of Law administers the Inheritance and Succession Tax Law and the Gift Tax Law of the State of Colorado.

During the period from January 1, 1951, to January 1, 1953, there was collected in inheritance taxes the sum of \$4,880,199.40 and in gift taxes the sum of \$292,474.74. The amount expended during this period for collection of this amount, including salaries and expenses, was \$123,729.78 or 2.43% of the amount collected. There were 13,120 estates processed during this period.

**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.

**REPORT OF THE DIVISION OF SECURITIES**  
**For the Period**  
**January 1, 1951, to December 31, 1952**

	1951	1952
Receipts from fees.....	\$6,534.00	\$8,247.50
Original prospectuses filed.....	87	113
Renewal prospectuses filed.....	53	63
Supplemental prospectuses filed.....	17	29
Dealers' registrations in effect at end of each year.....	125	149
Salesmen's registrations in effect at end of each year.....	392	457

During the past two years there has been a steady increase in the volume of business handled by this department. Receipts for the calendar year 1952 were greater than for any year during the past decade. New offerings of securities by both established companies and promotional enterprises reached a post-war high and there is no present indication that this trend will not continue. Likewise, the number of registered securities salesmen has reached an all time high.

Acknowledgment is given to the Attorney General and to his assistant, Mr. Wilbur M. Pryor, Jr., for the capable assistance and consultation furnished this department and the helpful and generous advice received from them.

The personnel of the department consists of Curtis White, Securities Commissioner, and Rhoda Son, secretary. The position of Assistant Securities Commissioner is presently vacant.



**PART I**  
**OPINIONS OF THE ATTORNEY GENERAL**

**Note: These syllabi of opinions are numbered chronologically. A copy of each opinion is on file under a number corresponding with that of the syllabus.**



**CIVIL SERVICE COMMISSION****Opinion 1915-51**

State Civil Service Commission,  
January 17, 1951.

1. The Civil Service Commission has the implied power to adopt a rule providing for suspension pending the filing of charges.

2. Any suspension imposed must be within the limitation provided under the rules and must be in strict conformity with the provisions of the rules.

**COLORADO STATE HOSPITAL****Opinion 1916-51**

Colorado State Hospital,  
January 17, 1951.

*Sec. 6, Chap. 39, 1935 C.S.A.*, provides the procedures for securing performance of public contracts of more than \$1,000. *Sec. 7* provides for advertisement before final payment to the contractor and the classes of claims which are included and protected by statutes. Unless the claim falls within the classification enumerated there is no duty or authority in law for the state to withhold final settlement with the contractor.

**HEALTH****Opinion 1916½-51**

R. L. Cleere,  
January 23, 1951.  
(Plumbing)

(1) Private property owners are not required to take out plumbing permits for work which they themselves perform on their own premises.

(2) The fees set out in *Art. XX, Sec. 148, State Plumbing Code* are valid, being specifically allowed in *Sec. 18, Chap. 26, 1935 C.S.A.*

**GOVERNOR—COLORADO STATE HOSPITAL  
HOME FOR MENTAL DEFECTIVES  
COURTS**

**Opinion 1917-51**

Hon. Dan Thornton,  
January 24, 1951.

Inmates of the Colorado State Hospital cannot be transferred to the Ridge or Grand Junction Homes upon executive order. The committing county courts have continuing jurisdiction and such courts alone can lawfully change place of custody.

**SCHOOLS**  
**DEAF AND BLIND SCHOOL**

Mr. A. L. Brown,  
January 25, 1951.

**Opinion 1918-51**

Colorado School for Deaf and Blind by *Sec. 15, Ch. 22, 1935 C.S.A.*, has authority to take and hold real estate by gift, devise or otherwise, but no authority is granted to sell or lease such lands. Such legislative sanction must be obtained before a sale or lease can be legally made.

**STATE TREASURER**  
**DIRECTOR OF REVENUE—MOTOR VEHICLE**

Hon. Earl E. Ewing,  
January 25, 1951.

**Opinion 1919-51**

State Treasurer is authorized to pay to Director of Revenue, instead of to the individual depositor, refunds of security deposits made pursuant to Motor Vehicle Safety Responsibility Law. Payment to Director can be made only upon properly authorized voucher certifying that refunds are due and will be made forthwith. Director must promptly disburse such refunds to individual depositor.

**GAME AND FISH COMMISSION—NEWSPAPERS**

Mr. C. N. Feast,  
January 25, 1951.

**Opinion 1920-51**

Based on *Sec. 252 of Ch. 73*, as amended, those portions of a season regulation having local implications only shall be published at least once in some newspaper published in and having general circulation in the locality whenever such rules, regulations and orders are applicable and if no newspaper is so published or circulated copies of such rules and regulations shall be posted in at least three conspicuous places in the locality in which they are applicable.

**UNIVERSITY OF COLORADO**  
**INSURANCE**

The University of Colorado,  
January 26, 1951.

**Opinion 1921-51**

The University of Colorado acting through its proper officials may lawfully hold policies of insurance in a mutual insurance company.

**VETERANS—INSANE AND MENTAL  
INCOMPETENTS****Opinion 1922-51**

Veterans Administration,

January 31, 1951.

*Section 27(1)(2) and (3), Chapter 105, 1935 C.S.A., and Sec. 9, Chap. 105, 1935 C.S.A., are wholly unrelated,—the one applying to the Criminal insane, the other to those civilly committed. The procedures for commitment are entirely different under said statutes and while they parallel each other, there is never a point of convergence or divergence in the said statutes.*

**STATE BOARD OF ACCOUNTANCY****Opinion 1923-51**

Herman I. Arenson, C.P.A.,

February 2, 1951.

*Sec. 1, Ch. 76, S. L. 1937, vests administration of act in board. Sec. 344 sets forth the powers of the board and grants it power to make rules not inconsistent with the act. Secs. 15(3) and 16 make violations misdemeanors and Sec. 15(36) requires the district attorneys to prosecute all violations of the act. Under the circumstances the Attorney General has no function to perform as all action must be taken by the District Attorney.*

**VETERANS—INSANE AND MENTAL  
INCOMPETENTS****Opinion 1924-51**

Veterans Administration,

February 6, 1951.

Where the veteran inmate has an estate, no matter how established or when the procedure of *Section 9, Chapter 105, 1935 C.S.A.*, is controlling whether the conservator pays all or part of the claim is a matter for the County Court to decide. If a part of the claim is unpaid, the State will have to look to the inmate's estate after death, if he has such an estate or absorb the claim under *Sec. 42, Chap. 105, 1935 C.S.A. Ferarazzi Estate, 28 Pac. (2d) 670 and In re Boyly's Est., 212 Pac. (2d) 587* are not applicable in Colorado as we do not have a statute comparable to *Section 690, California Code of Civil Procedure.*

**AGRICULTURE—LIVESTOCK**

Mr. Charles O. Moser,

**Opinion 1925-51**

February 6, 1951.

Provisions of the "fence law" (*Ch.* 92, *S. L.* 1917; *Sec.* 56-70, *Ch.* 160, 1935 *C.S.A.*) do not afford to landowner protection against trespasses by humans and sheep, even though he maintains a "legal fence" as defined in *Sec.* 1 of the Act. The Act applies only to trespasses by cattle, horses, mules and asses, but does not preclude recovery for willful or negligent trespass by humans and sheep.

**GAME AND FISH DEPARTMENT**

Mr. C. N. Feast,

**Opinion 1926-51**

February 7, 1951.

Injured party has no constitutional or statutory authority to demand that Game and Fish Commission go on another's land to remove or destroy beaver, who by their acts are changing the course of a natural stream.

Game and Fish Commission may enter on private lands to destroy beaver only on written request of landowner on whose land the beaver are located.

**CONTROLLER—CIVIL SERVICE**

Mr. James A. Noonan,

**Opinion 1927-51**

February 7, 1951.

Where members of a board or commission are appointed by the Governor and the legislature has fixed a per diem that does not "exceed \$600 per person per annum," such members are entitled to be paid such statutory per diem if there is an appropriation available for such payment. If the appropriation has reverted because of *Chap.* 234, *S. L.* 1949, the claimant will have to look to the legislature for relief.

**RACING COMMISSION**

Dr. James Farquharson,

**Opinion 1928-51**

February 9, 1951.

A fair association cannot conduct a horse race meet with wagering on the track of another licensed operator holding two meets of 20 days each during the year without violating the limitations of *Section* 10, *Chapter* 207, *S. L.* 1949.

**INSURANCE****Opinion 1929-51**

Mr. Luke J. Kavanaugh,

February 8, 1951.

(Withdrawal of deposits)

May fire insurance company retain its charter and withdraw \$100,000 of its deposit? Withdrawal may only be allowed upon order of court.

**SOIL CONSERVATION DISTRICTS****Opinion 1930-51**

Mr. L. E. Brown,

February 9, 1951.

Colorado Soil Conservation Districts are not "political subdivisions" of the State, but are instead "instrumentalities" of the state, or agencies thereof organized for state purposes. Employees of such districts are not in the absence of state enabling legislation, subject to the Federal Social Security Act, as amended to be effective January 1, 1951.

**HIGHWAY****Opinion 1931-51**

Mr. Mark U. Watrous,

February 9, 1951.

(Possession of excess of right of way—fencing leases)

Where Highway Department acquires land for future use along present right of way and does not wish to enclose such strip by moving present fences, State Highway Engineer should lease land as provided by *S. L. 1945, p. 559, Ch. 143, Sec. 112(1) C.S.A. (49 Repl. Vol.) Fencing Law (Ch. 160, Sec. 71, C.S.A.)* does not require such excess of right of way be enclosed by moving back the existing fence.

**STATE AGRICULTURAL COLLEGE****Opinion 1932-51**

Mr. James R. Miller,

February 12, 1951.

*Section 16, Chapter 38, 1935 C.S.A.*, requires one department of economics and sociology at the State Agricultural College and does not permit two separate departments.

**SCHOOLS**  
**ADAMS STATE COLLEGE OF COLORADO**

Opinion 1933-51

Mr. N. Wm. Newsom,  
February 14, 1951.

Oath of allegiance limited to teachers only. Determination as to who is teacher is administrative function.

**STATE AGRICULTURAL COLLEGE**

Opinion 1934-51

Mr. James R. Miller,  
February 14, 1951.

Citizen of foreign country not exempt from teacher's oath of allegiance.

**SCHOOLS**

Opinion 1935-51

Mrs. Nettie S. Freed,  
February 15, 1951.

Former exclusive power of State Superintendent of Public Instruction to decide all points touching construction of school laws is vested in Commissioner of Education subject to authorization and approval of Board of Education.

**OLD AGE PENSIONS**

Opinion 1936-51

Honorable Tom Kimball,  
February 15, 1951.

The payment of old age pensions out of the pension fund created by *Article XXIV, Sections 1 and 2* of the Constitution of the State of Colorado, to persons not citizens of the United States would be a violation of the Constitution since *Section 3 of Article XXIV* of the Constitution states, " \* \* \* *citizen of the United States* \* \* \* shall be entitled to receive the same."

Technical words must be supposed to have been used in their technical sense. Cooley's *Constitutional Limitations*, 8th Ed. Vol. 1, page 132. "The moneys deposited in the fund shall not be transferred to any other fund or used for any other purpose. *Davis v. Pensioners Assn.*, 110 Colo. 380 at 387, citing *Sec. 7 of Article XXIV* of Constitution. Payment to aliens not being authorized from the pension fund the same would be an illegal diversion.



**SCHOOLS****Opinion 1937-51**

Mr. James B. Garrison,

February 16, 1951.

County Treasurer must register warrants if valid on face even if in excess of levies for special fund.

**STATE AGRICULTURAL COLLEGE—TAXATION****Opinion 1938-51**

Mr. Joseph M. Whalley,

February 16, 1951.

Personal property of Agricultural College not subject to taxation.

**DEPARTMENT OF HEALTH****Opinion 1939-51**

Dr. Roy L. Cleere,

February 16, 1951.

(Office of State Chemist)

The office of State Chemist was transferred to the Department of Public Health by the Public Health Reorganization Act of 1947.

**DEPARTMENT OF HEALTH****Opinion 1940-51**

Dr. R. L. Cleere,

February 21, 1951.

(Re Licensing and standards of hospitals and similar institutions owned and operated by governmental units.)

1. The phrase "except those wholly owned and operated by any governmental unit or agency" in *paragraph 14 of Section 5 of the 1947 Health Reorganization Act* refers to levels of government, state, local and national, and thereby exempts county hospitals from state licensing provisions.

2. However, such county hospitals are subject to the provisions of Paragraph 16 of the same section and act which states that the State Department of Public Health shall set out sanitary standards for such hospitals and shall make inspection of such hospitals.

**COLORADO STATE TAX COMMISSION****Opinion 1941-51**

Mr. Howard A. Latting,

February 23, 1951.

“Contiguous” means “touching” as used in *Sec. 217, Chapter 142, 1935 C.S.A.*

**COLORADO STATE BOARD OF FUNERAL DIRECTORS  
AND EMBALMERS****Opinion 1942-51**

The Colorado State Board of Funeral Directors and Embalmers,  
February 20, 1951.

A funeral director's license and an embalmer's may issue by reciprocity under *Ch. 105, S. L. 1939*, as amended by *S. L. 1945*.

**STATE BOARD OF HEALTH****Opinion 1943-51**

Dr. R. L. Cleere,

February 23, 1951.

*(Re—Chapter 110, S. L. 1943)*

County Hospital Board does not have discretion to refuse to establish a county hospital once it has been appointed. The general intent of the act states: “Said board of hospital trustees \* \* \* shall in general carry out the spirit and intent of the act in establishing and maintaining a county public hospital.”

**FEDERAL — WATER — COURTS****Opinion 1944-51**

Hon. Dan H. Hughes,

February 27, 1951.

The United States does not have to pay a docket fee when filing a statement of claim in a water adjudication proceeding because of the common law rule that a sovereign is not liable for costs unless specific provision for such liability is made by law. See *14 Am. Jur. Costs, Sec. 33; State v. La Plata Co.*, 101 Colo. 368 at 371.

**CONTROLLER—CIVIL SERVICE**

Mr. James A. Noonan,  
February 26, 1951.

**Opinion 1945-51**

1. *Chapters 162 and 163, S. L. 1949*, are limited to salaries and not to infrequent per diem payments made to members of boards and commissions.

2. If there is an authorizing statute, the controller is entitled to draw warrants against such appropriations and the treasurer to pay the same. On the other hand where the legislature has not fixed the per diem or authorized the Board or Commission to do so by rule, there is no authority in law for the Controller to draw warrants against the state's funds in payment of such per diem.

**MOTOR VEHICLE—DIRECTOR OF REVENUE  
STATE TREASURER**

Hon. Averill C. Johnson,  
February 27, 1951.

**Opinion 1946-51**

(Safety Responsibility Law)

Director of Revenue is responsible for proper disbursement of security deposits under Motor Vehicle Safety Responsibility Law. State Treasurer is custodian only, and may upon proper application disburse deposits to Director of Revenue for prompt distribution by the Director to the depositor, to payment of judgments, or in other manner provided by law (*Sec. 43, Ch. 16, 1935 C.S.A.*, as amended).

**SHERIFF'S FEES**

Mr. Robert F. Zimmerman,  
March 1, 1951.

**Opinion 1947-51**

Sheriff's salaries must be paid from fees collected from his office. See *Attorney General's Opinion 1376—49*.

**LEGISLATURE**

Hon. William Albion Carlson,  
March 2, 1951.

**Opinion 1948-51**

The General Assembly may at its regular session propose by concurrent resolution amendments to the Constitution as limited by *Sec. 2, Art. XIX, Colorado Constitution*.

**LEGISLATURE—GOVERNOR  
COUNTY OFFICERS**

Hon. Dan Thornton,  
March 5, 1951.

**Opinion 1949-51**

The Governor can make a prospective appointment to fill a vacancy sure to occur in a public office in advance of the vacancy. If such appointment is made during the legislative session and the senate must concur in the appointment, such concurrence must be obtained while the legislature is in session. (*Walsh v. People*, 72 Colo. 406; *Murphy v. People*, 78 Colo. 276; 67 *C.J.S.* pp. 159-160, Sections 30 and 32).

**CONTROLLER—CHIROPRACTOR**

Dr. E. A. Jackson,  
March 5, 1951.

**Opinion 1950-51**

Where the members of a Board or Commission are appointed by the Governor and the Legislature has fixed a per diem that does not exceed \$600 per person per annum, such members are entitled to be paid such statutory per diem if an appropriation is available for such payment. Affirming Opinion 1927-51.

**GAME AND FISH**

Game and Fish Commission,  
March 6, 1951.

**Opinion 1951-51**

Where the state acquired the land on May 15, 1950, the land became public property on that date and was not subject to taxation. (*Sec. 4, Art. X, Colo. Const.*) Since the lien for the general taxes of 1950 had not attached at the time of transfer, there was and is no tax liability on the part of either the grantor or grantee for the alleged taxes of 1950. (*Sec. 4, Ch. 142, 1935 C.S.A.*; *Denver v. Research Bureau*, 101 Colo. 140; *Territory v. Perrin (Ariz.)* 83 Pac. 361; *Bannon v. Burnes*, 39 Fed. 892).

**SCHOOLS**

Mr. N. Wm. Newsom,  
March 6, 1951.  
(Oath of allegiance)

**Opinion 1952-51**

Teachers oath of allegiance may not be subject to allegiance to another country.

**AGRICULTURE DEPARTMENT****Opinion 1953-51**

Mr. Paul W. Swisher,

March 6, 1951.

(Produce Dealers—Licenses)

An applicant for a Produce Dealers License, who was president of a closely held family corporation which had previously violated the statute relating to such licenses and the conduct of licenses, may, in the discretion of the Commissioner of Agriculture, be granted a license in his own name if the Commissioner determines such to be in the best interest of convenience and necessity to the industry and to the public. Pursuant to *Sec. 9, Ch. 90, S. L. 1937*, however, Commissioner has power to deny such license if he sees fit.

**JUSTICES OF THE PEACE  
COUNTIES****Opinion 1954-51**

Hon. Homer F. Bedford,

March 6, 1951.

Justices of the Peace are county officers. *Thrush v. People*, 53 Colo. 544. *McNichols v. Denver*, 109 Colo. 269, and, therefore, an audit of each Justice should be included in the county audit.

**JURY COMMISSIONER—CITIES AND TOWNS****Opinion 1955-51**

Hon. Stephen L. R. McNichols,

March 7, 1951.

Jury Commissioner in the City and County of Denver and employees of his office do not come within the provisions of *Chapter 163, Session Laws of 1949* and *Senate Bill No. 9*.

**CHIROPRACTORS****Opinion 1956-51**

Dr. E. A. Jackson,

March 8, 1951.

(Qualifications of Applicants under *Chapter 34, 1935 C.S.A.*)

Applicants must have graduated from a qualified chiropractic school which requires 3660 hours for graduation in order to be presently qualified. The graduation from a 2800 hour school and subsequent completion of 3600 hours without graduation from the 3600 hour course does not qualify.

**BUREAU OF MINES****Opinion 1957-51**

Hon. C. L. Ramblin,  
March 9, 1951.

State of Colorado, providing "The use of Diesel Locomotives underground is subject to written permission given by the Commissioner of Mines," Bulletin 13, requires written permission as condition precedent to use of Diesel Locomotives under ground. District Attorney is proper official to prosecute for violation of mining laws. This opinion does not apply to coal mines.

**LEGISLATURE—COAL MINES****Opinion 1958-51**

Hon. Donald G. Brotzman,  
March 9, 1951.

The provisions of H. B. 212 are directed to those mines "from which coal is mined for sale, exchange or commercial use." The fees and/or tonnage taxes are to be paid by the owner of such mine or mines operated in the State of Colorado. This includes "captive mines."

**CIVIL DEFENSE—CONTROLLER****Opinion 1959-51**

Lt. Gen. Henry L. Larsen  
March 12, 1951.

In view of *Sec. 33, Art. V* and *Sec. 12(1)(e), Chapter 3, 1935 C.S.A.*, as amended it is my opinion that the state cannot deposit in advance with the U. S. Treasury moneys to pay its share of defense equipment, etc., but that it can make a lawful contract with the federal government to reimburse it for such defense equipment and supplies after the share of the state has been ascertained and can be made a claim, definite in amount, against the appropriation.

**PUBLIC BUILDINGS—CITIES AND TOWNS  
STATE PROPERTY****Opinion 1960-51**

Mr. James Merrick,  
March 12, 1951.

Property acquired by the State of Colorado from private ownership is subject to reasonable zoning regulations of a Home Rule city in existence at the time of the acquisition.

**GAME AND FISH COMMISSION—FIRE PROTECTION  
DISTRICTS**

Mr. C. N. Feast,  
March 12, 1951.

**Opinion 1961-51**

The State of Colorado may purchase fire protection, as it would fire insurance, on its various holdings.

**STATE BOARD OF DENTAL EXAMINERS**

Wm. D. McCarthy, D.D.S.,  
March 13, 1951.

**Opinion 1962-51**

(Re—practice limitations for dental hygienists)

1. Concurs with Attorney General's Opinion dated January 9, 1948, on same subject.
2. Announcements of change of employment are not illegal but the ethical and civil liability considerations are serious.
3. Dental hygienists may work only on patients of an employer dentist and under the supervision of the dentist or on inmates of public educational and charitable institutions. Hygienists may work only on patients of their specific employers and not upon patients of dentists other than their employers. Therefore, telephone listings are not illegal but might be unethical.
4. Hygienists may only examine teeth, remove deposits and stain therefrom outside the line of normal attachment of gum tissues. They may not polish fillings.

**SOIL CONSERVATION DISTRICTS  
CITIES AND TOWNS**

Mr. Kenneth W. Chalmers,  
March 13, 1951.

**Opinion 1963-51**

Land owned by a town or city may be included within a soil conservation district, unless such land is within the limits of a municipality or comprises an area devoted exclusively to commercial or industrial uses.

**LIQUOR**

Hon. George J. Baker,  
March 13, 1951.

**Opinion 1964-51**

(3.2% fermented malt beverages—licenses—regulation of sale)

*House Bill 224, 38th General Assembly, does not affect the doctrine of *Gettman v. Board of County Commissioners of Morgan**

*County* concerning the power of local licensing authorities to regulate days and hours of sale of fermented malt beverages. Local authorities have concurrent power of regulation with the State Licensing Authority and may lawfully regulate sale of fermented malt beverages.

#### GOVERNOR—RENT CONTROL

Opinion 1965-51

Hon. William Albion Carlson,  
March 14, 1951.

Termination of rent control by the Governor pursuant to the Federal statute now in effect, as authorized by *Senate Bill 117, Thirty-Eighth General Assembly*, would affect the entire State of Colorado, including home rule cities. It is probable that the necessity of rent control in home rule cities would be considered a matter of pure local and municipal concern thereby permitting home rule legislation on the subject.

#### LIVESTOCK—LEGISLATION

Opinion 1966-51

Hon. Dan Thornton,  
March 14, 1951.

(Bang's Disease, Dairy and range cattle)

*Chapter 239, S. L. 1949*, applies only to dairy cattle as therein defined; the Act and every part thereof must necessarily apply only to dairy cattle as defined therein and the application of the terms "all heifer calves" and "any animal" in the Act must be limited to dairy cattle only.

#### INSURANCE

Opinion 1967-51

Mr. Luke J. Kavanaugh,  
March 16, 1951.

Money advanced for guaranty fund of a mutual fire insurance company is a liability of such company.

#### NOTARY PUBLIC—PUBLIC TRUSTEE

Opinion 1968-51

Mr. Mansur Tinsley,  
March 16, 1951.

*Section 56, Chapter 40, 1935 C.S.A.*, requires that a public trustee execute a release deed of trust for \$2.00 including the ac-



knowledge of the same and therefore he can not require any additional charges for notary fees.

The Board of County Commissioners may properly allow a claim for notary fees presented by a public trustee since he is impliedly required in performing the duties of his office to incur notary expenses.

### **CIVIL SERVICE—VETERANS**

**Opinion 1969-51**

State Civil Service Commission,

March 20, 1951.

In order to obtain veteran's preference under *Section 14, Article XII, Colorado Constitution*, the applicant must show his or her qualifications for such credit. This must include service in the armed forces (*Sec. 466, Title 50, App. U.S.C.A.*, during time of war. *Sec. 14, Art. XII, Colo. Const.*) with an honorable discharge therefrom.

### **CIVIL DEFENSE**

**Opinion 1970-51**

Lt. Gen. Henry L. Larsen,

March 20, 1951.

*Secs. 1 to 8, inclusive, of S.B. 176* are the amendatory portions of the bill and amend *Secs. 2, 3, 4, 6, 7, 8, 9 and 11 of Chap. 4, Extraordinary Session Laws 1950. Sections 1, 5, 10, 12, 13 and 14 of the 1950 Civil Defense Act* remain undisturbed. *Secs. 12, 13 and 14* are substantive in character and stand as the law until amended or repealed.

*Sec. 15* neither adds to or subtracts from the act but does not control the acts of succeeding legislatures.

*Sec. 16* will be repealed when the Governor signs *S.B. 361, S. L. 1951*.

*Sections 9, 10, 11, 12, 13 and 14 of S.B. 176, S. L. '51*, must logically follow *Section 14 of the 1950 Civil Defense Act*.

### **DENTAL EXAMINERS**

**Opinion 1971-51**

Wm. D. McCarthy, D.D.S.,

March 22, 1951.

*Senate Bill 107, 1951*, is sufficiently clear in language to make construction thereof unnecessary. Personal notice to those who

might be affected by the passage of a general law is not a prerequisite to enforcement of the law. Violations of the Dental Practices Act by non-licentiates should be reported to the proper district attorney. Citing *Chapter 52, 1935 C.S.A.*

### OIL INSPECTION

John E. Cronin, Director,  
March 22, 1951.

**Opinion 1972-51**

The Oil Inspection Department can properly require the mechanical devices for distributing distillate to the public to be inspected by said department by virtue of *Ch. 118, Sec. 23, 1935 C.S.A.*, since the purpose of that statute is to regulate the standards of certain petroleum products and the methods and devices for measurement of "oil and gasoline", distillate being an oil product.

### MENTAL DEFECTIVES

Mr. Edwin H. Steinemeyer,  
March 21, 1951.

**Opinion 1973-51**

The order of liability for payment for support and maintenance of mental defectives at Ridge and/or Grand Junction is as follows:

1. Estate of mental incompetent,
2. Parents,
3. County or inmate's residence.

### STATE BOARD OF NURSE EXAMINERS

Mrs. Joy Irwin,  
March 26, 1951.

**Opinion 1974-51**

*Chapter 114, Section 3(a), 1935 C.S.A.*, requires that a nurse applicant be a graduate from high school or must in fact have the credits required for entrance to the University of Colorado. Any equivalency test given by the Board of Nurse Examiners must meet the standards of similar tests used by the University of Colorado to determine educational equivalency.

### COURTS—JUSTICE OF THE PEACE

Mr. C. N. Feast,  
March 26, 1951.

**Opinion 1975-51**

By *Section 160, Ch. 96, 1935 C.S.A.*, only jury bringing in a verdict of guilty against defendant in Justice Court has authority to assess a fine. A jury failing to assess a fine leaves state powerless to collect.

**GAS CONSERVATION COMMISSION**

Mr. John E. Cronin,  
March 27, 1951.

Opinion 1976-51

(Re—Cobb-Stringer Company)

The Gas Conservation Commission under its rules may require or waive the performance bond for the operation and proper abandonment of oil lease. However, the bond when issued runs to the State of Colorado and the Commission cannot by its sole action cancel the bond. The Commission may negotiate a cancellation agreement but the agreement must be executed by the Governor and other State officials.

**GAME AND FISH COMMISSION**

State Game and Fish Commission,  
March 28, 1951.

Opinion 1977-51

1. The Commission cannot contract in excess of the unencumbered balance of the allotment to which the disbursement would be charged. (*Sec. 33, Art. V, Colorado Constitution; 12(1)(e), Ch. 3, 1935 C.S.A.; 12(1)(c), Ch. 3, 1935 C.S.A.*)

2. Contracts extending beyond the terms of the officers executing them will be held invalid where the making of the contracts tends to limit or diminish the efficiency of those who will succeed the incumbents in office or usurps the power which was clearly intended to be given to the successors. (*43 Am. Jur., 101, Sec. 292*)

**STATE BOARD OF HEALTH**

Dr. R. L. Cleere,  
March 29, 1951.

Opinion 1978-51

The State Board of Health has authority to receive, allocate and distribute surplus property as provided under Public Law 152, 81st Congress, as amended.

**INCOME TAXES**

Hon. Averill C. Johnson,  
March 29, 1951.

Opinion 1979-51

(Basis for computation of capital gains).

All resident taxpayers are required to use the same basis for computation of capital gains, regardless of when they became a resident of Colorado. Where taxpayer became a Colorado resi-

dent on January 1, 1946, and during 1946 sold at a profit corporate stocks purchased before becoming a resident, he must report for tax purposes the difference between selling price and cost or other basis as provided in *Section 18, Chapter 84, A, 1935 C.S.A., Cum. Supp.* Market value of the stocks on date of becoming a resident is immaterial.

#### **CRIMES—COUNTIES—COLORADO STATE PATROL**

Joseph T. Callahan, Esq.,  
March 30, 1951.

**Opinion 1980-51**

(Payment of bills for sobriety tests procured by State Patrolmen).

Counties are legally obligated to pay bills submitted by doctors for making sobriety tests at the request of State Patrolmen, but only if the tests were made upon the authority, express or implied, of the district attorney or his assistant. Such authority may be implied from long-standing practice. In the absence of such authorization, counties may still ratify the action and pay such bills, they having received the benefit thereof.

#### **CIVIL SERVICE COMMISSION**

Civil Service Commission,  
March 30, 1951.

**Opinion 1981-51**

In re application to take Civil Service examination by parolee whose term of parole has not yet expired. Such applicant is not a qualified elector of the State of Colorado, and, without a Governor's pardon, cannot become such qualified elector until the termination of his maximum sentence. (*Sec. 13, Art. XII, Colorado Constitution; Sections 547 and 550, Chapter 48, 1935 C.S.A.*)

#### **STATE INSPECTOR OF COAL MINES**

Mr. Thomas Allen,  
April 2, 1951.

**Opinion 1982-51**

(1) *H.B. 212* was signed by the Governor on March 21, 1951, at 5:08 P.M. and became effective immediately.

(2) *Art. II, Sec. 131(b), H.B. 212*, becomes effective 60 days from the effective date of the act.

(3) Prior coal mining act in conflict with *H.B. 212* was repealed by *Sec. 142* of said *H.B. 212*. Four mill levy under prior act was effective from January 1, 1951, to March 21, 1951, and from and after March 21, 1951, the seven (7) mill levy became effective.

**SCHOOLS****Opinion 1983-51**

Mr. B. F. Kitchen,  
April 6, 1951.

1. It is unnecessary for the Board of Education to elect a teacher the fourth time since *Section 2, Chapter 230, S. L. 1949*, specifically provides that after any teacher, employed as a regularly elected teacher for three consecutive years, shall without further election have stable and continuous tenure.

2. The Board of Education is not required to retain a non-tenure teacher at the same salary, providing it shall cause notice in writing to be given said teacher on or before the 15th day of April of the terms upon which teacher is employed.

3. First and second election of a non-tenure teacher does not acknowledge services are satisfactory, but third election does.

4. Formal notice of election not necessary when teacher has completed three consecutive years. Salary may not be reduced.

5. If Board has elected teacher for three consecutive school years and teacher has served same, formal notice discontinuing services would violate Tenure Law.

6. Teachers retained from third class district joining another would be considered as one year teachers in new consolidated district. Discussion of particular situation.

**STATE BOARD OF MEDICAL EXAMINERS****Opinion 1984-51**

State Board of Medical Examiners,  
April 9, 1951.

(Overcharge of fees by medical doctors)

Mere overcharge of fees is not grounds for revocation of a medical license. The overcharge must be connected with an illegal act such as a fraudulent misrepresentation in order to constitute grounds for revocation.

**FORT LEWIS SCHOOL****Opinion 1985-51**

State Board of Land Commissioners,  
April 10, 1951.

(Mineral rights)

The State of Colorado has a fee simple in Fort Lewis School both as to the surface and the mineral rights, subject, however, to

a condition subsequent that an educational institution with free tuition to Indians be maintained on the premises.

The State Board of Land Commissioners and the State Board of Agriculture have power to execute a joint mineral lease on the premises.

### COAL MINING

Opinion 1986-51

Mr. Thomas Allen,

April 10, 1951.

The Board of Examiners appointed under *Section 5, Ch. 110, 1935 C.S.A.*, was abolished by repealing clause of *H.B. 212, 38th General Assembly*, effective March 21, 1951. Members of former Board may be appointed to Board provided by new law, but Governor cannot dictate such appointments.

### CITIES AND TOWNS

Opinion 1987-51

J. William Wells, Mayor,

April 11, 1951.

Salaries of officers of cities of second class should be fixed by ordinance and not a resolution.

### MOTOR VEHICLES

Opinion 1988-51

Mr. L. B. Flanders, Jr.

April 12, 1951.

(Crimes—Motor Vehicle Certificate of Title Act)

When a motor vehicle owner reports theft of a certificate of title, obtains a duplicate certificate which he delivers to a finance company under a floor plan mortgage, and later recovers the original certificate and delivers it to a third party as purchaser, he has not violated any specific provision of the *Certificate of Title Act, Ch. 14, S. L. 1949*. Depending on circumstances of recovery of the original title the dealer might be charged with making false oath under *Section 40* of the Act, or possibly with perjury under *Section 143, Chapter 48, 1935 C.S.A.* He may also be charged with selling mortgaged property under *Section 18, Chapter 32, 1935 C.S.A.*

**COUNTIES**

Hon. Robert Delaney,  
April 12, 1951.

**Opinion 1989-51**

Pitkin County is a county of the fourth class for the purpose of "fixing fee chargeable and to be collected by the county, precinct and other officers." *Ch. 66, Sec. 3, 1935 C.S.A.*

Mileage expense and mileage fees for sheriffs are limited to eight cents per mile by virtue of *Chapter 66, Sections 58(13) and 44, respectively, 1935 C.S.A.*

**CITIES AND TOWNS**

Mr. Charles T. Byrne,  
April 12, 1951.

**Opinion 1990-51**

Officers of cities of the second class are (1) members of the city council; (2) those specifically designated as such; (3) those required by statute or ordinance. Salaries of such officers are regulated by ordinance of the city council.

**OLD AGE PENSIONS**

Earl M. Kouns, Director,  
April 12, 1951.

**Opinion 1991-51**

(1) In order to be eligible for an old age pension the applicant must have been physically present in the State of Colorado five out of the preceding nine years.

(2) To gain admission with either of the pension groups or classes, an applicant must have attained an age making him eligible for admission into such group or classes, an applicant must have attained an age making him eligible for admission into such group and further must have the other statutory qualification necessary for such admission among which trade, occupation or profession cannot be found.

**SANITATION DISTRICTS**

Hon. Archie R. Reeves,  
April 13, 1951.

**Opinion 1992-51**

State of Colorado cannot be a petitioner for formation of a sanitary district under *Ch. 175, S. L. 1939*, as amended and re-enacted by *Chapter 253, S. L. 1949*, nor can its lands be included within any such district. State can, however, under *Chapter 244, S. L. 1949*, contract with such a district for sewage services for the State Penitentiary.

**CITIES AND TOWNS—COUNTIES—HOSPITALS****Opinion 1993-51**

Mr. Robert Delaney,

April 13, 1951.

The City of Aspen being a city of the second class needs specific statutory authority in order to contribute to a county hospital by means of an ad valorem or excise tax. Citations,—to the effect that the words, “erect, establish and maintain” cannot be construed to allow contribution to a general charitable hospital.

**MOTOR VEHICLES****Opinion 1994-51**

Hon Averill C. Johnson,

April 18, 1951.

(Specific Ownership Tax)

Specific ownership tax cannot lawfully be collected upon motor vehicles intended to be operated upon the highways of this state, if such vehicles are (1) publicly owned, including those owned by state, counties, cities, towns, and other municipal corporations, and by public libraries; or (2) used solely and exclusively for religious worship, for schools or for strictly charitable purposes.

It is the character of use, and not the element of ownership which determines the applicability of the religious, educational and charitable exemptions.

**SCHOOLS****Opinion 1995-51**

J. H. MacDonald, Chairman,

April 19, 1951.

1. The State Board of Education cannot pay the travel expenses of prospective candidates from their place of residence to Denver so that the Board may there interview them and pass upon their competency for appointment to the position of Commissioner of Education. (*Sec. 1(1)(a), S. L. 1949; Sec. 34, Art. V, Colorado Constitution; Attorney General Opinion 1472-49*).

2. The wisdom or necessity of the Board or how many thereof should go on trips to investigate candidates are all matters of fact for the determination of the Board, with the consent and approval of the Governor and the Controller.



**CIVIL SERVICE**

State Civil Service Commission,  
April 20, 1951.

**Opinion 1996-51**

Irrespective of the intermediate steps taken by the several departments, or their heads, a transfer of employees in the classified service does not become complete until the transfer has been "certified by the Commission." (*Rule X, Sec. 1, para. 1. Rules Civil Serv. Com.; Sec. 13, Art. XII, Colorado Constitution*)

**VOCATIONAL EDUCATION—CONTROLLER**

E. C. Comstock,  
April 20, 1951.

**Opinion 1997-51**

The question of maintaining offices outside of Denver under a different hourly and daily basis than is provided under *Fiscal Rule No. 16* is an administrative question and not one of law.

**GOVERNOR—LEGISLATURE**

Hon. Dan Thornton,  
April 20, 1951.

**Opinion 1998-51**

*Senate Joint Resolution No. 30* is not and cannot be an appropriation. (*Sec. 17, 32 and 34, Art. V, Colo. Constitution*)

It must be deemed recommendatory in character and if the Colorado Advertising and Publicity Committee decide that publicity in connection with the San Luis Centennial Fiesta comes within the purview of their appropriation for state advertising and publicity then such expenditure must be made at their hands and not those of the Fiesta Committee.

**HOSPITALS—BOARD OF MEDICAL EXAMINERS**

Board of Medical Examiners,  
April 24, 1951.

**Opinion 1999-51**

The Board of Medical Examiners lacks authority to issue opinions to hospital boards concerning the staffing of hospitals.

**MOTOR VEHICLES**

Mr. Averill C. Johnson,  
April 30, 1951.

**Opinion 2000-51**

Fees provided for in *H. B. 222* do not apply in case of documents provided for in the Motor Vehicle Code and used in the issuance of titles and licenses.

**COURTS—MENTAL DEFECTIVES  
FEES**

**Opinion 2001-51**

Hon. Joseph A. Davis,  
April 27, 1951.

The \$1.00 tax imposed on all civil actions by *H. B. 201* does not apply to delinquency, dependency or lunacy proceedings.

**CIVIL DEFENSE—APPROPRIATIONS**

**Opinion 2002-51**

Lt. Gen. Henry L. Larsen, Director,  
April 25th, 1951.

Money appropriated may be used for capital outlays and can be expended to purchase equipment to be used by Civil Defense Agency. Sums of money appropriated for a fiscal year cannot be set aside or encumbered subsequent to the end of said fiscal year. Purchases of equipment in relation to Federal matching funds are to be made through the State Purchasing Agent.

**STATE BOARD OF HEALTH—COUNTIES**

**Opinion 2003-51**

Dr. R. L. Cleere,  
April 25, 1951.

The County Board of Commissioners may erect and maintain a building for the specific purpose of housing local public health department by authority of *Chapter 45, Section 4, 1935 C.S.A.*, such building being a "necessary" building within the meaning of the act. Such building would be a county building and need not be limited by *Chapter 204, S. L. 1947*, providing for financing by one mill levy ad valorem tax. Such building could be financed from the post war improvement fund set up. *Chapter 45, Sections 232-241, 1935 C.S.A.*, would be a public building.

**STATE BOARD OF PHARMACY**

**Opinion 2004-51**

Mr. Ralph E. Kemp,  
April 26, 1951.

Board of Pharmacy may not by resolution restrict issuance of store licenses to owners or operators that are registered pharmacists as statutes do not impose such a restriction.

**COSMETOLOGY**

Ms. Beryl W. Maus,

**Opinion 2005-51**

April 26, 1951.

1. *Sec. 26, Chap. 42, 1935 C.S.A.*, explicitly provides how an expired license may be renewed within three years from date of its expiration. Renewed means a continuation of the old license and not the issuance of a new one. 2. If a school renews its license, the conditions as to the number of students required will be the same as must be applied to any other licensed school if its students drop below the minimum requirements. 3. There is nothing in the statutes which forbids the offering of free scholarships. Whether it causes "dissension among the other schools" is a matter of business practice and not of law.

**COUNTY COURTS—ESTATES AND ESCHEATS**

Honorable Harold D. Lutz,

**Opinion 2006-51**

April 27, 1951.

It is improper for the clerk or the County Judge to open a sealed envelope containing purported will deposited in the County Court under the provisions of *Section 46(1), Chapter 176, Vol. IVB, Colorado Statutes Annotated. Section 46(1)* does not require the giving of a certificate of receipt which receipt shows the name of the executor or executrix and the witnesses to the will or the number of pages of the will.

**COUNTIES—GROUP INSURANCE**

Mr. Maurice W. Konkel,

**Opinion 2007-51**

April 27, 1951.

The Board of County Commissioners can legally pay remuneration for county employees other than elected officials, civil service employees and others whose salaries are fixed by statute, one-half of insurance premiums required to maintain group insurance plan for such covered employees.

**COUNTIES—COURTS**

Mr. Charles R. Corlett,

**Opinion 2008-51**

May 1, 1951.

When public officer resigns after salary increase his successor is entitled to increase of salary. Constitutional prohibition on salary increase no application to Clerks of Court who serve for no specific term.

**LAND BOARD—LEGISLATION**

Harold F. Collins,  
April 24, 1951.

**Opinion 2009-51**

(*House Joint Resolution No. 4 and Ch. 202, S. L. 1937*)

*Ch. 202, S. L. 1937*, is limited to leases existing at the time of the passage of the act and does not apply to leases executed thereafter. Application to present leases would violate *Art. II, Sec. 11* of the *Const.* (impair the obligation of contract)

**GAME AND FISH—LEGISLATION**

Game and Fish Commission,  
May 1, 1951.

**Opinion 2010-51**

(1) The Game and Fish Commission may rent or lease its surface lands, including mineral reservations or may rent or lease lands for its use when found desirable, subject to the condition imposed by *H.B. 169, S. L. 1951*.

(2) *H.B. 169, S. L. 1951*, authorizes the Game and Fish Commission to make leases according to the provisions of the law. When the payment of money is not involved the provisions of *Ch. 118, S. L. 1947* are not applicable. However, since the Governor as Chief Executive of the State is head of said department, it is necessary for it to work out administrative details with the Governor.

**COURTS—FEES AND SALARIES**

W. B. Moore,  
May 1, 1951.

**Opinion 2011-51**

Salaries of court employees not appointed for specific term are not subject to constitutional prohibition against increase.

**LEGISLATION**

Ben. L. Garman,  
May 1, 1951.

**Opinion 2012-51**

(*H.B. 222, 223 and 241, 38th General Assembly*)

Effective date of *H.B. 222* passed by 38th General Assembly is April 10, 1951, the date on which the bill was approved by the Governor as the bill contains the "safety clause" and "emergency" clauses are no longer needed.

*H.B. Nos. 223 and 241* passed by the 38th General Assembly become effective 90 days after adjournment of General Assembly because the bills did not contain the safety clause and are therefore subject to referendum provisions of the constitution.

**GAS CONSERVATION COMMISSION**

John E. Cronin,

**Opinion 2013-51**

May 2, 1951.

(Re—Cobb-Stringer Performance Bond)

Amending opinion No. 1976-51. Once a performance bond is executed to the state, no officer of the state can enter into a cancellation agreement, and the conditions of the bond must be fulfilled before release.

*Parry v. Board of Corrections*, 93 Colo. 592; 28 Pad. (2d) 261.

**STATE BOARD OF PHARMACY**

State Board of Pharmacy,

**Opinion No. 2014-51**

May 2, 1951.

(Confiscation of Drugs)

Drugs included in schedules A and B of *Section 18, Ch. 58, 1935 C.S.A.*, are not contraband and they are therefore "property" within the purview of the constitution, and, as such, they cannot be summarily confiscated upon discovery in the hands of an unauthorized person. The District Attorney has the discretion to accept or refuse complaints upon the basis of his appraisal of the evidence presented to him.

**VETERANS ADMINISTRATION—  
COLORADO GENERAL HOSPITAL—  
WELFARE DEPARTMENT**

Veterans Administration,

**Opinion 2015-51**

May 2, 1951.

The procedural provisions of *Art. 1, Sec. 21, Chap. 105, 1935 C.S.A.* are not applicable to criminally insane inmates of the Colorado State Hospital who have been placed in said institution by order of the District Court under the procedures provided in *Article II, Sec. 27(1) and 27(2), Chap. 105, C.S.A. 1935.*

**SCHOOLS**

Commissioner of Education,

**Opinion 2016-51**

May 3, 1951.

(organization)

There is no conflict between *Secs. 122 and 33 and 34, Chap. 146, 1935 C.S.A.*, for the reason that *Secs. 33 and 34* are applicable to

“new districts” formed under *Ch. 224, S. L. 1949*; while *Sec. 122* of said *Chap. 146*, as amended by *H.B. 196, S. L. 1951*, is applicable to “any school district,” other than such “new district” formed under the provisions of said *Chap. 224* “or as the same may be amended.”

**SCHOOL OF MINES—FEDERAL**

**Opinion 2017-51**

Colorado School of Mines,

May 3, 1951.

Colorado School of Mines is qualified for federal loan assistance under *Title IV* of the *Housing Act of 1950*, for construction of student and faculty housing, and can pledge anticipated revenues to be derived from operation of the housing project for repayment of the loan.

**STATE COLLEGE OF EDUCATION—  
COMMISSIONER OF EDUCATION**

**Opinion 2018-51**

Glen C. Turner, Secretary

Board of Trustees,

May 3, 1951.

The State Commissioner of Education is a non-voting, ex-officio member of the Board of Trustees of State Normal School, with duties as limited by *Sec. 22, Chap. 155, 1935 C.S.A.*

Unless State Commissioner of Education has signed diplomas authorized by said section 22, the diplomas are incomplete and are without the evidential value specified in the statute.

**LEGISLATION—COUNTY COURT—  
TAXATION**

**Opinion 2019-51**

Hon. William L. Gobin,

May 3, 1951.

(\$1.00 tax imposed by *H.B. 201*)

The \$1.00 tax imposed by *H.B. 201*, approved March 28, 1951, is applicable to civil actions as the term is used in the ordinary and usual sense, and is inapplicable to all other matters over which the county court has jurisdiction that are not true civil actions.

**DEPARTMENT OF PUBLIC HEALTH****Opinion 2020-51**

Dr. R. L. Cleere,

May 4, 1951.

(Re Master Plumbers)

A master plumber who operates his own shop may simultaneously act as a sole master plumber for other jobs in which he has no interest.

**BOARD OF NURSE EXAMINERS****Opinion 2021-51**

Miss Joy Erwin,

May 4, 1951.

(nurse qualifications)

Board of Nurse Examiners may place limitation on time elapsed between examinations and require further preparation after that elapsed time before re-examination. Requirement must be in nature of a duly promulgated regulation of the board and it must apply generally. It cannot apply to a specific person who has already failed the first examination.

A nurse applicant who failed certain subjects under the old examination system may not demand re-examination on the subjects failed under old system, and must be re-examined under system presently used.

**GAME AND FISH—LEGISLATION****Opinion 2022-51**

Game and Fish Commission,

May 4, 1951.

(Re *S. B. 255, 38th Gen. Assembly*)

The first issue of the six issues of Game and Fish magazine will be the original publication, as contemplated by *S.B. 255, Sec. 1, S. L. 1951*, and is the one and only issue which can be subsidized from Game and Fish Cash Fund.

**DEPARTMENT OF PUBLIC HEALTH****Opinion 2023-51**

Department of Public Health,

May 7, 1951.

(Appointment of Hearings Officers by Department)

Department of Public Health may not appoint county health officers to hear license revocations proceedings under state law.

*Ch. 78, Sec. 21 (5) (20), 1935 C.S.A. and Chap. 81, 1935 C.S.A.* are sufficiently broad to allow designation of referees and masters within the department, but are not sufficiently broad to allow such appointments outside of the department.

### COLORADO STATE HOSPITAL

Opinion 2024-51

Colorado State Hospital,

May 7, 1951.

(Re: *H. B. 423, S. L. '51*)

In view of said *H.B. 423*, the estate of an insane person, admitted, committed or transferred to any public institution of the state, maintained for the care, support, maintenance, education and treatment of insane persons, mentally incompetent persons, criminally insane persons, feeble-minded or epileptic persons irrespective of its source, composition or origin is primarily liable for the payment of the claims of said public institution for his care, etc., equal to the cost per capita per month of the care and treatment of other patients in said institution on and after March 29, 1951.

Liability for refund of monies received is controlled by *Sec. 32 (1) Ch. 153, 1935 C.S.A.* as amended by *S.L. 1947*.

Instant case, claim of James M. Richardson for refund was made on March 9, 1951, and under the authority of the above statute, no refund could be made by the state prior to March 9, 1950; i.e, within one year after such money was collected or received. The claim of Richardson shows that between March 25, 1950, and February 25, 1951, he paid the state \$330.00. This sum if correct, would be the maximum amount to which Richardson is entitled to have refunded, and said refund would be subject to state's claim for care and maintenance of Richardson under *H.B. 423, S. L. 1951*, from and after March 29, 1951, unless the same has since been paid.

### BOARD OF MEDICAL EXAMINERS

Opinion 2025-51

Board of Medical Examiners,

May 8, 1951.

(Narcotics-Licenses for Chiropodists)

A licensed chiropodist is not entitled to the use of narcotics in the state. Narcotics, as defined in *Ch. 58, Sec. 28, subsec. 14, 1935 C.S.A.* effect only the central nervous system, and are general anaesthetics. A chiropodist may use only local anaesthetics.



**GAME AND FISH COMMISSION**

Game and Fish Commission,  
May 8, 1951.

**Opinion 2026-51**

The magazine contemplated by department is printing of third class and under *Secs. 67, and 69, Chap. 130, 1935 C.S.A.* is to be handled by purchasing agent.

**COUNTIES**

James B. Garrison,  
May 8, 1951.  
(Treasurer's Deed)

**Opinion 2027-51**

County required to advertise sale of land to which county has taken Treasurer's deed.

**ESTATES**

John C. Stoddard,  
May 8, 1951.

**Opinion 2028-51**

Adoptive parents may inherit estate of adopted child. (*Sec. 4, Chap. 176, 1935 C.S.A.*)

**CIVIL SERVICE COMMISSION**

Civil Service Commission,  
May 8, 1951.

**Opinion 2029-51**

Nothing in present law which prevents a person, convicted of a crime and who has completed and been discharged from probation, from being appointed to a position on State Highway Patrol. *Chap. 210, S. L. 1945* was expressly repealed by *Sec. 25, Ch. 273, S. L. 1947. Sec. 9, H.B. 208, S. L. 1951* and *Sec. 10, Ch. 216, S. L. 1949*, are the provisions of law which now set forth qualifications for such patrolmen.

**OIL INSPECTION**

John E. Cronin,  
May 10, 1951.

**Opinion 2030-51**

State Inspector of Oils has no power to prohibit use of manifolds for unloading of multi-compartmented tank trucks carrying more than one class of fuel products. The Inspector can re-

quire strict compliance with *Sec. 12, Ch. 118, 1935 C.S.A.*, requiring cleaning and approval of unloading lines used for more than one class of fuel products, and the impracticability of such compliance may result in discontinuance of the use of manifolds.

**INDUSTRIAL COMMISSION—  
LEGISLATURE**

Ray H. Brannaman,

**Opinion 2031-51**

May 10, 1951.

In view of *Sec. 19, Art. V, Colo. Const., S. B. 29, S. L. 1951*, became effective upon the approval of the Governor on March 8, 1951.

**COURTS—COUNTY  
LEGISLATURE**

Hon. Donald A. Carpenter,

**Opinion 2032-51**

May 10, 1951.

(Adoption proceedings)

(*H.B. 220, 38th Gen. Assembly*)

In adoption proceedings, an investigation must be conducted if adoptive child is not related to petitioners or if adoptive child was not placed in adoptive home by a child placement agency, the State Home or other welfare agency, and court may designate any person or agency to make investigation when required.

**DEPARTMENT OF PUBLIC HEALTH**

Dr. R. L. Cleere,

**Opinion 2033-51**

May 10, 1951.

(Obstetrical facilities in general medical and surgical hospital)

Under *Sec. 21 (6), Chap. 78, 1935 C.S.A.* obstetrical facilities are required in general medical and surgical hospital.

**COUNTIES—COUNTY JUDGE  
LEGISLATURE**

James B. Garrison,

**Opinion 2034-51**

May 10, 1951.

(*S.B. 296, 38th General Assembly*)

*S.B. 296, S. L. 1951*, provides for compensation fees or expenses to be paid to county judge assisting another county judge of a county less than a second class county.

**HIGHWAYS**

Herbert Gordon, County Attorney,  
 May 11, 1951.  
 (County highways)

**Opinion 2035-51**

1. Where county hires equipment and operators are employees of county, not necessary to advertise for bids even though rentals for equipment exceed \$300.00. *Ch. 143, Secs. 67-69, 1935 C.S.A.* If independent contractor relations exist, county must advertise.
2. Payment on basis of yardage hauled may be indicative of independent contractor relation.
3. Bids may be based on a price per cubic yard where the extent of yardage is unknown, subject to budget laws.
4. If bidder is to be employee of county, bids may be restricted to bona fide residents of county, if competitive and acceptable; if an independent contractor, bids may be so limited, but may require employment of county citizens, in so far as possible.

**HIGHWAYS**

W. L. Raley,  
 May 11, 1951.  
 (County highways)

**Opinion 2036-51**

1. County may not limit bidding to "taxpayers" under provision of *Section 68, Chapter 143, C.S.A.*
2. Right to use roadway based on time is a presumptive right limited to those portions of roadway, and right of way, used for over 18 years openly, notoriously, and adversely, *Sec. 136, Chap. 40, C.S.A.*

**LIVESTOCK, CONTROLLER, AUDITOR**

Board of Stock Inspection Commissioners,  
 May 11, 1951.

**Opinion 2037-51**

1. At some time there must be a point reached where the state's accounts are closed or placed in a state of repose and public officials released from the risk and hazards of the acts of their predecessors in office. This point is reached when the Department of Audit has made its official audit and certified the accounts as closed.
2. The sums collected for stallion and jack licensing fees from 1947 to-date should be transferred from the Brand Inspection Fund to the State's General Fund.

**GAME AND FISH****Opinion 2038-51**

Hon. James F. Quine, Jr.,  
District Attorney,  
May 11, 1951.

Every person fishing in a body of water for which a Class "A" license has been issued, must have a proper fishing license.

**SECURITIES****Opinion 2039-51**

Securities Commissioner,  
May 7, 1951.  
(Dividend Investment Company)

Relates to dividends of investment contract within the meaning of *Ch. 148, Sec. 20, 1935 C.S.A.*, and whether certain acts made by the officers of certain investment certificates would come within the prohibition of the statute.

**UNIVERSITY OF COLORADO****Opinion 2040-51**

Mr. Robert I. Hislop,  
University of Colorado,  
May 14, 1951.

University of Colorado is qualified for federal loan assistance under *Title IV of the Housing Act of 1950*, for construction of student and faculty housing, and can pledge anticipated revenues to be derived from operation of the housing project for repayment of the loan.

**SCHOOLS****Opinion 2041-51**

Mr. Alfred C. Nelson,  
University of Denver,  
May 18, 1951.  
(Oath of Allegiance)

Colorado statutes requiring teachers oath of allegiance makes no exception in cases of teachers who are citizens of foreign countries.

**CITIES AND TOWNS****Opinion 2042-51**

William Atha Mason,

May 18, 1951.

(Power of Town Marshal)

Marshal of an incorporated town may serve process from the police magistrate court of such town only within the territorial limits of the court's jurisdiction and may not serve such process within the county in which town is located. *Sec. 108, Chap. 163, 1935 C.S.A.*

**STATE OFFICERS—DISTRICT JUDGE—  
SALARIES****Opinion 2043-51**

George H. Blickhahn,

May 18, 1951.

(Effective date of appointment)

Where appointment of a public official is made after the effective date of a legislative enactment increasing the salary of such official, the constitutional limitation of *Sec. 30, Art. V*, do not apply, and the appointed official is entitled to compensation at the rate prescribed by the new enactment.

**SCHOOLS****Opinion 2044-51**

Clifford J. Gobble,

May 18, 1951.

(Organization)

A new school district is not subject to bonded indebtedness of the old district. *Art. XI, Sec. 7, Colo. Const.; Sec. 72, Chap. 146, 1935 C.S.A.*

**ADVERTISING AND PUBLICITY DEPT.****Opinion 2045-51**

Lewis R. Cobb,

May 21, 1951.

(Use of State Flag on farm products bags)

Reproduction of State Flag on farm products bags is illegal. *Sec. 4, Ch. 152, 1935 C.S.A. and Sec. 17, Ch. 48, 1935 C.S.A.*

**CITIES AND TOWNS**

William O. DeSouchet,

**Opinion 2046-51**

May 21, 1951.

(Adoption of City Manager Form of Government)

(1) Under new city manager type of government, the new council takes over after canvassing of votes and declaration of results. (2) The new council selects the city manager. *Sec. 115 (3); Sec. 115 (6) and Sec. 115 (10), Ch. 163, 1935 C.S.A.*

**DEPARTMENT OF AGRICULTURE****Opinion 2047-51**

Paul W. Swisher, Dept. of Agriculture,

May 21, 1951.

Funds received from fees, taxes, sales, etc., except when otherwise provided by law, shall hereafter be deposited with the State Treasurer as the custodian thereof. *Sec. 3, Ch. 232, S. L. '49; Controller's Fiscal Rule 12.*

**SCHOOL OF MINES****Opinion 2048-51**

John W. Vanderwilt, President,

May 21, 1951.

(1) The Board of Trustees has the power, through rule or resolution, to adopt a program to encourage contributions, gifts, bequests, etc. to the state for the benefit of the School of Mines.

(2) In view of statement that "The man in charge would devote his attention to problems of administration directly related to the regular work of the school," there is no objection to paying his salary from state funds, if such funds are available within appropriation.

**ENGINEERS**

M. C. Hinderlider, Secretary,

**Opinion 2049-51**

State Board of Registration for

Professional Engineers and Land Surveyors,

May 22, 1951.

(Budgets and Work Programs)

The State Board of Examiners for Engineers and Land Surveyors was abolished by *H.B. 10, 38th General Assembly*, and in

effect replaced by the State Board of Registration for Professional Engineers and Land Surveyors.

The 1949-1951 Budget of the State Board of Examiners is not binding upon the State Board of Registration, but the State Board of Registration is limited by the budget and work program provisions of the Administrative Code in making expenditures and commitments.

### CITIES AND TOWNS

**Opinion 2050-51**

Dr. W. S. Keyling,

May 22, 1951.

(Improvement Districts—Assessment of Cost)

A town board has no power to create a street improvement district by ordinance of its own volition.

Street improvement districts can be organized under *Sections* 1 to 16 or 65 to 104, *Ch.* 138, 1935 *C.S.A.*, which must be strictly followed.

Assessment of the cost of the improvement cannot be made on a frontage basis, unless such basis accords in fact with the enhanced value of the assessed property and the proportionate benefit accruing thereto.

### GAME AND FISH

**Opinion 2051-51**

Game and Fish Commission,

May 23, 1951.

(Lost abstracts—Red Feather Lake)

The replacement of lost abstracts, the property of others, is a proper charge against the Maintenance and Operation appropriation to the Department of Game and Fish from the Game Cash Fund.

### HIGHWAYS

**Opinion 2052-51**

Mark U. Watrous,

May 24, 1951.

1. The State Highway Department can allocate funds from highway revenue for purposes of participation in construction of a test section of highway to determine effect of truck travel, where

other states and industry participate; such agreement should be approved by Congress.

2. It is suggested that the experiments be conducted in the name of a department of the USA, where state highway department is authorized by statute and eliminating congressional approval requirement.

**STATE OFFICERS—DISTRICT JUDGE  
FEES AND SALARIES**

Hon. Henry S. Lindsley,

Opinion 2053-51

May 28, 1951.

(Expert witness fee)

1. The written opinion of a physician employed at Colorado Psychopathic Hospital who examines a defendant pursuant to *Section 508, Ch. 48, 1935 C.S.A.*, may not be received in evidence in the trial of such defendant.

2. Trial judge may not lawfully allow expert witness fees to be paid to a physician testifying as to result of examination made pursuant to *Sec. 508, Ch. 48, 1935 C.S.A.*

**ENGINEERS**

M. C. Hinderlider, Secretary,

Opinion 2054-51

State Board of Registration for

Professional Engineers and Land Surveyors,

May 28, 1951.

Corporations and partnership, although entitled to engage in the practice of professional engineering or land surveying within the State, are not entitled to registration under *H.B. 10, 38th General Assembly*.

*Section 15* of the act, pertaining to use of a seal by each registrant, applies only to individual natural persons registered under the act.

**COUNTIES—COUNTY ATTORNEY**

Leon H. Snyder,

Opinion 2055-51

May 29, 1951.

The signatures of the chairman of the board of county commissioners and the county clerk may be affixed to county warrants by mechanical means if they adopt such as their signatures.



**LIQUORS—CITIES AND TOWNS****Opinion 2056-51**

John Oliver Hall,  
 June 1, 1951.  
 (City ordinance)

The City of Pueblo has no power to enact an ordinance regulating the sale of malt, vinous, and spirituous liquor, but can regulate the sale of fermented malt beverages. A resolution adopting a policy for suspension and revocation of licenses, the period of suspension or revocation to be dependent upon the number of previous violations of laws or regulations by the licensee, is probably invalid.

**COUNTIES—COUNTY CLERKS****Opinion 2057-51**

Clerk of the County Court,  
 June 4, 1951.

The \$1.00 tax imposed on all civil actions by *H.B.* 201 approved on March 29, 1951, does not apply to adoption proceedings which are not true civil actions in the usual and ordinary sense of the term.

**GOVERNOR—COSMETOLOGY****Opinion 2058-51**

Hon. Dan Thornton,  
 May 4, 1951.  
 (Re Cosmetology Board)

Issuance of instructor of cosmetology licenses by the state board of cosmetology to themselves as individuals is a representation of incompatible interests and against public policy.

Licenses of Fay Dickson Stahle, Helen M. Scott, Leora P. Williams and Norma Moon are individually so imperfect they can be challenged irrespective of the general principle.

**CITIES AND TOWNS****Opinion 2059-51**

William O. DeSouchet,  
 June 4, 1951.  
 (Use of Unbudgeted and Unappropriated Surplus Funds)

A building fund which has not been appropriated or budgeted for the current fiscal year cannot be used for improvement of public buildings, and cannot be transferred to the post war im-

provement fund, *Ch. 45, Sec. 231, 1935 C.S.A.*, because they are neither surplus general funds nor surplus appropriated and budgeted special funds. Surplus general funds from the immediate past fiscal year may be transferred to the post war improvement fund.

### DEPARTMENT OF HEALTH

Opinion 2060-51

H. A. Sauberli, M.D.,

June 6, 1951.

(Special and Limited Health Regulations)

Only health regulations of general application may be passed and enforced. A health regulation affecting only a small geographical area within a health district is not one of general application.

### SCHOOLS

#### CONSOLIDATION OF DISTRICTS—ELECTIONS

Opinion 2061-51

Miss Irene M. P. Wichmann,

June 6, 1951.

Where there is a tie vote for election of directors under *Section 69, Ch. 146, 1935 C.S.A.*, the meeting should be continued until the tie is resolved and officers elected. In an event of failure to elect, the county superintendent should appoint the directors in accordance with *Section 23*. The provisions of *Section 80* for the calling of special elections are inapplicable to tie votes under *Section 69*.

Where notice of a special election under *Section 80*, or of a bond election under *Section 123*, is posted on May 18 for an election to be held on June 6, the 20 day posting requirement of *Section 78* has not been met. Any election held pursuant to such notice is void.

### COUNTIES—COUNTY JUDGE

Opinion 2062-51

Hon. Joseph A. Barron,

June 6, 1951.

A county judge in Class III County has exclusive power to fix the compensation of the clerk of the county court, and the same need not be approved by the board of county commissioners concerned. (See *Sec. 10, Ch. 158, S. L. '49.*)

**GAME AND FISH****Opinion 2063-51**

Game and Fish Commission,  
 June 8, 1951.  
 (Fines)

*Sec. 8288, C. L. 1951*, makes it mandatory in the county treasurer to credit to the General County School Fund all fines received unless otherwise directed by statute.

**GAME AND FISH****Opinion 2064-51**

Game and Fish,  
 June 7, 1951.

Multiple sales of game and fish licenses not permitted by *Section 183, Ch. 70, 1935 C.S.A.*

**STATE OFFICERS—GOVERNOR—  
LAND BOARD****Opinion 2065-51**

F. Ross Brown,  
 June 7, 1951.  
 (Re SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 25, T. 3 N. Range 53 W 6th P.M.  
 Mineral lease application)

*Ch. 2, S. L. '05*, must be strictly construed and the Board of Supervision created therein has power limited only to selection and reconveyance of 160 acre tract for the purpose of drilling an artesian well. Conveyance of any portion of the 160 acres to any person not in privity with the original donor is unauthorized.

**CONSTITUTIONAL LAW—SALARIES—STATE OFFICER—  
WATER****Opinion 2066-51**

Charles Holmes,  
 June 8, 1951.  
 (Re compensation of incumbent directors of Grand  
 Junction Drainage District)

*H.B. 285, 38th General Assembly*, which amends *Sec. 147, Ch. 57, 1935, C.S.A.*, so as to increase maximum compensation of the

Grand Junction Drainage District from \$4.00 to \$8.00 per day, is effective to increase the compensation of incumbent directors from the date of signing.

*Sec. 30, Art. V, Colo. Const.* forbids increase of "salary" of public officer after his election or appointment, but does not prohibit increase in "emoluments" of the office. The per diem compensation of the directors of the Grand Junction Drainage District, being payable only when the directors are engaged in business of the District, does not constitute "salary" within the meaning of *Sec. 30, Art. V*. The per diem compensation may be increased during the term of office of the directors without contravening the constitutional prohibition.

#### **CIVIL DEFENSE—EMPLOYEES**

General Henry L. Larsen, Director **Opinion 2067-51**

June 11, 1951.

(Travel and maintenance expenses of volunteers)

Travel and maintenance expenses of civil defense agency volunteers traveling in the course of official business may be lawfully paid even though such volunteer is not a regular state employee.

A written contract need not be executed in order to provide for the payment of such expenses. (*Sec. 11 (d), Chap. 4, Ex. S. L. 1950.*)

#### **EMPLOYEES' RETIREMENT**

Raymond J. Heath, **Opinion 2068-51**

June 13, 1951.

(Judge's retirement act)

All service of a judge shall be considered for all purposes of the judge's retirement act (*Chap. 145, S. L. 1945, as amended*) and any judge having served for more than ten years becomes entitled to annuity benefits upon his attainment of the age of sixty-five.

#### **LIQUORS—CRIME**

Hon. George J. Baker, **Opinion 2069-51**

June 13, 1951.

(*Sec. 8, Ch. 89, 1935 C.S.A.* not violated by a fishing contest)

*Sec. 8, Ch. 89, 1935 C.S.A.* prohibiting 3.2% beer licensees from furnishing or supplying any article or commodity at less than its market price for the purpose of influencing the sale of any

particular brand of malt beverage, is not violated by a fishing contest to be conducted by a brewing company, whereunder the rules of the contest registration is without charge, the winner is determined solely by the size of the fish entered, and it is not necessary to buy beer or to accompany the entry by any container, parcel, coupon or package used in connection with the manufacture or sale of beer.

*Sec. 8, Ch. 89, 1935 C.S.A.* was intended to apply to "tie-in" sales, and not to prohibit normal and customary advertising methods. The proposed fishing contest is a means or medium of advertising, and is not the type of scheme for the direct influencing of sales contemplated by the statute.

### SOIL CONSERVATION DISTRICTS

Kenneth W. Chalmers,

Opinion 2070-51

June 14, 1951.

(Formation-elections)

Where a petition for formation of a soil conservation district is presented to the Colorado State Soil Conservation Board, and after due notice a hearing is held and the Board makes a determination that the petition is sufficient and the formation of the district is necessary, and an election is then held and a majority vote in favor of the district, a person whose lands were included within the boundaries of the proposed district cannot for the first time object to the inclusion and the board has no power to exclude such lands.

If the pre-election proceedings were in compliance with the statute, the board has no alternative but to follow the mandatory provisions thereof and carry the formation of the district to its conclusion. If the pre-election proceedings were defective, the board can so find and can permit the petitioners to institute new proceedings. Under the latter course, the objector could make his views known at the first hearing, and the board could then exclude the lands. There is no provision in the law for exclusion of lands except for reasons appearing at the hearing.

### PUBLIC RECORDS

Dolores C. Renze,

Opinion 2071-51

State Archivist,

June 15, 1951.

There is no conflict between *H.B. 221* and *H.B. 98*, both passed by the 38th General Assembly and there is no limitation or restriction imposed by one on the other.

**CHILDREN****Opinion 2072-51**

Earl M. Kouns,  
June 18, 1951.

(Illegitimate children may inherit from parents)

An illegitimate child may inherit from his father if such child's parent subsequently intermarry and the child is recognized by the father to be his child. (*Sec. 8, Chap. 176, 1935 C.S.A.*)

**GAME AND FISH****Opinion 2073-51**

J. D. Hart, Asst. Director,  
June 19, 1951.

Game and Fish Commission is not liable to pay "grazing fees" upon open unfenced range land under *Secs. 42-50, Chap. 73, 1935 C.S.A.*, since the "open range policy" has always been the law of this state. *Morris v. Fraker*, 5 Colo. 425.

**CIVIL SERVICE****Opinion 2074-51**

Civil Service Commission,  
June 19, 1951.

The Civil Service Commission can require other qualifications not specified in the statute, and can, as a matter of fact, determine whether the applicant has the statutory qualifications, and if you do not abuse your discretion in doing so, the courts will sustain your action in view of *People v. Hare*, 109 Colo. 223. (See also *Atty. Gen. Opinions* 415-36; 605-45 and 1088-47.)

**CIVIL SERVICE****Opinion 2075-51**

Civil Service Commission,  
June 20, 1951.

Where protests are filed with the Civil Service Commission protesting the person on the head of the list but said protests are filed ten months after the establishment of the list, the protests should be denied and no hearing had for the following reasons:

1. The protests were not filed within the five day period fixed by *Sec. 1, Rule VI*.

2. The protestant not on the eligible list is without legal right and has no standing in law upon which to base a protest.

3. The protestant who stands 4th on the eligible list not only is too late in filing his protest, but is now attempting, through administrative procedure, to deprive the person at the head of the list of his property right on the list without having any co-relative right thereto himself.

### HEALTH

Department of Public Health,  
June 21, 1951.

Opinion 2076-51

(Rule 20, Sanitary Engineering Standards)

Rule 20, Sanitary Engineering Standards, Colo. State Board of Health 1942, covering the bacterial count in domestic sewage, or water containing domestic sewage used in irrigation, comes directly within the purview of *Sec. 5, Subsec. 7, Chap. 208, S. L. 1947*, and the Department of Public Health has the power to pass and enforce such a rule.

### CONTROLLER—CIVIL SERVICE—EMPLOYEES

James A. Noonan,  
June 22, 1951.

Opinion 2077-51

(Payment for accumulated annual leave upon death of employee)

Rule of Civil Service Commission providing for payment of accumulated annual leave to widow or children of deceased upheld.

### CIVIL SERVICE

Civil Service Commission,  
June 22, 1951.

Opinion 2078-51

The deputy commissioner of education is not exempted from civil service under *Sec. 1, Art. IX, Colo. Const.*, but is exempt under *Sec. 13, Art. XII, Colo. Const.*, as an officer of an educational institution not reformatory or charitable in character.

### GAME AND FISH

Game and Fish Commission,  
June 25, 1951.

Opinion 2079-51

(Claims)

There is no statutory authority for settlement of unserved claims on a pro rata or compromise basis, though insurance company may be receipted for amount actually paid in settlement of claim and be relieved of further liability.

**SCHOOLS—LEGISLATURE****Opinion 2080-51**

Nettie S. Freed,

June 26, 1951.

(Teachers' Pensions under State Emeritus Act and Local Retirement Plan *H.B. 331, Chap. 274, S. L. 1951*)

Pensions of teachers not under Teachers' Emeritus Act may be increased if net result is not to require payments not contemplated under appropriation made in Emeritus Act.

**ACCOUNTANCY****Opinion 2081-51**

Norman H. Gross, Secretary,

June 28, 1951.

State Board of Accountancy authorized to issue certificate as a certified public accountant to a Colorado non-resident, if such person is otherwise qualified. No prohibition in *Chapter 76, S. L. 1937*, as amended, against issuing such certificate to a Colorado non-resident.

**CIVIL SERVICE****Opinion 2082-51**

State Civil Service Commission,

June 29, 1951.

1. In view of *Par. 1, Sec. 13, Art. XII, Colo. Const.*, each competitive examination can only result in one list, and that to be legal the appointment must be made from the head of that list; any rule of the commission providing otherwise is an illegal assumption of power by the commission and is contrary to *Sec. 13, Art. XII, Colo. Const.*

2. In view of *Hewitt v. Commission, supra*, it is our opinion that, whether an examination is promotional or open or a combination of the two, so long as it is competitive, it is an administrative and not a legal question.

**CIVIL SERVICE—GOVERNOR—  
DIRECTOR, PUBLIC INSTITUTIONS****Opinion 2083-51**

State Civil Service Commission,

July 5, 1951.

State Homes and Training Schools at Ridge and Grand Junction are educational institutions of the state, not reformatory or



charitable in character, and the officers and teachers of said schools come within the exception of *Par. 2, Sec. 13, Art. XII, Colo. Const.* Whether an individual or the position which he occupies is within the classified civic service, or is exempt because it is within the exemptions provided by *Art. XII, Sec. 13*, is a matter of fact, to be determined by the commission, and no opinion expressed at this time upon that point.

### NATIONAL GUARD

**Opinion 2084-51**

Joseph L. Horgan, Jury Commissioner,

July 2, 1951.

(National Guard Jury Exemption)

*Chap. 159, S. L. 1945*, contains no repeal clause and is not sufficiently contradictory to repeal by implication *Secs. 23 and 24, Chap. 111, 1935 C.S.A.* Therefore, active members of the National Guard are exempt from jury duty.

### GOVERNOR—REVENUE DEPARTMENT

**Opinion 2085-51**

Hon. Dan Thornton,

July 2, 1951.

(Unfair Practices Act License Fee Fund)

Any cash balance existing on June 30 of any year in the Unfair Practices Act License Fee Fund must be transferred to the general fund (*Sec. 9(e), Ch. 148, S. L. 1949*)

### GAME AND FISH

**Opinion 2086-51**

C. N. Feast,

July 2, 1951.

By the state's acceptance of *Public Act No. 415, 75th Congress*, and the making of the state's appropriation in conformity with the federal requirement, it definitely makes a commitment of such appropriation to the specific purpose of wild life restoration projects, continuing in character and not subject to reversion to the Game Cash Fund under general statutory provision so long as *Public Act No. 415, 75th Congress*, is in force and effect.

The manner of handling balances, etc., is administrative in character and is subject to the Controller's general rules relating to such matters.

**BANKING****Opinion 2087-51**

Frank E. Goldy,

July 3, 1951.

(Branch Banking)

Sale by bank of checks through a retail merchant constitutes branch banking within the meaning of *Sec. 61, Chap. 18, 1935 C.S.A.*

**SCHOOLS****Opinion 2088-51**

Nettie S. Freed,

July 5, 1951.

(Sale of bonds)

Boards of directors of third class school districts have the authority to print and sell bonds without consulting or obtaining the consent of bonding company.

**MOTOR VEHICLES****Opinion 2089-51**

Charles R. Corlett,

July 5, 1951.

(Operators' and Chauffeurs' Licenses)

Operators of water and oil tanks, trucks, dirt and gravel trucks, and similar vehicles used for transporting of materials used in highway construction or excavated from a site in connection with construction are required to be licensed as chauffeurs to drive such vehicles. No license is required for the operators of other types of road machinery temporarily operated or moved upon a highway and engaged in constructing and maintaining highways.

**STATE TREASURER****Opinion 2090-51**

Hon. Earl E. Ewing,

July 9, 1951.

There is no legal prohibition which prevents State Treasurer from consolidating accounts of funds having small cash balances into one consolidated fund so long as the identity of said account is retained as required by *Sec. 12, Art. X* of the state constitution.

**WELFARE DEPARTMENT—  
OLD AGE PENSIONS—  
SCHOOLS—RETIREMENT FUND**

**Opinion 2091-51**

Earl M. Kouns,

July 9, 1951.

Entitlement to benefits from the State Teachers Emeritus Retirement Fund is an available resource contemplated by *Sec. 28(6), Ch. 119, 1935, C.S.A.* (old age pension statute), and in computing net amount of old age pension payments, such benefits should be deducted. Similarly, old age pension benefits received must be deducted in computing net amount of payment from Teachers Emeritus Retirement Fund. (See *Sec. 4, Ch. 274, S. L. 1951*)

**SCHOOLS OF MINES—  
CONSTITUTIONAL LAW**

**Opinion 2092-51**

Gurnett Steinhauer,

July 12, 1951.

Where the Colorado School of Mines acquired certain self-liquidating housing and dining hall projects through federal grants and other sources, no money from tax receipts or legislative appropriation being used, the board of trustees may legally pledge the net income of such projects to the repayment of a federal law to be obtained for the purpose of constructing a new and separate housing project. Such a pledge does not constitute a "debt" within the meaning of *Sec. 3, Art. XI, Colo. Const.* and there are no statutory limitations upon such action.

**GAME AND FISH—CRIMINAL LAW—  
MOTOR VEHICLES**

**Opinion 2093-51**

C. N. Feast,

July 18, 1951.

Game wardens have no statutory power to arrest violators of motor vehicle traffic laws, although they have the citizen's power to arrest in cases of felony, and possibly breaches of the peace constituting misdemeanors, if committed in their presence. They may sign a criminal complaint before a justice of the peace or district judge, who may cause the arrest and prosecution of the violator.

**GAME AND FISH—CIVIL SERVICE****Opinion 2094-51**

Game and Fish Commission,  
July 19, 1951.

Assigning of employees from Game and Fish department to State Purchasing Agent and Civil Service Commission to there do work for the Game and Fish Department does not involve a question of law but is administrative in character, when such physical transfer is done with the knowledge of the Governor and Civil Service Commission.

**INSURANCE****Opinion 2095-51**

Luke J. Kavanaugh,  
July 19, 1951.

Mutual benefit association may adopt actuarially sound table of graded benefits for children under five years of age. (*Ch. 87, Sec. 240, 1935 C.S.A.*)

**ENGINEERS—LEGISLATURE****Opinion 2096-51**

M. C. Hinderlider,  
July 20, 1951.

State Board of Registration for Professional Engineers and Land Surveyors has no power to classify engineers into branches other than those set forth in *Sec. 11, Ch. 161, S. L. 1951*. It cannot use the classification of "Petroleum Engineer," even as a parenthetical addition to the classifications of Chemical or Mining Engineering.

**COUNTIES—LAND BOARD****Opinion 2097-51**

State Board of Forestry,  
July 23, 1951.

Counties are not liable for expenditures made by third persons in fighting forest fires on state-owned lands.

**VETERANS ADMINISTRATION—  
COLORADO STATE HOSPITAL**

**Opinion No. 2098-51**

Dee H. Beer,

July 23, 1951.

(Estate of Harry Jacobson, M. I. 9039-2)

Colo. State Hospital should not divide its claim against an inmate for care and maintenance but should present same in full to conservator for payment.

Conservator is required to "pay said account out of any money in his hands belonging to said estate, *and which* may be lawfully applied." (*Sec. 9, Ch. 105, 1935 C.S.A.*)

If federal statutes limit application of federal funds to payment of so much of the account as occurs after his appointment as conservator, then the conservator can only "lawfully apply" such federal funds in the manner specified by federal statute, but funds other than such federal funds are not so limited and are to be applied by him in payment of state's claim without such federal restriction.

**COUNTIES—COUNTY COMMISSIONERS—  
SCHOOLS**

**Opinion 2099-51**

Ben G. Tyler,

County Treasurer of Adams County.

Signatures of chairmen of board of county commissioners and county clerks may be affixed to county warrants by mechanical means if they desire and do adopt such as their signature. (94 *A. L. R.* 770; *Ch. 45, Sec. 44, Chap. 159, Sec. 2, 11th par., C.S.A. 1935; Ch. 159, Sec. 211 and Ch. 45, Sec. 44*)

**CONTROLLER—LEGISLATURE**

**Opinion 2100-51**

James A. Noonan,

July 25, 1951.

Where a legislator appointed to fill vacancy under *Ch. 160, S. L. 1951* has qualified and taken the oath pursuant to *Sec. 7, Art. XII, Colo. Const.* he thereafter "entered upon the duties of his office immediately"; and pursuant to provisions of *Ch. 160, S. L. 1951* is entitled to serve therein, "until the convening of the general

assembly next after his successor shall have been elected, certified and qualified in accordance with election laws of the state.”

That as such duly qualified and acting legislator he was and is entitled to the salary and prerequisites of the office from date of his qualification and so long thereafter as he retains the office.

#### **EMPLOYEES—RETIREMENT BOARD**

Raymond J. Heath,

**Opinion 2101-51**

July 27, 1951.

(Refund of deductions upon cessation of employment)

When state employee leaves the service he becomes entitled to demand deductions withheld from his salary, during the period of employment. The right to demand lasts two years, and he is not divested of the right by reemployment in state service during the two-year period. (*Quoting Secs. 9 and 19, Employees Retirement Act*)

#### **ARCHITECTS**

Earl C. Morris,

**Opinion 2102-51**

July 27, 1951.

Under *Sec. 11, Chap. 10, 1935 C.S.A.* Board of Examiners of Architects has discretionary power to grant or deny applications for license based on reciprocity and the rule of the board requiring such applicants to have five years active practice as a principal may be waived by the board.

#### **GOVERNOR—CONTROLLER—MEDICAL EXAMINERS FEES AND SALARIES—LEGISLATURE**

F. Ross Brown,

**Opinion 2103-51**

July 30, 1951.

*Sec. 33, Ch. 227, S. L. 1951* repealed *Sec. 16, Ch. 109, 1935 C.S.A.*, therefore, since *Sec. 3, Ch. 227 S. L. 1951* only provides that “Members of the Board shall be reimbursed for their actual and necessary traveling and subsistence expenses when absent from their places of residence in attendance at meetings or in other performance of their duties,” the board cannot provide by rule for per diem compensation to its members. The board is prohibited by law to enlarge by rule, powers not granted to it by law. *Dice v. Com.*, 93 Colo. 593 at 603.

Until the Medical Act of 1951 provides otherwise the members of the board cannot draw per diem compensation.

**CONTROLLER—RACING COMMISSION**

James A. Noonan, **Opinion 2104-51**  
 July 30, 1951.

Funds collected from trainers, jockeys, apprentices, etc., under Racing Commission Rule No. 263, are quasi-trust funds and should be handled by Controller in accordance with *Sec. 78, Ch. 153, 1935 C.S.A.*, as amended by *Sec. 3, Ch. 232, S. L. 1951*.

**COUNTIES—UNEMPLOYMENT COMPENSATION**

William R. Kelly, **Opinion 2105-51**  
 July 28, 1951.

(Re: social security for employees of county hospitals)

County hospitals, created under *Chap. 110, S. L. 1943*, are separate juristic entities within the meaning of *H.B. 291, 1951*, but they are not quasi-municipal corporations, or independent state agencies. They are county agencies. As such the employees of the hospital should be entitled to social security benefits under *H.B. 291. Quoting People ex rel. Rogers, v. Letford, 102 Colo. 284; Newton v. Denver Housing Authority, 106 Colo. 61; City of Aurora v. Aurora Sanitation Dist., 112 Colo. 406.*

**HEALTH—UNEMPLOYMENT COMPENSATION  
LEGISLATURE**

Dr. R. L. Cleere, **Opinion 2106-51**  
 July 30, 1951.

(Retirement Plan for Town and District Health Departments,  
 El Paso City-County Health Unit)

City-County, county, and district health departments created under *Chap. 204, S. L. 1947*, as amended by *Chap. 169, S. L. 1949*, are independent quasi-municipal corporations and not county agencies, and they are "political subdivisions" as defined in *H.B. 291, 1951*. Therefore, employees of such departments are eligible for social security under *H.B. 291, 1951*.

**COUNTIES—DISTRICT ATTORNEYS—  
UNEMPLOYMENT COMPENSATION—  
LEGISLATURE**

Gerald Solt, **Opinion 2107-51**  
 August 2, 1951.

District Attorneys, their deputies and employees and court reporters, if so included in the county plan, are entitled to participate in the social security program authorized by *Chapter 237, S. L. 1951*.

**SOIL CONSERVATION****Opinion 2108-51**

Kenneth W. Chalmers,

August 3, 1951.

(Negligence, bailments)

Where a soil conservation district owns a cement mixer which it rents to individuals who operate the mixer for their own benefit, the relationship is that of bailor and bailee.

If, in the operation of the mixer, the bailee is injured as a result of a defect therein, the bailor is liable if it knew of the defect or could have ascertained it by the use of due care.

The bailor is not generally liable to any third person who may be injured as the result of the negligence of the bailee in operating the mixer, or as a result of a defect in the machine. If the bailor lets the machine to a negligent or incompetent person and a third person is injured as a result of the bailee's incompetence, the bailor may be liable for the injuries sustained. Where the third person is caring for the bailed property during the bailment and at the instance of the bailee, he must look to the bailee for his recompense.

**COUNTIES—SHERIFFS****Opinion 2109-51**

L. W. McDaniel,

August 6, 1951.

A sheriff is not entitled to a fee for making return of a summons served when a fee has been received for the service thereof *Sec. 16, Chap. 66, 1935 C.S.A. Hillman v. Chmelka*, 118 Colo. 252.

**CIVIL SERVICE****Opinion 2110-51**

State Civil Service Commission,

August 7, 1951.

Where a department requested suspension of an employee on June 5, 1951, and the civil service commission received the request on June 7, 1951, and acted on the same on June 8, making the suspension effective as of the latter date, it is the action of the commission upon the request that gives effect to the suspension and not the request upon the commission.

The commission must determine under its rules the amount of earned annual leave due a dismissed employee, and then decide, as a matter of discretion, and not of law, whether such earned annual leave shall be forfeited or shall be allowed and compensated for in cash.



**TAXATION**

Colorado Tax Commission,  
August 10, 1951.

**Opinion 2111-51**

The fact that ownership is in Federal Government does not itself provide exemption of taxation on privately owned personal property located within the boundaries of the federal owned property. See *Atty Gen's Opinions Nos. 237-41 and 1074-47.*

**GAME AND FISH**

Kenneth C. Balcomb, Jr.  
Asst. Dist. Atty.,  
August 16, 1951.

**Opinion 2112-51**

Question: Can two individuals entering enclosed property in a boat and proceeding through the property fishing from the boat, never touching dry land or the bottom of the river until requested by the landowner to leave, engage in fishing without violation of *Sec. 64, Ch. 73, 1935 C.S.A.?*

Answer from case of *Hartman v. Tresise*, 36 Colo. 146, holding that owner of the bed of a natural fresh water, non-tidal stream has the exclusive right to fish therein.

**LIQUORS—SECRETARY OF STATE**

Hon. George J. Baker,  
August 16, 1951.

**Opinion 2113-51**

Under *Sec. 20 (d) Chap. 89, 1935 C.S.A.* (Liquor Code 1935) the state licensing authority may furnish for public inspection a tabulation of quantities of spirituous liquors, by brand name, shipped into the state. The statute requires only that licensing authority tabulate the number of taxable units, and the listing of units by brand name is not mandatory.

**EMBALMERS—CIVIL SERVICE—CONTROLLER  
SALARIES**

Board of Funeral Directors and Embalmers,  
August 20, 1951.

**Opinion 2114-51**

The controller and treasurer can, with approval of civil service commission, pay members of board of funeral directors on a per diem basis, but not to exceed \$600 per person per annum, if there is an appropriation available for such payment.

**GAME AND FISH**

Game and Fish Commission, **Opinion 2115-51**  
August 30, 1951.

The verb "is" as used in last line of *Sec. 73, Ch. 73, 1935 C.S.A.* indicates a present tense, as indicated by rule of law expressed in *Sec. 589, 59 C.J.* page 989.

**GOVERNOR—SUPERINTENDENT OF  
PUBLIC BUILDINGS**

F. Ross Brown, **Opinion 2116-51**  
August 31, 1951.

Neither governor nor superintendent of public buildings has statutory authority to execute a lease for a portion of the capitol building.

**LEGISLATION—CITIES AND TOWNS**

J. A. Hughes, City Attorney, **Opinion 2117-51**  
September 4, 1951.

Cap guns as such are not "fireworks" prohibited by *Sec. 1, Ch. 179, S. L. 1951.*

**LEGISLATION**

Allan R. Phipps, **Opinion 2118-51**  
September 4, 1951.

Inasmuch as the intent of the general assembly appears to be that of prohibiting articles commonly used in connection with celebrations such as Independence Day, it is extremely unlikely that toy paper caps were intended to be prohibited although such caps are literally defined to be "fireworks" by *Sec. 1, Ch. 179, S. L. 1951.*

**COUNTY ASSESSOR—  
TAX COMMISSION**

Clarence Burger, **Opinion 2119-51**  
September 4, 1951.  
(Levy on mineral interests)

The owner of the surface may not declare the value for assessment of the mineral interests reserved to another. The county assessor may assess mineral interests, but he is responsible for his valuations. Circular No. 1, Series 1951, Colo. Tax Commission, states that mineral reserves may be assessed at the rate of fifty cents per acre.

**INDUSTRIAL COMMISSION****Opinion 2120-51**

David F. How,  
September 5, 1951.

Civilian employees employed, paid and discharged by a private employer but under the immediate control of certain commanding officers of the armed forces for specific duties at various federal installations within the United States and subject to being assigned and moved among the various installations without prior notice to the private employer come under the Workmen's Compensation laws of the state within which they are working at the time of the injury and not the Federal Longshoremen and Harbor Workers' Act, 33 U.S.C.A., *Sec. 901, et seq.*, as extended by the Bases Act, 42 U.S.C.A. *Sec. 165*;

*Chap. 97, Secs. 430 to 434, 1935 C.S.A.* indicates the procedure for obtaining the proper coverage of these employers. This procedure should be followed, even though the private employer may lack direct knowledge of actual employment within this state, if there is any possibility that the employer may be assigned to work within this state.

**STATE TREASURER—CONTROLLER****Opinion 2121-51**

American Fed. of State, County and Municipal Employees,  
September 5, 1951.

(Deduction of union dues of employees from state payroll)

Board of Regents and other state agencies cannot as a matter of right deduct or collect over the state payroll any contributions, dues, etc., but may do so as a matter of grace in their sole discretion.

**GAME AND FISH****Opinion 2122-51**

Game and Fish,  
September 5, 1951.

An Indian, hunting or fishing off of a government reservation, within the state of Colorado, is required to have a license of the same type and character, as that required by any other "persons," to do the same acts.

**SCHOOLS****Opinion 2123-51**

C. C. Daily,  
September 5, 1951.

(Status of new board under *H.B.* 900 as amended  
by *H.B.* 308, 1951 *General Assembly*)

New board in newly reorganized district under *H.B.* 900 as amended by *H.B.* 308, 1951 *General Assembly*, may continue to function as de facto officers until a new board has been elected at a special election called for that purpose. See *Butler v. Phillips*, 38 Colo. 378; *Gorman et al v. People*, 17 Colo. 596; 99 *A. L. R.* 294.

**UNIVERSITY OF COLORADO—  
COLORADO GENERAL HOSPITAL—  
PSYCHOPATHIC HOSPITAL**

**Opinion 2124-51**

University of Colorado,  
September 6, 1951.

(a) The Colorado General Hospital can collect for medical attendance where the patient is covered by medical care insurance, provided such fees are used for the purpose of said hospital and not paid over to the attending physician, surgeon, etc.

(b) The Psychopathic Hospital can collect for medical attendance, where the patient is covered by medical care insurance, provided such fees are placed in the Psychopathic Hospital Fund and not paid over to the attending physician, surgeon, etc.

**UNIVERSITY OF COLORADO****Opinion 2125-51**

Ward Darley,  
University of Colo. Medical Center,  
September 6, 1951.

1. Form of contract waiving liability for experimental surgery with approval of kin folk.

2. State is not liable in contract or tort for malpractice; doctors performing experiment are liable.

3. Usual malpractice insurance policy covers practice "common and ordinary and in conformity with the accepted standards of practice in this vicinity," and would not cover experimentation as here conducted.

**SALARIES—COUNTY SHERIFF****Opinion 2126-51**

George W. Cope,  
September 7, 1951.

A public official, appointed to fill a vacancy subsequent to the time of enactment of a statute increasing the salary of such position, is entitled to receive such increased salary. (See *Lan-caster v. Com.*, 115 Colo. 261)

**NATIONAL GUARD****Opinion 2127-51**

William R. Bartlett,  
September 7, 1951.

The National Guard may pay for paving from their 1951 appropriation if the military board determines that the expenditure is for "military purposes" and there are unexpended funds available within the appropriation to pay for the same.

**STATE TREASURER****Opinion 2128-51**

Hon. Earl E. Ewing, State Treasurer,  
August 22, 1951.

(1) *Sec. 2, Chap. 279, S. L. 1951*, is limited to anticipation warrants specifically, and cannot be broadened to include the certificates of indebtedness authorized by *Sec. 32, Ch. 153, 1935 C.S.A.*, as amended by *Ch. 232, S. L. 1949*.

(2) The statutory rate of interest on certificates of indebtedness is fixed by statute "at the rate of four per cent per annum."

**EMPLOYMENT SECURITY****Opinion 2129-51**

Bernard E. Teets,  
Department of Employment Security,  
September 5, 1951.

*Sec. 9 (b) of Colo. Employment Security Act* provides that department may set up banking account in name of department for payment of benefits in any bank in which state funds are deposited provided no public deposit charge shall be paid on said bank account.

**CITIES AND TOWNS****Opinion 2130-51**

William A. Grelle, Colo. Municipal League,  
September 10, 1951.  
(Council-manager form of government)

Council-manager form of government for second class cities having been adopted by a majority vote of the people, becomes effective upon fulfillment of the following: 1. completion of the following regular election of officers of the municipality concerned; 2. canvass of the votes cast in said election; 3. declaration of the results of said election by the city clerk.

**COUNTY JUDGE—ESTATES****Opinion 2131-51**

Hon. James E. Miller,  
County Judge,  
September 11, 1951.

The surviving joint tenant takes the entire estate free and clear of the claims of the creditors of the deceased tenant.

**STATE ENGINEER—IRRIGATION****Opinion 2132-51**

M. C. Hinderlider, State Engineer,  
September 12, 1951.  
(Adjudication proceedings)

*Sec. 5 (b), Ch. 190, S. L. 1943*, requiring the State Engineer to submit to the clerk of the court a certified list of "all claimants in the water district who have filed maps and statements" etc., applies only in original adjudication proceedings as defined in the act, and by definition excludes from the list adjudicated claims.

*Sec. 7* applies to supplemental adjudications. In a proceeding wholly supplemental, the certified list need not include adjudicated claims, but where the proceeding is supplemental as to one class of claims and original as to another class, adjudicated claims must be certified and included.

**COUNTIES—HOSPITALS—LEGISLATION**

Ben L. Garman, County Attorney, **Opinion 2133-51**  
September 14, 1951.

(County financial aid to private hospitals)

*Subsec. (b), Sec. 60, Ch. 78, 1935 C.S.A., as amended by Ch. 192, S. L. 1951, does not confine county financial aid to private hospitals for contagious diseases alone, but such aid may be granted for the care and treatment for any resident of the county involved.*

**COAL MINES—DEPARTMENT OF REVENUE—  
STATE TREASURER**

Averill C. Johnson, Director of Revenue, **Opinion 2134-51**  
September 17, 1951.

(Coal mine license fees)

Under *Ch. 228, S.L. 1951*, State Treasurer is the only officer authorized to receive coal mine license fees and tonnage levies and to issue coal mine licenses, the functions of the Director of Revenue under the Administrative Code having been abrogated to that extent.

The procedure for enforcement of collection of delinquent fees and assessments as set forth in *Ch. 228* is exclusive. The distraint power of the Director of Revenue under *Sec. 40* of Administrative Code is not applicable to the coal mine laws.

**COSMETOLOGY BOARD—CITIES**

Beryl W. Maus, **Opinion 2135-51**  
September 20, 1951.

A city ordinance of Denver prohibiting a separate entrance to a beauty salon located in a residence building supersedes a rule of the department of cosmetology to the contrary.

**COSMETOLOGY BOARD**

Chalmerse A. Parker, **Opinion 2136-51**  
September 20, 1951.

Powers and duties of department of cosmetology are set forth in *Ch. 42, 1935 C.S.A.*, and are limited as a practical matter to the extent of authorized per diem of the board members. There is no conflict between powers and duties of board members and employees as employees perform such duties in accordance with policies established by the board.

**WELFARE DEPARTMENT**

Earl M. Kouns,  
September 21, 1951.

**Opinion 2137-51**

Director of State Department of Public Welfare may execute a reciprocal agreement of the mutual exchange of feeble-minded and epileptic patients provided the same are admitted to any state hospital by order of court.

**STATE COLLEGE OF EDUCATION—  
COMMISSIONER OF EDUCATION**

Colo. State College of Education,  
September 21, 1951.

**Opinion 2138-51**

Supplementing Opinion No. 2018-51, nothing can be found in the law which enlarges the powers of the state commissioner of education as an ex-officio member of the board of trustees. Under *Dice v. Bratton*, 93 Colo. 593, no action of the board of trustees, by rule or otherwise, can change or enlarge the power of the board or the powers of the ex-officio member. The legislature by *Sec. 22, Ch. 155, 1935 C.S.A.* limited the duties of the ex officio member to the signing of the diplomas issued by the "state teachers college of Colorado, Greeley, the western state college of Colorado, Gunnison, and the Adams state normal School, Alamosa," and there is no place for him in law upon the official board or upon any executive committee thereof.

**PUBLIC UTILITIES COMMISSION**

Joseph W. Hawley, Chairman,  
September 28, 1951.

**Opinion 2139-51**

Highway contractors and other contractors transporting property over the public highways of the State of Colorado pursuant to construction contracts with the State of Colorado, or with the Federal Government, or with any department of either of them, must pay the ton-mile tax on such hauls and must obtain permits from the Public Utilities Commission under either the Commercial Carrier Act or the Private Carrier Act of the State of Colorado.

**HIGHWAY DEPARTMENT—CONTRACTS**

Mark U. Watrous,  
September 28, 1951.

**Opinion 2140-51**

1. Claims presented to department after date set for final settlement and before payment are too late, and are not entitled to



the benefits of *Ch. 148, S. L. 1929, Ch. 39, C.S.A. 1935, Sec. 7 (Lomax v. Colo. National Bank, 46 Colo. 229, 236; Words and Phrases, Vol. 16, p. 848, et. seq. Perm. Ed.)*. Notice thereof should be given such tardy claimants.

2. Payment due contractor may be assigned by him to another, and the department must recognize such assignment where the performance of the contract is not thereby affected.

**STATE HOME FOR DEPENDENT  
AND NEGLECTED CHILDREN**

State Home for Dependent Children, **Opinion 2141-51**  
October 3, 1951.

Neither natural parents nor county from which child is sent is financially liable to the state home for the care and support of such dependent child.

**STATE COLLEGE OF EDUCATION  
COMMISSIONER OF EDUCATION**

Colorado State College of Education, **Opinion 2142-51**  
October 3, 1951.

Supplementing our Opinion 2138-51: (a) It is proper for the commissioner of education to be present and sit with the board; (b) he has no voting right upon the board; (c) He may participate in discussion by invitation of majority of board, but not of his own volition.

**COLORADO STATE HOSPITAL**

Dr. F. H. Zimmerman, Supt., **Opinion 2143-51**  
October 3, 1951.

The furnishing of information to the police about paroled inmates is not a matter of law but one administrative in character. In view of *Secs. 9(4) and 9(5), Chap. 177, 1935 C.S.A.* it would appear to be the best administrative practice to follow the spirit of the statute and not furnish such information, except as to escapees.

**SALARIES—EMPLOYEES**

Hon. Tom Kimball, **Opinion 2144-51**  
October 3, 1951.

Fixing of salaries of state employees is done by legislative action and any change in salaries requires additional legislation.

**DEPARTMENT OF AGRICULTURE—LIVESTOCK****Opinion 2145-51**

Paul W. Swisher,

September 11, 1951.

The "stock inspection fund" created by *Sec. 143, Ch. 160, C.S.A. 1935* can be expended only upon appropriation and then only for the purposes declared by affirmative legislation, to wit: payment of sheep inspectors appointed by the State Agricultural Commission pursuant to *Sec. 85, Ch. 160, 1935 C.S.A.*, as modified by *Sec. 9 (g), Ch. 100, S. L. 1949*. The monies are not available to the Agricultural Commission at this time because there is no appropriation to that body; they are not available to the Board of Stock Inspection Commissioners because that body does not perform the functions for which expenditures are authorized.

Attempted appropriation of the fund to the use of the Board of Stock Inspection Commissioners is ineffective because of the absence of affirmative legislation.

The fund must be kept separate and apart from other funds by the State Treasurer, pending action by the general assembly designating affirmatively the purposes for which it may be expended, and making a proper appropriation therefrom.

**SECRETARY OF STATE—LIQUORS—LOTTERIES****Opinion 2146-51**

Hon. George J. Baker,

October 1, 1951.

A special federal tax on coin operated gaming devices (slot machines) is presumptively in violation of amended Regulation No. 19 of the State Licensing Authority and the State Licensing Authority is thereby justified in holding a hearing and taking such action as may therefrom appear to be advisable according to the evidence presented.

**PUBLIC INSTITUTIONS****Opinion 2147-51**

J. Price Briscoe, Director,

October 4, 1951.

In view of *Sec. 544, Ch. 48, 1935 C.S.A.*, the friends and relatives who claim the body of a person executed by the state must bear the burial expense.

**GAME AND FISH**

C. N. Feast,  
October 9, 1951.

**Opinion 2148-51**

Question: Whether or not the distribution and usage of "Hunters' Carnival" registration cards, as submitted along with printed information and ultimate donation of prizes constitutes a violation of *Ch. 143, S. L. 1951*?

This sort of advertisement is not in violation of *Ch. 143, S. L. 1951*, since it does not appear that the object of said contest is the killing of animals or birds.

**ELECTIONS—CITIES AND TOWNS**

Robert M. Gilbert, City Attorney,  
October 15, 1951.

**Opinion 2149-51**

Where a petition for initiated ordinance is submitted to a city clerk on October 5, 1951, for an election to be held November 6, 1951, and a city ordinance requires such filing to be made at least 30 days before the election, said petition has been filed in time and in accordance with law. The provisions of *Sec. 4, Ch. 130, 1935 C.S.A.* apparently superseded the provisions of *Sec. 11, Ch. 86, 1935 C.S.A.* relating to publication of initiated ordinances.

The clerk should therefore begin publication forthwith even though a divergence from the statutory requirements of notice may result. It is probable (citing decisions) that the election would be upheld in the absence of a showing that the results would have been otherwise had strict statutory requirements of notice been followed.

**CIVIL SERVICE—DEPENDENT CHILDREN**

State Civil Service Commission,  
October 17, 1951.

**Opinion 2150-51**

State Home for Dependent and Neglected Children is a charitable state institution and as such its employees are within the classified civil service and amenable to *Secs. 13 and 14, Art. XII, Colo. Const.*

**UNIVERSITY OF COLORADO—LEGISLATION**

University of Colorado,  
October 17, 1951.

**Opinion 2151-51**

The Medical Practice Act of 1951 has no bearing upon the management, control or operation of state institutions, including the Colorado Psychopathic Hospital and/or the Colorado General Hospital.

**GAME AND FISH**

Game and Fish Commission,

**Opinion 2152-51**

October 17, 1951.

Personnel of the Game and Fish Department working under authority of the Commission, may render damage control service, kill such animal or animals at any time or place that is necessary to stop or prevent destruction or detriment to life, health, crops, timber, property and/or cultivation of lands, and may do so when witnessing or seeing those animals at the time and place and in the act of causing such detriment or destruction, regardless of the hour.

**HEALTH**

Janet E. Grauberger, Secretary,

**Opinion 2153-51**

October 22, 1951.

(Commission of district Treasurer for transfer of funds)

The treasurer of a district health department organized under *Chap. 204, S. L. 1947*, may not withhold collection percentages allowed county treasurers in *Chap. 66, Sec. 25, 1935 C.S.A.* No statutory authority exists for payment of a district treasurer's salary or withholding percentages by the district treasurer and his salary can only be that received as county treasurer of the largest county in the district.

**LAND BOARD**

State Board of Land Commissioners,

**Opinion 2154-51**

October 24, 1951.

(Regarding mill tax on oil production)

The mill tax on oil production levied under *Sec. 18, Chap. 230, S. L. 1951*, is a tax on the producer with secondary liability in the producer of the produced oil and should be regarded as a production cost and as such it cannot be passed on to the lessor who has reserved one-eighth of the oil and gas produced on the premises.

**DEPARTMENT OF AGRICULTURE**

Paul W. Swisher, Commissioner,

**Opinion 2155-51**

October 24, 1951.

1. A person who is actually "engaged in the business of buying any farm produce from the owner for resale," unless a retail grocery merchant or a processor or manufacturer, is a dealer within

the meaning of *Secs. 1 (h) and 1 (k), Chap. 90, S. L. 1935*, and is excluded from the definition of any exemption as a "cash buyer" even though he may pay the seller "in lawful money of the United States."

2. One who buys for resale farm produce from a dealer, and not a producer, is excluded from the definition of and exemption as a "cash buyer" within the meaning of *Chap. 90, S. L. 1937*, even though he may pay the seller "in lawful money of the United States." If such person is actually engaged in the business of buying for resale, or is engaged in transactions bringing him within the definitions of "commission merchant, dealer, broker or agent" the commissioner of agriculture should require him to be licensed or request the proper district attorney to prosecute such person.

3. The exemption of "any cash buyer" by *Sec. 2 (c), Chap. 90, S. L. 1937* pertains only to those who are within the definition of "cash buyer" in *Sec. 1 (k)* and does not extend to all persons paying cash from farm produce.

4. The mere exhibition of a bill of sale reciting that the holder has paid cash for produce in his possession does not conclusively establish his exemption from licensing under the act, although it affords some evidence that he may be a "cash buyer."

#### PUBLIC UTILITIES

Karl R. Ahlborn,

Opinion 2156-51

Deputy District Attorney,

October 25, 1951.

Interpretation of Rule 17(a) of the Rules and Regulations Governing Commercial Carriers by Motor Vehicle in the State of Colorado as prescribed by the Public Utilities Commission, effective May 15, 1950.

#### WATER

C. C. Hezmalhalch,

Opinion 2157-51

October 25, 1951.

(Irrigation-Compacts)

Where water is carried from a tributary of the Animas River across a divide to the La Plata River Basin and there carried downstream and re-diverted for use on lands in that vicinity, the waters so transported are not subject to the La Plata River Basin. The La Plata River Compact applies only to waters of the La Plata River and all streams tributary thereto, and waters artificially diverted from other water sheds are not within its terms.

**GOVERNOR—CRIMINAL LAW—PARDONS**

Hon. Dan Thornton,

**Opinion 2158-51**

October 25, 1951.

The Governor may issue or grant a pardon to an individual who entered a plea of *nolo contendere* and was ordered to pay a fine in a fixed amount.

**DEPARTMENT OF AGRICULTURE**

Paul W. Swisher, Commissioner,

**Opinion 2159-51**

October 26, 1951.

Under *Chap. 66, S. L. 1939*, as amended, and marketing orders issued thereunder, Department of Agriculture has no control over shipments of cull potatoes which originated within the State of Colorado and are destined for points outside the state. Such shipments are made in interstate commerce not intrastate commerce and are not within the terms of the statute.

**COLORADO A & M COLLEGE**

O. R. Adams, D.V.M.,

**Opinion 2160-51**

October 29, 1951.

Colo. A & M College may sell animals left in its care in accordance with *Secs. 1-14, Chap. 101, 1935 C.S.A.*, as an agistor's lien attaches which may be foreclosed by the statutory procedure.

**SCHOOLS**

N. E. Darrow,

**Opinion 2161-51**

October 30, 1951.

Board of Education may not by rule or regulation prohibit free education of children who become six years of age after semester begins.

**ENGINEERS—LEGISLATION**

Frank H. Prouty, Chairman,

**Opinion 2162-51**

October 30, 1951.

Where a final decree of injunction forbids certain acts and thereafter the applicable statutory law is changed, such change is sufficient justification for modification or vacation of the in-

junction decree. Where the basis for the injunction is the lack of statutory authority to do the forbidden acts and subsequent to the issuance of the injunction the defendant is expressly authorized by statute to do the acts prohibited by the injunction, he is not guilty of contempt in committing such acts if the authorizing legislation is constitutional. Where the constitutionality of the authorizing statute is challenged, the terms of the injunction should be followed until the status of the statute is judicially determined.

**CIVIL SERVICE  
COMMITTEE ON STATUTE REVISION**

State Civil Service Commission.

**Opinion 2163-51**

October 31, 1951.

The Revisor of Statutes and his associates and assistants, who are attorneys at law and acting as such in the revision of our laws, are exempt from civil service in view of *paragraph 2, Sec. 13, Art. XII, Colo. Const.*; and that the other state employees engaged in such revision are employees of the General Assembly and, likewise, not within the classified civil service.

**WELFARE DEPARTMENT**

Earl M. Kouns,

**Opinion 2164-51**

November 1, 1951.

There is no statutory prohibition which prevents the keeping of the Old Age Pension Fund as a separate fund within the county public welfare fund.

**GAME AND FISH**

Game and Fish Commission,

**Opinion 2165-51**

November 1, 1951.

The expenses incurred in securing subscriptions for the conservation magazine authorized by *Chapter 188, 1951 S. L.*, is an integral and necessary part of the publication of the "original publication" of said magazine and may be paid for by the Game and Fish Department.

**CITIES AND TOWNS**

Ruth Rouss, Town Attorney,

**Opinion 2166-51**

November 2, 1951.

A town may accept contributions from individuals for the construction of sewerage facilities; may contract for the construction

of such facilities and may pay the financial obligations under the contract out of the fund comprised of such contributions. The budgeting provisions of the Local Government Budget Law are applicable if the contributions are accepted in such a way as to become municipal funds. If, however, the town by agreement holds the money in trust for the specific purposes for which it is contributed, and if a suitable indemnity contract is provided the sewerage facilities may be constructed without following the regular budget and appropriation procedures.

### COMMISSIONER OF EDUCATION

Opinion 2167-51

J. Burton Vasche,

November 5, 1951.

The Board of Education has no duties to perform over the State Home for Dependent and Neglected Children since the institution is a Home and not a school and has no "matter of curriculum, teacher certification, and educational statistical and financial reporting."

### COMMISSIONER OF EDUCATION— STATE HOME FOR DEPENDENT CHILDREN, ETC.

Opinion 2168-51

J. Burton Vasche,

November 5, 1951.

1. *Chap. 153, S. L. 1949*, does not authorize the State Board of Education to set up a curriculum at the State Home for Dependent and Neglected Children but to merely supervise the same, if and when the legislature broadens the purposes of the said Home and makes it into an educational institution.

2. The Home is a Home and not a school as presently organized and therefore has nothing for the Commission of Education to supervise.

3. The Board of Education has no power to set up forms for reporting educational statistics at the Home, since the institution is a Home and not a school in any sense of the word.

4. This institution is not within the definition of a "public school" as defined by law.

5. The State Home as presently established is not eligible for a distributive share of state funds allocated for distribution to school districts.



**RACING COMMISSION**

H. A. Christensen,  
November 8, 1951.

**Opinion 2169-51**

It is not within the scope of the rule-making power of the Colorado Racing Commission to adopt a rule requiring all licensed horsemen to pay an additional sum of one dollar to establish a fund for the benefit of sick or disabled horsemen. Funds erroneously collected in this connection should be transferred to the escheat fund.

**CITIES AND TOWNS—  
ELECTIONS**

William DeSouchet,  
November 8, 1951.

**Opinion 2170-51**

*Chap. 59, Sec. 246, 1935 C.S.A.* provides that tie elections on the county and precinct level should be determined by lot. This section was upheld in *People ex rel Dick vs. Mosco*, 114 Colo. 464. Therefore, a tie vote for city councilman in Alamosa should be resolved by any method of chance in the discretion of the county clerk and his election assistants.

**COUNTY COMMISSIONERS—  
LIQUORS**

Lucille M. Kane, Secretary,  
November 8, 1951.

**Opinion 2171-51**

Boards of county commissioners have no power to adopt a resolution regulating the closing hours of dance halls or the persons permitted therein. *Chap. 51, 1935 C.S.A.* empowers the county commissioners to grant and revoke licenses but authorizes no regulation by the county board. Boards of county commissioners possess only such powers as are expressly conferred by the constitution and statutes and such implied powers as may reasonably be inferred therefrom.

**GAME AND FISH**

Game and Fish Commission,  
November 9, 1951.

**Opinion 2172-51**

The "Fishing Easement Fund" may be used to defray and pay the cost of construction of a road through private lands to public fishing areas when the right of way for said road is conditioned upon the construction and maintenance of said road.

**EMPLOYEES RETIREMENT**

Raymond J. Heath, Secretary,  
November 13, 1951.

**Opinion 2173-51**

There is no prohibition in the law to prevent a state employee from receiving both an assigned annuity benefit under the State Employees' Retirement Plan, and the salary earned by such employee. A person may receive both an assigned annuity benefit together with such person's own annuity benefit at the same time.

**SHERIFFS**

M. E. H. Smith,  
November 13, 1951.

**Opinion 2174-51**

Sheriffs in counties of the fifth class may charge only one mileage fee at the rate of eight cents per mile as provided in *Sec. 44, Chap. 66, 1935 C.S.A.*

**CONTRACTS—  
INDUSTRIAL COMMISSION  
LEGISLATURE**

Roy Chapman,  
November 15, 1951.

**Opinion 2175-51**

A private contractor who enters into the usual and ordinary construction contract with the State of Colorado is an independent contractor and not a public employer. The definition of a "public employer" as defined in *Chap. 217, S. L. 1951*, does not include independent contractors but refers specifically to the "state and every county, city and county, city, town or other political subdivision thereof."

**BOARD OF PAROLE**

State Board of Parole,  
November 16, 1951.

**Opinion 2176-51**

A prisoner is never entitled to automatic parole, but the Parole Board "shall have authority, under such rules and regulations as it may prescribe, to issue a parole or permit to go at large any convict who now is, or hereafter may be, imprisoned in the said penitentiary under a sentence other than a life sentence, who may have served the minimum term pronounced by the court, or, in the absence of such minimum term pronounced by the court, the minimum term provided by law for the crime for which he was convicted.

**GOVERNOR—  
BOARD OF PAROLE****Opinion 2177-51**

Hon. Dan Thornton,

November 16, 1951.

(After the escape or attempted escape of a prisoner)

1. (a) The maximum sentence becomes the basis for computation of time to be served;

(b) The prisoner loses all earned good time credits and cannot start to earn new credits until after the expiration of the said two year period.

(c) Should such two year period project beyond the maximum sentence, the prisoner is to be discharged at the expiration of such two-year period.

(d) Should said two year period expire before the maximum sentence date, then the prisoner is eligible for parole on the expiration of said two year period providing the minimum sentence has been served.

2. A prisoner may be paroled by the Parole Board upon the serving of his minimum sentence without executive clemency.

3. Upon return for parole violation, the prisoner starts to serve on his maximum sentence. Any credits he earns after such return are to be computed on his maximum sentence. The prisoner may thereafter be reparaed at the discretion of the Board.

**PAROLE AND PARDONS****Opinion 2178-51**

Kenneth A. Johnson,

November 16, 1951.

1. Under the facts stated without taking into consideration "trustee time" the convict would be eligible for parole at the expiration of his two year minimum sentence, less good time credits if any; when his parole is revoked he starts to serve on his third year; after such return earned good time is then computed on his maximum sentence; with a maximum eight year sentence, a prisoner would be eligible for discharge from the penitentiary five years and four months from his original entry therein.

2. "Where a prisoner, while at liberty on parole, is found guilty of another criminal offense, regardless of the sentence imposed under the second offense, having violated his parole by a

second infraction of the law, he may be reincarcerated and compelled to serve the remainder of the sentence imposed under the first conviction; however, the second sentence, where practicable, may be made to run concurrently." (*Garcia v. Best, Warden*, 112 Colo. 543, Syllabus)

### HIGHWAYS—COUNTY OFFICERS

**Opinion 2179-51**

Colorado Highway Planning Committee,  
November 15, 1951.

(County Highway Equalization Board  
Public Officers; County Officers)

Per diem pay, expenses, and mileage may be paid to members elected to the proposed County Highway Equalization Board, subject to the civil service amendment to the Constitution. Such does not conflict with *Art. V, Sec. 30* of the Constitution relating to increase during term of office. Citations in opinion.

### MEDICAL BOARD

**Opinion 2180-51**

Colo. State Board of Medical Examiners,  
November 19, 1951.

(Re practice of chiropody in connection  
with business establishment)

*Sec. 3, Chap. 237, S. L. 1947*, prohibits a person licensed after March 24, 1947, from maintaining his professional office in conjunction or relation with any business or establishment other than one engaged in the practice of the medical sciences.

### COLO. A & M COLLEGE

**Opinion 2181-51**

Joseph M. Whalley, Treasurer,  
November 19, 1951.

(Re use of city storm sewerage facilities)

1. Colo. A & M may not enter into a joint contract for the construction of sewerage facilities in the streets of Fort Collins, for the reason that such contract might violate *Art. XI, Sec. 1, Colo. Const.*—pledging of state credit for liability of another corporation.

**MEDICAL BOARD****Opinion 2182-51**

Mrs. Beulah H. Hudgens, Executive Secretary,

November 19, 1951.

(Re home care by internes, residents and medical students)

1. Residents and internes may make house calls only if such calls are made as part of the program of an approved residency or internship.

2. Medical students may make house calls only under the personal supervision of a licensed physician. (*Citing Chap. 227, Secs. 6, 9 and 10, 1951, S. L.*)

The word "in" as used in connection with "internes or residents in a hospital" may be used interchangeably with the word "for." *Citing Heron v. Gaylor*, 49 N. M. 62, 157 Pac. (2d) 239 and *City of Jackson v. Nims*, 316 Mich, 694, 26 N. W. (2d) 580.

**SCHOOLS—MENTAL DEFECTIVES**

Mr. J. Burton Vasche,

**Opinion 2183-51**

Commissioner of Education,

November 19, 1951.

1. The statute does not authorize the board of education to set up the curriculum, etc., for the Home and Training School but it does authorize the board to supervise the "educational programs" within this institution, "in the matter of curriculum, teacher certification and educational, statistical and financial reporting" which in my opinion approaches very closely to the setting up of such curriculum and a close supervision of the same.

2. The State Home and Training School does not meet the requirements of a public school under the provisions of the statutes relating to public schools, and cannot be so classified.

3. This institution, as now established under the law, cannot participate in the distribution of funds allocated by the state legislature to the State Board of Education for distribution to school districts.

**SOIL CONSERVATION**

Kenneth W. Chalmers, Secretary,

**Opinion 2184-51**

November 23, 1951.

A land use ordinance of a soil conservation district may by its terms be applicable to only a portion of the land in the district if such ordinance is in fact "necessary for the best interest of the district and of the people therein." *Sec. 9, Soil Conservation Act.*

**COMMISSIONER OF EDUCATION****Opinion 2185-51**

J. Burton Vasche, Commissioner of Education,  
November 23, 1951.

Use of protectographer signer in lieu of actual signature is valid on warrants of school district. School board should authorize such use by resolution.

**BASIC SCIENCES****Opinion 2186-51**

State Board of Examiners in The Basic Sciences,  
December 3, 1951.

A basic science certificate automatically revoked under *Sec. 8* of the Basic Science Act for the revocation of a particular license to practice a healing art may not be automatically renewed upon restoration of the healing art license, but under *Lipset v. Davis*, 119 Colo. 335, and opinion of Attorney General, dated March 8, 1938, to Dr. Esther B. Starks, a regulation allowing such restoration should be passed or a new license should issue with waiver of examination.

**STATE BOARD OF ACCOUNTANCY****Opinion 2187-51**

Norman H. Gross, President,  
December 4, 1951.

So long as a certificate of a certified public accountant remains unrevoked or unsuspended the holder thereof is entitled to practice as such. Even though a hearing on a complaint against a certificate holder is pending, the board must nevertheless issue an annual registration card pursuant to *Sec. 13, Chap. 76, S. L. 1937*. The annual registration card must be issued in all cases except where the license of the person requesting the card has been revoked.

**COUNTY JUDGES****Opinion 2188-51**

Hon. Harold D. Lutz, County Judge,  
December 5, 1951.

County judges are entitled to the sum of \$12.00 per day when called to assist a county judge of any county of the first or second class within the state, as authorized by *Chap. 46, Sec. 190, 1935 C.S.A.*, but no remuneration is provided for assistance by a county judge to any county less than a county of the first or second class. County judges are also entitled to the travel expenses provided by *Chap. 46, Sec. 14 (1), C.S.A. 1935*, as amended, in addition to any compensation which they may receive by virtue of *Sec. 190, supra*.

**HIGHWAY PATROL****Opinion 2189-51**

Gilbert R. Carrel, Chief,

December 5, 1951.

*Secs. 157 and 286, Chap. 16, 1935 C.S.A.*, as amended, were erroneously codified by substituting the word "part" for the word "Act." The penalty provisions of these sections may be applied in any case of a violation of any provision of the Uniform Motor Vehicle Act for which no other penalty is specifically provided.

**HEALTH—LIVESTOCK  
AGRICULTURE****Opinion 2190-51**

State Board of Public Health,

December 6, 1951.

The State Board of Health does not have power to pass regulations regarding the control of brucellosis in beef cattle. *Chap. 160, Secs. 82, 83, 95, 97, 100 and 102, 1935 C.S.A.*, as amended, and *Chap. 239, 1949 S. L.* put the control of brucellosis in domestic animals in the Department of Agriculture.

*Chap. 208, Sec. 5 (20) (b), 1947 S. L.* gives the State Board of Health jurisdiction over the State Veterinarian in matters affecting meat for human consumption. Brucellosis is not carried in the flesh of the animal, but in the milk, but the control of the disease in dairy cattle is controlled as before stated by *Chap. 239, 1949 S. L.*

**BARBERS****Opinion 2191-51**

Selmer A. Lillehaug, Executive Secretary,

December 6, 1951.

A proposed bill in which license fees are raised, and which also contains a health provision for barbers is not a "revenue-raising" bill under 1951 amendment to *Art. V of State Constitution*.

**DEPARTMENT OF PUBLIC HEALTH****Opinion 2192-51**

State Department of Public Health,

December 7, 1951.

(Re additional hospital categories)

An additional category of health establishments may be licensed under authority of *Chap. 208, Sec. 5 (14) 1947 S. L.* The proposed

category would be a clinic for limited hospitalization and immediate postoperative care. This clinic would come under the category of "other similar institutions" as stated in the above cited section.

### SECURITIES

Opinion 2193-51

Curtis White, Securities Commissioner,

December 6, 1951.

(Re Associated Musicians, Inc., a Cal. corp.)

Distribution of prospectus to residents of Colorado prior to compliance with provisions of *Chap. 148, Sec. 3, 1935 C.S.A.*, would constitute a direct violation of the above statute.

### REVENUE DEPARTMENT

Opinion 2194-51

Averill C. Johnson, Director,

December 11, 1951.

(Christian Science churches subject to sales tax, etc.)

1. Under the Emergency Retail Sales Act of 1935, and with particular reference to *Sec. 15 (a)* thereof (exempting "all sales which the State of Colorado is prohibited from taxing under the constitution or laws of the United States, or the State of Colorado"), the sales tax is applicable to the sale of Bibles and other religious literature by and from reading rooms of Christian Science churches. The tax is not applicable to the sale of "newspapers, magazines, trade-journals and periodicals." All other items are subject to sales tax and are not exempted therefrom by any provision of statute or of the state or federal constitution.

2. The license provided by *Sec. 2* of the Emergency Retail Sales Act of 1935, is literally applicable to Christian Science Reading Rooms and must be applied in absence of judicial inhibition. The store license required by *Chap. 161, 1935 C.S.A.*, is literally applicable to Christian Science Reading Rooms. However unconstitutional this provision may appear to be, it must be enforced until declared void by the courts.

3. The license imposed by the Unfair Practices Act is presumptively applicable to Christian Science Reading Rooms and is considered constitutionally valid.



**CIVIL SERVICE COMMISSION**

State Civil Service Commission,  
December 14, 1951.

**Opinion 2195-51**

All of *Sec. 1 of Chap. 148, S. L. 1947* is applicable to officers and employees having a civil service status; and that part of *Sec. 2* preceding the first "provided, however" and following the second "provided, however," is likewise applicable to such officers and employees.

**PENITENTIARY  
PAROLE BOARD  
GOVERNOR**

Roy Best, Warden,  
December 20, 1951.

**Opinion 2196-51**

Where a prisoner escapes from the penitentiary, and, while such escapee, commits another crime for which he is sentenced to C.S.P., his new sentence runs consecutively to his first sentence. (Our opinion 2178-1951 dated Nov. 16, 1951, is limited to returned parolees and is not applicable to the situation considered in this opinion).

**HIGHWAY DEPARTMENT—  
CONTRACTS**

Mark U. Watrous, State Highway Engineer,  
December 20, 1951.

**Opinion 2197-51**

1. Where a bidder omits one item in the listing of items comprising a bid, the department, acting under its rules, may reject the entire bid.

2. Under such circumstances, the department may award the contract to the bidder having the lowest complete bid.

**COMMISSIONER OF EDUCATION—  
DEAF AND BLIND**

J. Burton Vasche, Commissioner,  
December 21, 1951.

**Opinion 2198-51**

1. Board of Education is not authorized to set up curriculum at School for Deaf and Blind.

2. Board of Education is not authorized to determine the qualifications of teachers but can advise with Board of Trustees in such matters.

3. Board of Education can advise with Board of Trustees in the matter of educational statistics and financial procedure.

4. School for Deaf and Blind is a public school under *Sec. 289, Chap. 146, 1935 C.S.A.*, and *Wilmore v. Annear*, 100 Colo. 106.

5. As presently organized School is not entitled to participate in distribution of school funds.

**COMMISSIONER OF EDUCATION  
INDUSTRIAL SCHOOL FOR BOYS**

J. Burton Vasche, Commissioner, **Opinion 2199-51**  
December 27, 1951.

1. Board of Education is not authorized to set up curriculum at Boys Industrial School.

2. Not authorized by rule or statute to determine teacher qualifications as this is a function of the Civil Service Commission.

3. Can advise with Department of Public Institutions about educational statistics and financial procedure.

4. Boys Industrial School is not a public school within *Sec. 289, Chap. 146, 1935 C.S.A.*

5. Boys Industrial School cannot participate in division of school funds.

**ENGINEERS BOARD**

M. E. Langsteiner, Asst. Sec., **Opinion 2200-51**  
December 27, 1951.

Where State Board of Examiners for Engineers and Land Surveyors received a \$15.00 application fee under *Sec. 8, Chap. 62, 1935 C.S.A.*, and the State Board of Registration for Professional Engineers and Land Surveyors licensed the applicants under *Chap. 161, S. L. 1951*, five dollars of each application fee may be refunded to the applicant pursuant to *Sec. 1, Chap. 294, S. L. 1947*.

**COMMISSIONER OF EDUCATION  
INDUSTRIAL SCHOOL FOR GIRLS**

J. Burton Vasche, Commissioner **Opinion 2201-51**  
December 28, 1951.

1. Board of Education is not authorized to set up curriculum at Girls Industrial School.

2. Board not authorized to determine teachers qualifications as this power is vested in the civil service commission.

3. Board may advise with Department of Public Institutions about educational statistics and financial procedure.

4. Industrial School for Girls is not a public school within the definition of *Sec. 289, Chap. 146, 1935 C.S.A.*

5. Said Institution cannot qualify under *Art. 5, Chap. 146, 1935 C.S.A.* for participation in funds allocated by legislature for distribution to school districts.

### DEPARTMENT OF AGRICULTURE

Opinion 2202-52

Harry B. Staver, Chief,

January 3, 1952.

The labeling requirements of *Sec. 16, Chap. 49, 1935 C.S.A.*, are mandatory. The word "Oleomargarine" must be printed in full on all packages of substance within the definition of oleomargarine as set forth in *Sec. 18*, and the word "Margarine" may not be used in lieu thereof.

### CITIES AND TOWNS— ELECTIONS

Opinion 2203-52

Howard Roepnack,

January 3, 1952.

(Graduation of classification of the Town of Arvada)

*Sec. 49, Chap 163, 1935 C.S.A.*, as amended, states that graduated classification organization should be "at the next regular election of municipal officers."

The Town of Arvada having received a certificate of eligibility to become a city of the second class, remains an incorporated town until organization by election of city officers in accordance with *Sec. 49 supra*.

"The next regular election" means the next regular election of an incorporated town, and not a city, and officers elected at that time will be elected for a short term.

**CITIES AND TOWNS—  
ELECTIONS****Opinion 2204-52**

Miss Ruth Rous, Town Attorney,

January 3, 1952.

(Legal status of Town of Manitou Springs)

1. The issuance of Governor's proclamation did not in and of itself constitute Manitou Springs as a city of the second class and is merely a condition precedent to the actual change in the organization of the municipality.

2. The earliest date at which a reorganization election can be held is the first Tuesday in April, 1952, which is the date prescribed by statute for election of officials of an incorporated town. According to *Harris v. Chambers*, 16 Colo. App. 250, it is mandatory that this election be held on said date.

3. We are unable to answer the third question which you ask for the reason the question assumes a fact which we believe to be erroneous. We do, however, believe that the mayor, city clerk, city treasurer and the aldermen elected in April of 1952, will, upon canvass of the votes cast and certification of the results thereof, take office immediately and serve until the first Monday after the first Tuesday in January, 1954, and that there will be no problem of overlapping terms of office as the incumbents who were elected in April, 1950, for a term of two years will have served their respective terms as of April, 1952.

**STATUTE REVISION****Opinion 2205-52**

Charles M. Rose, Revisor of Statutes,

January 7, 1952.

*Secs. 21 and 24, Art. V, Constitution of the State of Colorado*, constitute no objection to the adoption of a statutory compilation prepared under authority of *Chap. 259, S. L. 1951*, the adoption can take place in a single short-titled bill, which may adopt such compilation as the law of the State of Colorado. Such an adoptive act would contain only one subject, i.e., the adoption of a compilation. The entire compilation need not be read in order to enact it as the law of the state, but only the adoptive act must be read.

**COSMETOLOGY****Opinion 2206-52**

Beryl W. Maus, Exec. Sec.,

January 9, 1952.

*Sec. 2, of Chap 42, 1935 C.S.A.*, including haircutting in the definition of "cosmetology" is modified by *Sec. 1* of said *Chap. 42*, which requires a separate license for haircutting "as a part" of cosmetology, and the sections are not in conflict.

**CONTROLLER—STATE HIGHWAY—CONTRACTS****Opinion 2207-52**

James A. Noonan, Controller,

January 9, 1952.

In view of *Chap. 118, S. L. 1947*, the Controller and other state officers cannot approve the contract between the Highway Office Building Authority and T. H. Buell, architect, unless payments thereon are limited to payment from the Highway Office Building Authority Fund, and then without interest on deferred payments.

**TAXATION—COUNTY TREASURER****Opinion 2208-52**

Colorado Tax Commission,

Howard A. Latting, Commissioner,

January 10, 1952.

Purchaser of tax exempt property after March 1, is not required to pay taxes assessed for year of purchase.

**CIVIL DEFENSE—CONTRACTS****Opinion 2209-52**

Colo. Civil Defense Agency,

January 11, 1952.

While the Civil Defense Act of 1950 (*Public Law 920, Fed. Civil Defense Act of 1950, Title 50, Appx. U.S.C.A.*) is not explicit in its authorization of such compacts, nevertheless it is our opinion that where the states, in good faith, enter into such compacts under the direction and approval of the Administrator, the Congress is obligated to give the approval necessary to validate such contracts or compacts, under *Sec. 10(2), Art. I, U. S. Constitution*.

**DISTRICT ATTORNEYS—  
SCHOOL ELECTIONS**

**Opinion 2210-52**

Hon. Charles Casey, District Attorney,  
January 14, 1952.

Under *Sec. 64, Chap. 146, 1935 C.S.A.*, it is mandatory upon the county superintendent of schools to call an election for dissolution of a third class school district within thirty days from the filing of the electors' petition.

**CIVIL SERVICE—WAR**

**Opinion 2211-52**

Civil Service Commission,  
January 15, 1952.

The hostilities of World War II ceased at twelve o'clock noon, December 31, 1946, but World War II officially continues until such time as the President of the U.S.A., with the advice and consent of the Senate concludes treaties of peace with our declared enemies.

**UNIVERSITY OF COLORADO—  
CITIES AND TOWNS**

**Opinion 2212-52**

W. E. Brockway, Business Manager,  
January 16, 1952.

1. University of Colorado not required to pay assessments to City of Boulder for construction of trunk line sewers adjacent to the University property.

2. The University may not contract beyond its appropriation. However, the purchase of a perpetual right for the use of Boulder's sewerage facilities would be permissible.

*Art. X, Sec. 4, State Const.*, exempts public property from taxation.

**LEGISLATURE—GOVERNOR—PENITENTIARY**

**Opinion 2213-52**

Hon. Morton G. Wyatt, Jr., State Senator,  
January 16, 1952.

Senate Bill No. ...., Concerning Convict Labor, is not an act for the raising of revenue, neither is it an act making an appropriation, nor within any of the subjects designated by the Governor for consideration by the General Assembly at the 1952 regular session.

**DEAF AND BLIND—MISCELLANEOUS**

Colo. School for Deaf and Blind, **Opinion 2214-52**  
January 16, 1952.

(State—Actions against)

Without constitution or legislative authority, the State of Colorado in its sovereign capacity cannot be sued, and likewise, the Colo. School for Deaf and Blind, being a creature of the constitution of the State, and an agency of this State, the same reasoning applies. Similarly, the officers of the School, while acting within the scope of their office are not responsible in tort for damages or injuries to the person or property arising out of an accident occurring upon the premises of the School.

**SOIL CONSERVATION—CITIES & TOWNS**

Kenneth W. Chalmers, Secretary, **Opinion 2215-52**  
January 18, 1952.

1. Lands not within incorporated municipalities, which were used for agricultural purposes at the time of their inclusion in a newly organized soil conservation district, may be excluded from the district by the board of supervisors if such lands are later converted to commercial or industrial uses, including business uses, or if later brought within the limits of an incorporated municipality. (*Sec. 4, Chap. 241 1937 S. L.*, as amended by *Sec. 2, 1949 S. L., Chap. 231*)

2. Lands not within incorporated municipalities, which were used for commercial or industrial purposes at the time of their inclusion in a newly organized soil conservation district, may not thereafter be excluded from the district by the board of supervisors unless brought within the limits of an incorporated municipality. The statutes prescribe no specific exclusion procedure for such circumstances, and aggrieved landowners must apply for judicial relief if exclusion is desired. (*Sec. 7, Chap. 231, S. L. 1949*)

**FIREMEN'S PENSIONS**

Joe Lee, Fire Chief, **Opinion 2216-52**  
January 21, 1952.

A volunteer fireman may be retired (a) if he has served twenty years, and (b) is above the age of fifty years, at a pension not to exceed fifty dollars per month in the discretion of the board of trustees. (*Chap. 163, Sec. 485, 1935 C.S.A.*)

**LAND BOARD**

State Board of Land Commissioners, **Opinion 2217-52**  
 January 22, 1952.  
 (State Mineral Patents Nos. 1 to 19)

Surface rights to State Mineral Patents Nos. 1 to 19 were not reserved to the state and they passed to the patentee at the time of the issuance of the patent. (*See Opinion No. 1277-48*)

**LAND BOARD—FEDERAL**

State Board of Land Commissioners, **Opinion 2218-52**  
 January 23, 1952.  
 (Federal Housing Administration—  
 Cooperative Housing—Mortgage Insurance)

The 100% guarantee of a loan by the FHA brings it within the class of loans allowed by *Sec. 47, Chap. 146, 1935 C.S.A.*, and such a loan can be legally made by the Land Board. The loan would be made subject to *Sec. 213, FHA Rules and Regulations* concerning the Cooperative Housing Act.

**CITIES AND TOWNS—  
POLICEMEN'S PENSION**

Naida Stephens, Town Clerk, **Opinion 2219-52**  
 January 23, 1952.  
 (Police Retirement Fund)

(1) The Police Retirement Fund is not connected with the old age pension or social security.

(2) The plan is made for the benefit of the individual rather than position.

(3) Individual problems entail individual consideration and the City or Municipality Attorney who is legal advisor to the board, should advise the board as to administrative detail.

(*Secs. 517 to 535, Chap. 163, 1935 C.S.A.*)

**LEGISLATURE—LAND BOARD—FEDERAL**

Congressman Wayne N. Aspinall, **Opinion 2220-52**  
 January 24, 1952.

State Legislature can appropriate moneys to the State Board of Forestry to be expended by them "to cooperate with the Federal Department of Agriculture in carrying out the provisions of all federal acts providing funds to promote forest lands." (*Secs. 1, 2, 3, of Chap. 150, 1943 S. L.*)



**CHILDREN—COURTS**

Harold D. Lutz, County Judge,  
January 31, 1952.

**Opinion 2221-52**

Both the Juvenile and County courts have unrestricted power to award custody of a child to *whomsoever* the court shall see fit. See *Sec. 3, Chap. 129, S. L. 1949*, as amended. Also *Secs. 1, 6* of said chap. The word "*whomsoever*" appearing in *Sec. 6* is not limited to the agencies named in *Sec. 1* of the act.

**LEGISLATURE**

Representative Harry R. Sayre,  
February 1, 1952.

**Opinion 2222-52**

*S.B. 46* is clearly a bill concerning over-crowded conditions in state institutions and for the alleviation of such conditions, and comes squarely within the subject matter which the governor designated as additional matters to be considered by the General Assembly at its present session.

**EMBALMERS**

Board of Funeral Directors and Embalmers,  
February 4, 1952.

**Opinion 2223-52**

An applicant for licensure as an embalmer must meet the statutory requirements set out in *Chap. 60, Sec. 12, 1935 C.S.A.* The board cannot waive statutory requirements because its power is limited to making rules, regulations and resolutions which are not inconsistent with the law.

**LEGISLATURE—  
CONSTITUTIONAL LAW—  
TAXATION—CITIES & TOWNS**

Representative J. M. McMath,  
February 4, 1952.

**Opinion 2224-52**

(*Re Chap. 164, S. L. 1949—Organization of Fire Protection Districts, etc.*)

*Chap. 164, S. L. 1949*, was signed by the proper officers; approved by the Governor April 29, 1949, and lodged with the Secretary of State the same date. Therefore, all public officials, including this officer, should obey its terms, until some one, whose rights it invades, complains and invokes the courts to pronounce it void as to them, their property or their rights. (*Peo. v. Leddy*, 53 Colo. 109, 110)

**SECURITIES**

Curtis White,

**Opinion 2225-52**

February 5, 1952.

Foreign securities corporations may advertise in Colorado without qualifying under the provisions of *Chap. 41, Art. III, 1935 C.S.A.*, as such activity does not constitute doing business.

**LAND BOARD—GOVERNOR—CONTRACTS**

Board of Land Commissioners,

**Opinion 2226-52**

February 5, 1952.

1(a). The Land Board is not required by law to submit expired leases to competitive bids, but must follow the provisions of *Sec. 62, Chap. 134, 1935 C.S.A.*, as amended, when making such renewals; (b) In making new leases, or on forfeited leases you may provide by rule for letting on competitive bids, subject to constitutional requirement that you must protect the public domain.

2. You are not presently restricted by law to any particular size of grazing unit, but may lease in such size as will conserve and protect the state's lands and still yield the maximum possible return therefor.

3. *Sec. 59 (1), Chap. 134, 1935 C.S.A.*, enables you within *Sec. 11, Art. II; Sec. 12, Art. XV* to negotiate under existing contracts, for either the upward or downward revision of rentals "when in your opinion conditions justify."

**FEDERAL—ELECTIONS**

Leonard M. Campbell,

**Opinion 2227-52**

February 6, 1952.

Inhabitants of housing units located on U. S. government property and leased to a private corporation are not Colorado residents within meaning of election laws. *Art. VII, Sec. 4, Colo. Const.; Merrill v. Shearston, 73 Colo. 230; Kemp v. Hubner, 77 Colo. 177.*

**DEPARTMENT OF AGRICULTURE—  
LIVESTOCK**

Paul W. Swisher,

**Opinion 2228-52**

February 7, 1952.

There is no legal objection to requiring reactor brands for reactor cattle which are found under the Voluntary Beef Brusellosis Testing Program. *Ch. 100, Sec. 8 (3) 1949 S. L. or Ch. 100 Sec. 9(g) 1949 S. L.*

**FORT LEWIS COLLEGE—STATE OFFICERS**

Albert E. Corfman, Acting President, **Opinion 2229-52**  
February 11, 1952.

There is no tort liability against the State of Colorado, Ft. Lewis A & M College and its qualified officers, acting within the scope of their employment, in case of personal injury sustained by athletic squad members of said college. 14 *C. J.S.* 1354.

**GOVERNOR—FEDERAL—WATER—TREASURER**

Dan Thornton, Governor, **Opinion 2230-52**  
February 12, 1952.

(Re Flood control project, namely, John Martin Reservoir)

Moneys paid by the United States to the State Treasurer for Colorado's share of rental proceeds for the leasing of lands in Federal flood control projects can lawfully be expended only for the benefit of (1) public schools of the county in which the leased property is situated, and (2) public roads of the county in which the leased property is situated. The allocation of available funds between public schools and public roads of a particular county is a matter for legislative determination. (*Sec. 701c-3, Title 33, U.S.C.A.*)

**CITIES—ELECTIONS**

Ms. Ruth Rouss, Town Attorney, **Opinion 2231-52**  
February 13, 1952.

In municipal elections held by a town for the purpose of becoming a city of the second class, nominations for office may be made by petition and by political party conventions; it is not necessary for a political party to nominate a full slate; ward convention delegates convening as such may not nominate candidates at large; political party conventions must be held at least 45 days prior to election; petitions for nominations must carry a descriptive designation in less than five words which names may be supplied after petitions are filed upon the approval of those signing it. There is no affirmative responsibility on the town clerk to check petitions for sufficiency and challenge the lack thereof.

**GAME AND FISH**

Mr. C. N. Feast, **Opinion 2232-52**  
January 24, 1952.

No statutory authority exists under the Beaver Control Act of 1951, which would permit the Game and Fish Department, at the request of the State Engineer's office to go upon private lands to destroy beaver without the consent of the land-owner.

**COUNTY SURVEYORS—COMMISSIONERS****Opinion 2233-52**

Hon. Robert Delaney, District Attorney,  
February 21, 1952.

Board of County Commissioners is under no legal obligation to employ a county surveyor to perform surveying work for the county, but may lawfully employ a private independent surveyor to do such work if the work is within the scope of county powers and duties.

**COUNTY TREASURER—PUBLIC FUNDS  
BANK COMMISSIONER****Opinion 2234-52**

Leonard M. Campbell,  
City Attorney,  
February 11, 1952.  
(Unclaimed bank funds)

Unclaimed funds deposited by the state bank commissioner with a county treasurer shall be held in trust for the depositors, their heirs, assigns, etc., and may not be transferred by the county to its general fund.

**INSURANCE****Opinion 2235-52**

Luke J. Kavanaugh,  
February 11, 1952.

A group insurance policy issued to a labor union requires that a certificate of insurance be delivered to the policyholders. (*Chap. 206, Sec. 16 (b) (2), 1951 S. L.*)

**COUNTIES—COUNTY COMMISSIONERS—HIGHWAYS  
PLANNING COMMISSION****Opinion 2236-52**

H. A. Storey, Assistant Director  
February 13, 1952.

1. Counties, through their respective boards of county commissioners, have power to name, re-name, and otherwise regulate the names of public roads and streets in unincorporated areas within their boundaries, subject to limitations upon this power

which may have been made by the dedicator of a particular street or road.

2. Only the State has power to number, renumber, or otherwise regulate the numbering of houses in unincorporated areas. This power could probably be delegated by general law to the counties, but it is questionable if it could constitutionally be exercised by a local or special law.

3. There is no law requiring the creation of a fund for perpetual care of private cemeteries. Only the State has the power of regulation of private cemeteries, although such power could probably be delegated to the counties by general law.

### FEES—COURTS (CLERKS)

Opinion 2237-52

Ms. Lucille Woodard,  
Clerk of County Court,  
February 26, 1952.  
(docket fees)

Statutes establishing fees to be charged by clerk of county court must be strictly construed, and unless fee specifically authorized charge should not be made.

No authority given by *Sec. 23 (1) Ch. 66, S. L. 1945* for docket fee to be charged for filing an amended petition for sale or mortgage of real estate through county court.

In lunacy proceedings one filing complaint is not chargeable with costs, but rather, the estate of the patient, and if he has no estate, the same is chargeable to the county by *Sec. 9, Ch. 105, 1935 C.S.A.*

### COMMISSIONER OF EDUCATION—TUITION

Opinion 2238-52

J. Burton Vasche,  
March 3, 1952.

1. A school district may not charge an enrollment fee as a condition to enrollment in kindergarten.

2. School districts may require payment of fees in the nature of a deposit to insure safe return or proper custody of property.

3. A school district may charge a voluntary student activity fee for extra-curricular activities.

**GOVERNOR—MOTOR VEHICLE LICENSES  
LEGISLATION**

**Opinion 2239-52**

Hon. Dan Thornton,

March 4, 1952.

(*H.B. 2, 38th Gen. Assembly*)

*H.B. 2* of the *38th General Assembly, Second Session*, would not apply to chauffeurs' licenses issued or re-issued upon application made prior to January 1, 1953. The fee of two dollars would be collectible from persons applying for the issuance or re-issuance of such licenses prior to January 1, 1953.

**HIGHWAYS—CONTRACTS**

**Opinion 2240-52**

Mark U. Watrous,

March 6, 1952.

1. When the State Highway Department was abolished by the 1952 legislature, and reorganized as the Department of Highways, old forms of contract of the former department may not be used unless there is attached thereto a statement showing the change in name and functions, as set forth in opinion.

2. Revised form for Contract and Bond must be executed in triplicate, one copy filed with the controller, and must be in the name of "The State Highway Commission of Colorado, a public corporation, for the use and benefit of the Department of Highways and State of Colorado." Entire Contract and Bond attached to opinion.

**DEPARTMENT OF HIGHWAYS—  
CONTROLLER—EMPLOYEES  
MOTOR VEHICLES**

**Opinion 2241-52**

Averill C. Johnson,

March 6, 1952.

(state-owned cars pay toll charge)

1. Motor vehicles owned by the State of Colorado are not, per se, exempt from payment of tolls and charges for the privilege of traveling along and over the Denver-Boulder Turnpike. Persons who have the duty to drive upon such highway, such as enforcement officers of the State Patrol and maintenance personnel, may be considered as exempt from the payment of such toll.

2. Employees or officers of the State of Colorado who pay a toll for the privilege of driving a motor vehicle along and over the Denver-Boulder Turnpike may, if such charge is an actual and necessary expense of travel on official business, be reimbursed therefor by the State.

### **COSMETOLOGY**

Miss Beryl W. Maus,  
March 6, 1952.

**Opinion 2242-52**

The statutory definition of "cosmetology" does not include the manufacture and sale of false hair pieces, and the Board has no authority to license and control persons or firms engaged in the manufacture and sale of false hair pieces.

### **PSYCHOPATHIC HOSPITAL**

Colorado Psychopathic Hospital,  
March 7, 1952.

**Opinion 2243-52**

In the instant case, the patient is not a voluntary patient but must find a place under *Sec. 10, Ch. 158, S. L. 1923*. That section permits the director to accept such a patient "under the provisions of *Sec. 9*, conditioned further that the director shall then follow the procedure outlined in *Sec. 4* of said *Chap. 158*.

### **COLORADO GENERAL HOSPITAL (Anatomical Board)**

Anatomical Board of the State of Colorado,  
March 10, 1952.

**Opinion 2244-52**

Relatives, friends, fraternal or charitable organizations, who claim bodies from the Anatomical Board within twenty days after death for the purpose of burial at the expense of the claimant, may be reimbursed by the Federal Security Administration.

### **HIGHWAY—TREASURER—SECRETARY OF STATE— FEDERAL**

Earl E. Ewing,  
March 11, 1952.

**Opinion 2245-52**

(Distribution of 2c gas tax under *Chap. 128, S. L. 1947*)

For purpose of distributing two-cent gas tax under *Chap. 128, Sec. 2 (2), S. L. 1947*, the effective date of the census is the date that the Secretary of State certifies the same to the State Treasurer. That date here is November 2, 1951.

**UNIVERSITY OF COLORADO****Opinion 2246-52**

University of Colorado,

March 11, 1952.

*Secs. 1 and 2, Chap. 219, S. L. 1945*, limit the payment of revenue bonds to the net proceeds of the dormitory or refectory itself. Funds from other buildings, projects, or state property, can neither be used to supplement, pay, nor guarantee the payment of the revenue bonds issued to finance the project itself. Each project, in common parlance, "must stand upon its own bottom" and must meet its own financial obligations. Nothing in this opinion shall be deemed to prohibit the issuance of refunding bonds as per our opinion No. 203, dated October 21, 1943. See also Opinion No. 2040-51.

**COUNTY COMMISSIONERS—PUBLIC FUNDS  
MOTOR VEHICLES****Opinion 2247-52**

Mr. James B. Garrison,

County Attorney,

March 17, 1952.

County Commissioners are not liable individually for public liability and property damage insurance policies purchased with county funds on county vehicles. *Chap. 118, S. L. 1949; Chap. 45, Sec. 1, 1935 C.S.A.* Above applies to *all* vehicles of a state or county, and to the police, fire or health department vehicles of a municipal or quasi-municipal corporation. *Chap. 118.*

**LIVESTOCK—DISTRICT ATTORNEY  
GOVERNOR****Opinion 2248-52**

Fred E. Sisk,

Deputy District Attorney,

March 19, 1952.

In connection with a violation of *Sec. 84, Chap. 160, 1935 C.S.A.*, the venue for a prosecution of such violation is laid in the county in which the infected animals first entered the State of Colorado.



**ELECTIONS—DISTRICT ATTORNEY**

M. E. H. Smith,  
District Attorney,  
March 19, 1952.

**Opinion 2249-52**

Affidavit registration limited to those who, because of serious illness, or physical disability, or service in the armed forces, shall be unable to register.

**SECRETARY OF STATE—  
LIQUOR—ADVERTISING**

George J. Baker,  
Secretary of State,  
March 24, 1952.

**Opinion 2250-52**

(Brown Forman Distilling Company display)

(1) There is no state law, rule, or regulation now in force which of itself applies in a regulatory manner to advertising by means of such devices as the Brown Forman Distilling Company display now in place on the Zook Building in Denver;

(2) The State Licensing Authority is empowered to regulate advertising by persons licensed under the Liquor Code of 1935, as amended, but such power is limited to regulation of signs and displays on licensed premises; of practices unduly designed to increase the consumption of alcoholic liquors; of inherent indecency; and of such other phases thereof as are deemed "necessary for the proper regulation and control of the manufacture, sale and distribution of" spirituous liquors and the enforcement of the liquor code. In no case may such regulation "abridge the right of any licensee to fairly, honestly and lawfully advertise the place of business of or the commodities sold by such licensee." Consequently, it is extremely doubtful that the State Licensing Authority has any regulatory power over the specific type of display above described.

**TAXATION—CITIES AND TOWNS**

Howard A. Latting,  
Colorado Tax Commission,  
March 26, 1952.

**Opinion 2251-52**

1. A property owner is subject to fire district tax after annexation until excluded. 2. Property owner is subject to future levies for fire protection in the incorporated town. 3. Property owner is subject to indebtedness incurred by fire districts prior to exclusion.

**SCHOOLS—(Teacher's Tenure)**

Mrs. Betty East, Secretary,  
Ouray County High School Board,  
March 26, 1952.

**Opinion 2252-52**

1. Teachers under tenure may be discharged upon filing of charges and hearing. 2. Teachers under tenure may be assigned different subjects. 3. A contract waiving tenure is not valid. 4. Board can adopt policy requiring teachers to obtain college credits. 5. Board can require teachers to have medical exams.

**COUNTIES—COUNTY COMMISSIONERS**

Leonard Sutton,  
March 31, 1952.

**Opinion 2253-52**

(County zoning plan)

Through adoption of a comprehensive zoning plan, pursuant to *Chap. 92, S. L. 1939*, a county may regulate and control the platting and subdivision of lands in unincorporated areas, but such regulation must be limited to the scope of authority and power granted by *Sec. 12* of said chapter.

**LAND—TAXATION—COUNTIES**

Verne O. Martin,  
Kremmling, Colorado.  
April 1, 1952.

**Opinion 2254-52**

(Non-producing mining claims)

1. All mines and mining claims whether producing or non-producing, are subject to taxes. 2. This specification of property is divided into two classes—producing and non-producing mines or mineral lands. 3. A specific method is provided for the valuation of mines belonging to the first class. 4. No specific method is provided for assessing non-producing mines and they should be assessed in the same manner as other classes of real estate but must retain their classification as mineral lands. *Secs. 82 and 83, Chap. 142, C.S.A.*

**COUNTY CLERK—FEES**

L. W. McDaniel,  
Asst. District Attorney,  
April 1, 1952.

**Opinion 2255-52**

All sums authorized by *Secs. 93, 94 and 133, Chap. 16, 1935 C.S.A.*, to be "retained" by a county clerk and recorder are fees of

that officer and are to be collected, accounted for, and paid over to the county treasurer, all in accordance with *Secs. 38, 39, 43 and 102, Chap. 66, 1935 C.S.A.*, and *Sec. 16, Chap. 125, S. L. 1945. Flanders v. Kockenberger*, 118 Colo. 104.

### EMPLOYEES RETIREMENT

Raymond J. Heath, Opinion 2256-52  
April 2, 1952.

(Status of personnel of Moffat Tunnel Commission)

Moffat Tunnel Commission is an agency of the State within meaning of Public Employes' Retirement Act and therefore employees are eligible for membership therein. *Secs. 23-44, Chap 36, 1935 C.S.A.*

### OPTOMETRIC EXAMINERS

Opinion 2257-52

Colorado State Board of Optometric Examiners,  
April 3, 1952.

A six months internship before the granting of a license to practice optometry may not be required by the Board, if applicant meets requirements set forth in *Chap. 120, Sec. 8, 1935 C.S.A.*

### BASIC SCIENCES

Opinion 2258-52

State Board of Examiners in the Basic Sciences,  
April 4, 1952.

1. The Department of Revenue may require a bond from the secretary of the Basic Science Board. It is within the province of the State Treasurer to allow transfer or cancellation of the bond presently running to that office. (*Administrative Code of 1941, Chap. 3, Sec. 32 (b), 1935 C.S.A.*)

2. There is no set or proper form for the publication of rules and regulations of administrative boards.

### CITIES AND TOWNS

William B. Paynter, Opinion 2259-52  
Town Attorney,  
April 4, 1952.

(Reclassification of the Town of Brush)

The absence of a general canvass of the 1950 United States census and the absence of a general reclassification of cities and

towns does not invalidate the notice of entitlement to the Town of Brush to the extent that a future reorganization would be a nullity. (*Sec. 49, Chap. 163, 1935 C.S.A.*)

### CHILDREN

**Opinion 2260-52**

Board of Control,  
State Home for Dependent and Neglected Children,  
April 5, 1952.

Board of Control of State Home may spend money from the appropriation given it by the General Assembly to hire foster parents to care for children outside of the institution. Board of Control is a body corporate under *Chap. 33, Sec. 25, 1935 C.S.A.* *Chap. 33, Art. 8, Secs. 107-113, 1935 C.S.A.* applies to placement of children in foster homes by the State Home.

### CIVIL SERVICE

**Opinion 2261-52**

State Civil Service Commission,  
April 7, 1952.

1. In view of *Article III, Colo. Const.*, it is my opinion the Courts would decline to pass upon what is an adequate appropriation but would hold that this was a matter for legislative determination.

2. If the courts did declare that the appropriation for 1952-1953 was inadequate such judgment could not be an effective additional appropriation that would permit an expenditure of additional funds, since the legislature alone can appropriate the state's funds. Furthermore, the courts are prohibited by *Article III, Colo. Const.* to encroach upon a power properly belonging to the legislature.

### INHERITANCE TAX

**Opinion 2262-52**

Neil Tasher,  
April 8, 1952.

The provisions of *Sec. 8, Chap. 85, 1935 C.S.A.* apply to "bank accounts held jointly, or, in the alternative, with the right of survivorship" and does not include savings and loan or building and loan association accounts. That an interest in such associations must be taxed according to the first paragraph of *Sec. 8 of said Chap. 85*, by dividing the value of the asset by the number of joint tenants.

**GAME AND FISH**

J. D. Hart,  
Assistant Director,  
April 9, 1952.

**Opinion 2263-52**

No authority exists for the refund of a fee paid for a resident antelope license when the records of the department show that such license was issued and mailed to the purchaser thereof.

**COSMETOLOGY**

Miss Beryl W. Maus,  
April 11, 1952.

**Opinion 2264-52**

A licensed managing cosmetologist cannot teach advanced hair styling to another license cosmetologist not in the employ of the managing cosmetologist.

**PAROLE—STATE HOSPITAL**

State Department of Parole,  
April 7, 1952.

**Opinion 2265-52**

(See Opinion 2286-52)

1. In view of *Sec. 5, Ch. 144, S. L. 1951, Sec. 4 (c), Ch. 147, S. L. 1951*, is not applicable to inmates confined in the Colorado State Hospital on a verdict of not guilty by reason of insanity.

2. (a) where the insane inmate has been convicted under *Sec. 1, Ch. 144, S. L. 1951*, the Governor can commute the sentence upon condition or pardon (*Art. IV, Sec. 7, Colo. Const.*), and issue his warrant for extradition in accordance with *Ch. 181, S. L. 1951*; (b) where there has been no conviction, but the criminal lunatic has been committed under *Sec. 5, Ch. 144, S. L. 1951*, he cannot be returned to the paroling state under the provisions of *Sec. 21, Ch. 105, 1935 C.S.A.*, since this section is only applicable to civil commitments, but must be held by Colorado until released pursuant to *Ch. 144, S. L. 1951*. Convenience and expediency cannot be given consideration in the matter.

**INSURANCE**

Commissioner of Insurance,  
April 14, 1952.

**Opinion 2266-52**

In view of decision in *Prudential Insurance Co. v. Kavanaugh*, 125, Colo., 93, decided by Supreme Court of Colorado on January 21,

1952, dividends of a life insurance policy used by the policy holder to shorten the endowment or premium paying period are not taxable under *Sec. 14, Chap. 87, 1935 C.S.A.*, as amended.

**BOARDS OF STANDARDS OF CHILD CARE—  
CHILDREN**

**Opinion 2267-52**

Board of Standards of Child Care,  
April 15, 1952.

Children may be placed in licensed foster homes without the intermediary of a child placement agency, and such foster homes may accept children placed in this manner. This does not apply to foster homes which are certified by a child placement agency.

**CITIES AND TOWNS**

**Opinion 2268-52**

Charles H. Allen,  
City Attorney, Alamosa,  
April 17, 1952.

Until the adoption by the city council of the plan submitted by the city manager, the power of appointment to municipal positions is vested in the city council by statute.

**FT. LEWIS A. & M. COLLEGE  
EMPLOYEES**

**Opinion 2269-52**

Daniel E. Black,  
Assistant Business Manager,  
April 18, 1952.

Ft. Lewis A & M College by statute (*Secs. 90 and 91, Chap. 38, 1935 C.S.A.*) is made a part of the agricultural college and therefore is an agency of the State and cannot, in the absence of legislative consent, be sued for the torts of its employees. The matter is one of remedy and not of liability and does not necessarily extend to relieve agents or employees of the consequences of their personal negligence.

**MEDICAL BOARD**

State Board of Medical Examiners,  
April 24, 1952.

**Opinion 2270-52**

Formal proof of citizenship; i.e., a certificate of citizenship, is not necessary for the taking of an examination for medical licensure, provided that a license is not issued until formal proof is given. The board may allow the taking of an examination upon the statement of a deputy clerk of the United States District Court that citizenship will be issued upon a minor showing of fact contained in Italian civil records.

**PUBLIC WELFARE—REFORMATORY—FEDERAL**

Earl M. Kouns, Director,  
April 24, 1952.

**Opinion 2271-52**

The State Reformatory is a penal institution within the usual and ordinary meaning of the federal regulation regarding distribution of surplus food to penal institutions.

**GAME AND FISH**

Game and Fish Commission,  
April 25, 1952.

**Opinion 2272-52**

1. The Hudnall diaries are private in character; are hearsay, and have no official status as records of the Game and Fish Department.
2. While these diaries may furnish clues to the record, they cannot be used by the auditors as the basis of their audit.
3. There is no reason why the commission or its members should repeat or publish the so-called Hudnall diaries, or adopt the said diaries as the records of the Game and Fish Department.
4. If such adoption and publication is not made by the commission, then the commission is neither guilty of slander nor libel and, consequently, no legal liability for such can attach.

**FT. LEWIS A. & M. COLLEGE**

Albert E. Corfman, Acting President,  
May 1, 1952.

**Opinion 2273-52**

If a building is purchased by the Alumni Association and moved onto the campus with the approval of the State Planning Commission and the State Board of Agriculture, it will then become part and parcel of the Ft. Lewis School properties and subject to the exclusive control of the said State Board of Agriculture.

**PUBLIC UTILITIES—HIGHWAYS**

Joseph W. Hawley, Chairman, **Opinion 2274-52**  
 May 7, 1952.  
 (Denver-Boulder Turnpike-ton-mile tax)

Common, private and commercial carriers, subject to the jurisdiction of the Public Utilities Commission, using the Denver-Boulder Turnpike must pay the ton-mile tax as provided in the Common, Private and Commercial Carrier Acts for the transportation of persons or property over said Turnpike in addition to the toll or fee charged by the State for the privilege of traveling over said Turnpike.

**ELECTIONS**

Raphael J. Moses, County Attorney, **Opinion 2275-52**  
 May 7, 1952.

There is no statutory authority permitting voting on paper ballots in election precincts where voting machines are provided. In election precincts where it is impracticable to immediately furnish such machines voting may be by paper ballots.

**INDUSTRIAL COMMISSION**

Roy M. Chapman, Director, FEP, **Opinion 2276-52**  
 May 8, 1952.  
 (*Anti-Discrimination Act of 1951, Chap. 217*)

There is no statutory authority to publish facts not appearing in complaint as filed. Complaint *only* can be published. Publication is permissive and not mandatory.

**HEALTH**

Department of Public Health, **Opinion 2277-52**  
 May 8, 1952.  
 (tourist camps)

Board has authority to adopt regulations governing installation of gas-fired appliances insofar as their jurisdiction as to installation is concerned. The word "sanitation" embraces public health and safety in general and does not limit it to hygienic measures. A trailer court is under the jurisdiction of "other buildings, centers and places used for public gatherings" as used in *Chap. 78, Sec. 21(5)(15) 1935 C.S.A., as amended.*



**COLORADO TAX COMMISSION—FEDERAL**

Colorado Tax Commission,  
May 14, 1952.

**Opinion 2278-52**

(Supplementing our Opinion No. 2111-51)

Where personal property is located on a federal reservation and is used and operated exclusively by the federal government on such reservation, such federal property while so located and so used, is not subject to taxation by this state or any of its taxing agencies, although the naked, legal title is vested in a private individual, corporation or association. (*Surplus Trading Co. v. Cook*, 281 U.S. 647, 74 L. Ed. 1091; *Secs. 2, 3 and 11, Chap. 168, 1935 C.S.A.*)

**HIGHWAYS—CONTRACTS**

Mark U. Watrous, Chief Engineer,  
May 12, 1952.

**Opinion 2279-52**

Where the department advertised that alternate items in proposal "must" be bid upon, and low bidder on the "regular" items did not bid upon the "alternate" items, and where the department does not wish to let the final contract on the basis of such "alternate" items, the department may waive the requirement of bids on the alternate items and let the contract to the lowest bidder on the regular items. (See Opinions Numbered 361, 1742-50 and 2197-51)

**COMMISSIONERS—SHERIFFS—FEES**

Leon H. Snyder, County Attorney,  
May 15, 1952.

**Opinion 2280-52**

(Sheriff's mileage fee)

County Commissioners may allow up to eight cents per mile for investigation mileage. *Sec. 76, Chap. 66, 1935 C.S.A.*, modified by *Sec. 44, Chap. 66, 1935 C.S.A.* and confirmed by *Sec. 58 (13), Chap. 66, 1935 C.S.A. 1951 Cumulative Supplement.*

**STATE TREASURER—PUBLIC FUNDS  
FEES**

Earl E. Ewing, Treasurer,  
May 1, 1952.

**Opinion 2281-52**

The clerks of the district and county courts should collect a single one-dollar fee upon each and every civil action filed in their

respective courts and remit the same to the state treasurer for reimbursing the general fund for money spent under *Ch. 259, S. L. 1951* and *H.B. 100, S. L. 1952*.

**COUNTY COMMISSIONERS—  
HEALTH—ELECTIONS**

**Opinion 2282-52**

Ray Perkins, County Attorney,

May 7, 1952.

County commissioners may not submit the question to vote when the county takes over an existing hospital under the provisions of *Chap. 78, Sec. 151, 1935 C.S.A.*, when no bond issue is contemplated. County commissioners have no express statutory authority to place the proposal on the ballot at either the general or a special advisory election. Expenditures for such elections do not come within the purview of *Sec. 7 (2), Chap. 45, 1935 C.S.A.*

**ESCHEATS—  
COUNTY COURTS—  
STATE TREASURER**

**Opinion 2283-52**

David Brofman, County Judge,

May 19, 1952.

Mandatory duty on county court to pay into state treasury unclaimed inheritances.

Discretion in county court to pay approved claim payments standing in registry and unclaimed, and unclaimed judgments in civil proceedings.

**GAME AND FISH**

**Opinion 2284-52**

Game and Fish Commission,

May 19, 1952.

Under the law, the director is authorized to "exercise all of the powers and functions of the Commission in the interim of its meetings, but subordinate thereto, and to perform such other duties as may be prescribed by the commission or by statute; provided, he shall not have authority to make rules and regulations" (*Sec. 248, Ch. 73, 1935 C.S.A.*, as amended).

The commission may by resolution, rules and regulations prescribe the duties of the director, as well as of other members of the

department, but one or more members of the commission, less than a quorum, cannot supplant the commission in its duties—neither can the commission or any of its members supplant the director, as the chief administrative head of the department. (*Secs. 247 and 248, Ch. 73, 1935 C.S.A., as amended*).

**SECRETARY OF STATE—  
LIQUORS**

**Opinion 2285-52**

Hon. George J. Baker,  
Secretary of State,  
May 19, 1952.

(Hearing before issuing license)

There is no mandatory statutory requirement for a hearing by the state licensing authority prior to the issuance of a state license to sell alcoholic liquors, but such hearing may be held if its purpose is to ascertain or inquire into the reasonable requirements of the neighborhood, the desires of the inhabitants, the character of the applicant, or any other factor bearing upon the propriety or legality of the issuance of such license.

**PAROLE**

Wayne K. Patterson,  
May 20, 1952.

**Opinion 2286-52**

(Re Russell Holbrook—See former Opinion 2265-52)

If Holbrook is found restored to reason, he can be returned to Illinois as a parole violator in the following ways: (a) upon extradition, or (b) upon waiver.

**GAME AND FISH**

**Opinion 2287-52**

Game and Fish Commission,  
May 20, 1952.

(Abating pollution on Animas River)

Game and Fish Commission may bring action to enjoin pollution of a river when such pollution is harmful to fish. The proof necessary to establish an enjoined pollution should consist of water and aquatic vegetation tests over a substantial period of time showing constant presence of harmful, deleterious, and resultant injury. Specifically affirms opinion of this office dated July 1, 1946, to C. N. Feast, Director, State Game and Fish Commission.

**JUSTICE OF PEACE—  
HIGHWAY PATROL—MOTOR VEHICLES**

G. I. Matthews, **Opinion 2288-52**  
Justice of the Peace,  
May 21, 1952.

(Fines for violations on public highways)

Where a person is fined upon conviction in justice of the peace court of a violation of *Chapter 16, 1935 C.S.A.*, as amended, he may be committed to jail until the fine is paid, but such commitment is not lawful unless the order therefor is a part of the judgment of the court. *Sec. 516, Chap. 48, 1935 C.S.A.*

**WORKMEN'S COMPENSATION—  
CITIES AND TOWNS**

Kenneth T. Colwell, **Opinion 2289-52**  
Town Attorney,  
May 22, 1952.

(Fire Protection District—Town of Eaton)

1. Members of the volunteer fire department of a Colorado municipality are subject to the provisions of the Workmen's Compensation Act only while actually performing duties as volunteer firemen for the municipality. They are not subject to the Act when engaged in performing similar duties voluntarily and without compensation for an association or organization which is neither a municipality nor a fire protection district.

2. The board of trustees of a municipal firemen's pension fund has authority, under *Sec. 485 (a), Chap. 163, 1935 C.S.A.* to insure the members of the municipal volunteer fire department only against injuries incurred in the line of duty as municipal firemen. Such board has no power to insure said members against any injuries they might receive while engaged in similar duties for another municipality, association, or similar separate entity.

**SOIL CONSERVATION DISTRICTS—  
WORKMEN'S COMPENSATION**

L. B. Casselman, **Opinion 2290-52**  
Secretary-Treasurer,  
May 22, 1952.

A soil conservation district is subject to the Workmen's Compensation Act without regard to the number of persons employed

by it, and the district must carry workmen's compensation insurance with the state compensation insurance fund. *Sec. 287, Chap. 97, 1935 C.S.A., and Sec. 300, Chap. 97, 1935 C.S.A., as amended.*

### ARCHITECTS

Earl C. Morris,  
Secretary-Treasurer,  
May 27, 1952.

**Opinion 2291-52**

Whether or not a sub-fire station is a building intended for public assembly is a question of fact, and if such a building is found to be intended for public assembly then no person except a licensed architect may prepare the plans and specifications. *Sec. 14, Chap. 10, 1935 C.S.A., as amended.*

### GAME AND FISH—CONTRACTS

Thomas L. Kimball,  
Executive Director,  
May 27, 1952.

**Opinion 2292-52**

1. Game and Fish Commission can enter into an approved sales contract with out of state fur sales agencies, provided as indicated by *Sec. 4, Ch. 183, S. L. 1951*, the contract provides for publication of notice of sale as provided by law.

2. All pelts taken under authority of *Ch. 183, S. L. 1951* must be sold at public auction except as indicated by *Sec. 4 (b)* of said chapter.

3. To obtain competitive bids on auction or other types of sales services, is not essential, but the matter of procurement of marketing services is an administrative function of the commission.

4. The acceptance of sealed bids on any or all pelts sold, would not comply with *Sec. 4, Ch. 183, S. L. 1951*.

### EMPLOYMENT SECURITY LEGISLATURE CIVIL SERVICE

Hon. Ike Murray,  
Attorney General of Arkansas,  
May 28, 1952.

**Opinion 2293-52**

1. The salaries of employees within the employment security division are fixed by the legislature.

2. The funds contributed by the federal government are deposited with the state treasurer as custodian and not commingled with the general funds of the state.

3. No legislative appropriation of such funds is necessary since the funds are specifically earmarked as federal funds and are expendable by the Director pursuant to the grant.

### SCHOOLS

**Opinion 2294-52**

Mr. J. Burton Vasche,  
Commissioner of Education,  
May 28, 1952.

(Leasing of school property for oil)

School boards in first and second class districts have the power to lease school property to oil companies for the purpose of drilling for oil.

### COUNTIES—CITIES AND TOWNS—SALES TAX

**Opinion 2295-52**

Harry M. Howard,  
City Attorney,  
June 4, 1952.

Counties and non home rule municipalities have no power to impose sales taxes, on cigarettes or any other commodity. Home rule cities may impose sales taxes unless restricted by their respective charters.

### LIQUORS

**Opinion 2296-52**

W. K. Lilley, District Supervisor,  
Internal Revenue Service,  
Denver, Colorado,  
June 4, 1952.

*Sec. 28, Art. 2, Chap. 89, 1935 C.S.A.* does not preclude agreements between retail licensees and other persons for the exclusive purchase, handling, or sale of the products of a particular manufacturer, unless influenced or caused by an agreement under which the retail licensee or some persons "interested" in his establishment, is to receive a consideration in "money, fixtures, supplies, services, or things of value."

**PUBLIC INSTITUTIONS—PENITENTIARY—  
GOVERNOR**

J. Price Briscoe, Director, **Opinion 2297-52**  
June 4, 1952.

Where the officers at the Penitentiary are performing their lawful duties they are protected, otherwise not.

**SCHOOLS—COMMISSIONER OF EDUCATION  
—CRIMINAL LAW**

J. Burton Vasche, **Opinion 2298-52**  
Commissioner of Education,  
May 27, 1952.

A person who has been convicted of a felony may serve as a member of a school board, except if such conviction was for the crime of embezzlement of public moneys, bribery, perjury, solicitation of bribery or subornation of perjury, *Sec. 4, Art. XII, Colorado Constitution*.

**PAROLE—SHERIFFS**

Leonard M. Campbell, **Opinion 2299-52**  
City Attorney, Denver,  
May 23, 1952.

(1) Where the arrest is made by the Executive Director, his assistants, or the parole officers, and the instructions or authorization for holding comes from the said department of parole, the department of parole is liable for such expense under *Sec. 7, Ch. 147, S. L. 1951*.

(2) Where the parolee is arrested and held at the instance of the Department of Parole or its officers, and his parole is revoked, the necessary expense of returning such parolee to the Colorado institution from which he was paroled is a proper charge to the Department of Parole under *Sec. 7, Ch. 147, S. L. 1951*, and should be borne by that Department. However, no sheriff or peace officer should transport the parolee or incur other expense on his own initiative, but must first have the proper authorization from such Department of Parole if he expects to be reimbursed by the state. (*Sec. 3, Ch. 118, S. L. 1947*)

No opinion is expressed as to the availability of funds to pay said expense, since that is a factual and administrative matter and not one of law.

**NEWSPAPERS****Opinion 2300-52**

Hon. Richard B. Cossaboom,  
County Judge of Arapahoe County,  
June 9, 1952.

*Sec. 11, Chap. 130, 1935 C.S.A.* is not to be construed to mean that a court shall designate the paper in which legal notices are to be published. *Sec. 10 (1) supra*, is controlling in connection with who designates the newspaper in which legal publications appear.

**COUNTIES—PUBLIC FUNDS—LAND BOARD****Opinion 2301-52**

Raphael J. Moses,  
County Attorney,  
June 10, 1952.

(Bonus funds for oil and gas leases)

Bonus funds for oil and gas leases issued in the proprietary capacity of the county should not be treated as tax revenue, and should be treated as general county revenue. Such funds are subject, however, to the provisions of *Chap. 192, Sec. 3, S.L. 1941*, providing for payments of unpaid taxes on file of county lands before application to other funds.

**CRIMINAL LAW—LIQUOR****Opinion 2302-52**

M. E. H. Smith,  
District Attorney,  
June 12, 1952.

(Sale of 3.2% beer to Indians)

There is no state law currently in force which prohibits sale of 3.2% beer to Indians.

**WEATHER CONTROL—AGRICULTURE****Opinion 2303-52**

Paul W. Swisher,  
Commissioner of Agriculture,  
June 16, 1952.

An applicant for weather control license to attempt to dissipate hail storms by "cloud seeding" from aircraft must demon-



strate such financial responsibility as shall appear adequate, in the light of present knowledge of such operations and experience with the results thereof, to "meet obligations reasonably likely to be attached to or result from" the activities proposed to be conducted.

### HEALTH

Honorable Tom Kimball,  
State Senator,  
June 17, 1952.

**Opinion 2304-52**

(Grading of restaurants)

A district health department has power to grade restaurants as to degrees of compliance with sanitary regulations. Such graduation does not violate the equal protection or due process clauses of the constitution. *Citing Western Pennsylvania Restaurant Association et al v. City of Pittsburgh, 77 Atl. (2d) 616.*

### HEALTH

State Board of Health,  
June 17, 1952.

**Opinion 2305-52**

(Right of county or district health department to hold title to real property)

1. A county or district health department does not have power to hold title to real property.
2. A participating county may hold title to the property in question for the use of the district health department.
3. The State Department of Public Health may not hold title to real property in its own name; however, the State of Colorado may hold property in its name for the use and benefit of the state department of public health or a district health department.

### FORT LEWIS SCHOOL

State Board of Agriculture,  
June 17, 1952.

**Opinion 2306-52**

Fort Lewis Permanent Endowment Fund may be invested in bonds of the United States. *Chap. 38, Sec. 101, 1935 C.S.A., as amended by S. L. 1943, page 582, Sec. 1.*

**ACCOUNTANTS****Opinion 2307-52**

F. Tillman Brownne, Sec.,  
Board of Accountancy,  
June 18, 1952.

The designation "certified public accountant" or "registered accountant" may be used in connection with an assumed name, pursuant to *Sec. 12 (b) Chap. 76, S. L. 1937*, but only if such assumed name was not used in Colorado prior to June 1, 1937.

**SCHOOLS—ARCHITECTS****Opinion 2308-52**

Mr. Avon Bristow, Principal,  
Gilman Grade School,  
June 18, 1952.

1. While the statute does not specifically require a builder to employ a licensed architect to prepare plans or supervise the construction of a building, the same end is accomplished by the prohibition of *Sec. 14*, and the penalties of *Sec. 13, Chap. 10, 1935 C.S.A.*, as amended.

2. *Sec. 14, Chap. 10, 1935 C.S.A.*, as amended, provides that any person who engages in the planning or supervising of the erection, enlargement or alteration of a building to be constructed by persons other than himself, unless such building comes within the exceptions of the statute, is practicing architecture, and that a school building does not come within such exception.

**LAND BOARD****Opinion 2309-52**

State Board of Land Commissioners,  
June 20, 1952.

(Right to incorporate provision in existing lease)

Land Board has power to lease lands and the incorporating of a provision in the existing lease contract is a matter of the contract of lease between the lessor and the lessee, and it does not appear to violate the advance rental provision of *Ch. 134, Sec. 61, 1935 C.S.A.*

**CIVIL DEFENSE**

Henry L. Larsen, Director,

**Opinion 2310-52**

June 20, 1952.

(Loyalty oaths)

Under the *Civil Defense Act of 1950*, as amended, there is no requirement that boy scouts, girl scouts and other children, many of whom are not yet in their teens, execute the loyalty oath.

**CIVIL SERVICE**

State Civil Service Commission,

**Opinion 2311-52**

June 20, 1952.

(Status of W. M. Bosco)

Under *Sec. 1, Chap. 96, S. L. 1945*, a former civil service employee, upon discharge from the armed services, has the following rights, if exercised within one year from the time of such discharge, etc.:

1. To re-occupy the place he left when he entered the armed forces.
2. To retain his position on the eligible list.

**LIVESTOCK**

Ed. Paul, Brand Commissioner,

**Opinion 2312-52**

Board of Stock Inspection Commissioners,

June 23, 1952.

(Estray Fund)

Where the right to the proceeds of the sale of an estray are claimed by two or more persons, and the board is unable to determine to its satisfaction which claimant was the lawful owner of the estray, it should not pay the proceeds to any claimant but should continue to hold them in the Estray Fund until ownership is clearly established.

**LIQUORS**

George J. Baker,

**Opinion 2313-52**

Secretary of State,

June 24, 1952.

(The Albi Display Service)

Transactions between a sign display service company and retail alcoholic liquor licensees, does not constitute a violation of the *Liquor Code of 1935*, as amended, unless such display company is acting as agent or employee of a manufacturer or wholesaler of alcoholic liquors.

**LEGISLATURE—ELECTIONS****Opinion 2314-52**

Senator Ben Veltri,  
Trinidad, Colorado,  
June 24, 1952.

(Compatibility of office)

(1) A clerk of a district court holds a position, the duties of which are undefined and which can be changed, and who can be discharged at the will of the district judge; the position is not an office, but a mere employment; the incumbent is *not an officer*, but a mere employee, and the office of state representative is *not incompatible* with the employment of clerk of the district court.

(2) The probation officer holds a position, the duties of which are defined by law and cannot be changed by his superior; he cannot be discharged without good cause shown; he takes an oath of office, is an officer of the court and not a mere employee, and the office of state representative is *incompatible* with the office of probation officer in view of the case of *Hudson v. Annear*, 101 Colo. 551.

**HIGHWAY PATROL—MOTOR VEHICLES  
HIGHWAYS****Opinion 2315-52**

G. R. Carrel, Chief,  
Colorado State Patrol,  
June 11, 1952.

*Sec. 280, Chap. 16, 1935 C.S.A.* prohibits the transmission to the roadway of certain stated weights on any series of wheels whose axles are 40 inches or less apart when measured between parallel lines projected vertically from said axles through the circumference of the wheels.

**HEALTH—DISTRICT ATTORNEY****Opinion 2316-52**

Hon. George E. Dilts,  
District Attorney, Cortez,  
June 17, 1952.

(Re status of Tom Roseberry as licensed plumber)

The operation of the plumbing shop in question violates *Sec. 10, Chap. 123, 1935 C.S.A.*

**SOIL CONSERVATION****Opinion 2317-52**

Kenneth W. Chalmers, Secretary,  
June 25, 1952.

Where a tract of land within the boundaries of one soil conservation district is sought to be added to another soil conservation district by election held pursuant to *Sec. 12 (b) of The Colorado Soil Conservation District Act*, as amended, the election is a mere nullity as to such tract. The election may be valid as to other lands, but the tract belonging to the first district is not affected thereby.

**UNIVERSITY—PSYCHOPATHIC HOSPITAL—  
COLORADO GENERAL****Opinion 2318-52**

G. A. W. Currie, M. D.,  
Director of Hospitals,  
June 25, 1952.

(Collection of patient-inmates' accounts)

The Attorney General cannot by official opinion cause the counties to assume liability for the payment of hospital charges for patients admitted to the Psychopathic Hospital from the committing counties. The opinions of the Attorney General are advisory in character and do not have the force and effect of law. If statutory authority for collection of patient-inmates' accounts is absent or defective, the remedy lies with the legislature, not with the courts or the Attorney General.

**EMPLOYMENT SECURITY—JUSTICES OF PEACE****Opinion 2319-52**

Bernard E. Teets, Executive Director,  
June 27, 1952.

Since Justices of the Peace occupy positions, the compensation for which is on a fee basis, services rendered by them are excepted and excluded by *Sec. 2 (b) (3)*, and they may not be covered in the plan. *Chapter 237* is fundamentally a taxing statute and on dealing with the expenditure of public funds and is subject to strict construction.

**MEDICAL EXAMINERS**

State Board of Medical Examiners,  
June 30, 1952.

**Opinion 2320-52**

(Re Cramer Foot Comfort Clinic announcement)

It is possible the announcement of Cramer Clinic violates *Sec. 6, Chap. 138, S. L. 1943*, but such violation is a matter of proof of elements of lawful or malicious omission of the words "chiroprapist, pediatriist or C.S.C." after the use of the prefix "doctor." This determination should be made by the District Attorney who would be the proper prosecuting officer in this instance.

**SCHOOLS**

J. Burton Vasche, Commissioner,  
July 2, 1952.

**Opinion 2321-52**

(Teachers' Retirement) (*Chap. 274, S. L. 1951*)

Although a teacher fulfills the requirements of the elements (a) through (d) of *Chap. 274, S. L. 1951*, she can not comply with the requirements of (e) of said chapter, and is not eligible for retirement under said act as full compliance is required.

**ELECTIONS—CITIES AND TOWNS—  
LIQUOR**

George Fisher,  
Assistant District Attorney,  
July 2, 1952.

**Opinion 2322-52**

An election held to determine whether or not a proposed town should be incorporated is not a "primary, general or municipal election," and the sale of alcoholic liquors is not prohibited on the day of such election by *Sec. 17 (c), Article 2, Chap. 89, 1935 C.S.A.*, as amended.

**CIVIL SERVICE—CONTROLLER—  
GOVERNOR**

James A. Noonan, Controller,  
July 3, 1952.

**Opinion 2323-52**

(Re work program of Civil Service Commission)

In view of *Sec. 17, Ch. 2, S. L. 1941*, as amended by *Ch. 118, S. L. 1947*, the duties of the controller in such circumstances are to assist the governor in reviewing "the requested allotments with

respect to the work program of each department, institution or agency'' in order to see that the aggregate allotment distribution does not exceed the total appropriation made for such department, etc.; controller has no discretion under the statute, but must abide by the final action of the governor so long as said aggregate allotment distribution does not violate *Sec. 3, Ch. 118, S. L. 1947.*

#### **STATE HOSPITAL—ESTATES**

C. G. Dowling, Business Manager,  
July 3, 1952.

**Opinion 2324-52**

(Estate of mental incompetent)

State Hospital, as a creditor, should cause an estate to be opened up under *Sec. 77, Chap. 176, 1935 C.S.A.*, as amended by *Chap. 255, S. L. 1949* (Estates of \$500.00 or less), setting up therein the claims of the Hospital, etc.

#### **DISTRICT ATTORNEY—MOTOR VEHICLES— HIGHWAY PATROL**

Sid Pleasant, District Attorney,  
July 3, 1952.

**Opinion 2325-52**

(Disposition of abandoned motor vehicles on highways)

1. Officers of the State Patrol have no power or authority to compel the owner of a public garage to take possession of and store in their garage motor vehicles found abandoned and unattended on the state highways. The officer may request the garage owner to do such acts and the garage owner may voluntarily accede.

2. If an officer of the State Patrol lawfully takes possession of a motor vehicle found abandoned on a state highway and transfers possession thereof to the owner of a public garage under a voluntary custody agreement, the garage owner acquires a warehousemen's lien for his reasonable charges for the transportation, storage or keeping thereof, and may enforce such lien by extra-judicial public auction sale.

#### **ELECTIONS**

Edward S. Whitcomb, County Clerk,  
July 3, 1952.

**Opinion 2326-52**

A designee who has failed to file his designation papers on time may be appointed by the vacancy committee to fill the vacancy created by his failure to file.

**COUNTIES**

M. O. Shivers, Jr.,  
County Attorney,  
July 3, 1952.

**Opinion 2327-52**

(Status of county official convicted on federal charge)

1. Within the meaning of *Sec. 533, Chap. 48, 1935 C.S.A.*, a plea of guilty to a federal charge which is a federal felony, constitutes a felony in said section, and an elected official found guilty of such felony is no longer eligible to hold his office during the time that he is serving the sentence imposed. Such felony conviction does not constitute a violation of the oath of office in respect to rendering such office vacant.

**JUSTICES OF THE PEACE—ELECTIONS**

A. G. Kochenberger,  
County Clerk and Recorder,  
July 10, 1952.

**Opinion 2328-52**

Within the meaning of *Sec. 220, Chap. 59, 1935 C.S.A.*, the office of justice of the peace and constable is a precinct office with respect to the appearance or non-appearance of the names of candidates therefor on absentee voter ballots.

**ABSTRACTERS**

Donald B. Graham,  
Executive Secretary,  
July 10, 1952.

**Opinion 2329-52**

Whether or not a non-resident abstractor engaging in compiling or selling abstracts, pursuant to an arrangement with a licensed abstractor, is a violation of *Sec. 1, Chap. 2, 1935 C.S.A.*, is a question of fact.

**SOLDIERS' AND SAILORS'  
RELIEF ACT—  
TAX COMMISSION**

J. R. Seaman, Chairman,  
July 16, 1952.

**Opinion 2330-52**

Where the tangible personal property of a member of the armed forces of the United States was actually located in Colorado throughout the tax year, such property was and is subject to taxation in Colorado, notwithstanding the provisions of the *Soldiers and Sailors Civil Relief Act of 1940*, as amended, and the fact that the domicile of said member was elsewhere than in Colorado. See Opinions Numbered 1343-48 and 403-44.



**HIGHWAYS—CITIES AND TOWNS  
MOTOR FUEL TAXES**

C. P. Rigby, Town Attorney, **Opinion 2331-52**  
July 21, 1952.

Tax moneys distributed to municipal corporations under *S. L.* 1947, *Ch.* 128 and 130 (6% and 3%) may be expended for the construction of curbs and gutters of "streets." Advisability thereof is a political question.

**ELECTIONS**

Howard M. Sears, Town Clerk, **Opinion 2332-52**  
July 22, 1952.

Failure to vote in city election purges the name of the person failing to vote and re-registration is necessary.

**ELECTIONS—  
CIVIL SERVICE**

State Civil Service Commission, **Opinion 2333-52**  
July 22, 1952.

A person is disfranchised and is not a qualified elector until he has served out the full term of his sentence—towit, one year and one day, and is quite probably forever barred from membership in the legislature or of holding any office of trust or profit in this state.

**MOTOR VEHICLES**

Ross D. Netherton, **Opinion 2334-52**  
Washington, D. C.  
July 24, 1952.

There is no statutory prohibition against the transportation of firearms in private automobiles in Colorado, so long as they are not concealed on the person.

**SCHOOLS**

J. Burton Vasche, **Opinion 2335-52**  
Commissioner of Education,  
July 25, 1952.

School board may not assess a teacher more than one-twelfth the annual salary for failure to complete contract.

**WELFARE—CHILDREN****Opinion 2336-52**

Earl M. Kouns, Director,

July 28, 1952.

Under *Secs. 85-106, Chap. 33, 1935 C.S.A.* (Aid to Dependent Children statute), a grandparent is not liable under the law for the support of said children.

**COLORADO STATE HOSPITAL  
COUNTY COURTS—CRIMINAL LAW****Opinion 2337-52**

Colorado State Hospital,

August 5, 1952.

*Sec. 508, Chap. 48, 1935 C.S.A.*, as amended, authorizes the judge of county court to commit the defendant to either the Colorado Psychopathic Hospital at Denver or the Colorado State Hospital at Pueblo for observation and examination for such time as the court may direct, not exceeding one month.

**COLORADO STATE HOSPITAL  
COUNTY COURTS—CRIMINAL LAW****Opinion 2338-52**

Dr. F. H. Zimmerman,

August 5, 1952.

A county judge may commit, designate or confine in a hospital or other suitable place, any person who is so insane or distracted in his mind as to endanger his own person or property, or the person or property of another, if allowed to go at large; the word "Hospital" includes the Colorado State Hospital, or any other hospital or place, which the county court deems suitable to accomplish these ends. Our Opinion No. 306-1934 is modified accordingly.

**ELECTIONS****Opinion 2339-52**

Mrs. Rachel Tishner, County Supt.

August 7, 1952.

It is not permissible for an elector voting in a primary election to write in the name of a candidate appearing on the opposite party's primary ballot.

**ELECTIONS**

Jack Londen, County Clerk,  
August 9, 1952.

**Opinion 2340-52**

It is permissible for an elector to be registered in a branch office maintained by the county clerk and recorder in his office.

**ELECTIONS**

Mrs. Sylvia L. Gaylord, County Clerk,  
August 11, 1952.

**Opinion 2341-52**

To be eligible for designation as a candidate for office one must be affiliated with a political party for more than one year prior to the assembly, and such affiliation must appear of record in county clerk and recorder's office.

**COSMETOLOGY**

Miss Beryl W. Maus, Executive Secretary,  
August 11, 1952.

**Opinion 2342-52**

The board does not have power to issue a temporary permit as an emergency measure to a person who has regularly applied for license by examination.

**AGRICULTURE**

Paul W. Swisher,  
August 11, 1952.

**Opinion 2343-52**

1. *Chap. 96, S. L. 1931*, found as *Secs. 60 through 101, Chap. 69, 1935 C.S.A.*, has no application to fruits and vegetables grown outside the State of Colorado but offered for sale, consigned for sale, or sold within this state.

2. Mandatory grading of fruits and vegetables imported for sale in Colorado can be achieved by amending the 1931 act.

**SOIL CONSERVATION**

Kenneth W. Chalmers, Secretary,  
August 11, 1952.

**Opinion 2344-52**

Soil conservation districts, except as otherwise limited by statute, are to be governed by their respective by-laws, and notice

of meetings of such districts shall be given in accordance with and in the manner provided by such by-laws, unless at such is to be considered the adoption of land use ordinances on tax levies or assessments. If the adoption of land use ordinances or tax levies or assessments is to be considered, notice of such meetings must be given in conformity with *Sec. 9 of the Colorado Soil Conservation Act*.

#### **COUNTY ASSESSOR—TAXATION**

**Opinion 2345-52**

Earl Latting, County Assessor,  
August 12, 1952.

County assessor may assess taxes on real property for the years such property was erroneously omitted from the tax assessment rolls.

#### **COUNTY COURT—CHILDREN**

**Opinion 2346-52**

Hon. Irvin E. Jones, County Judge,  
August 12, 1952.

A proper relinquishment proceeding is a condition precedent to a valid adoption.

#### **MOTOR VEHICLES**

**Opinion 2347-52**

Art. Bradbury,  
County Clerk and Record,  
August 14, 1952.

A person employed for the principal purpose of operating a motor vehicle is required to obtain a chauffeur's license, but one who is employed for other primary purposes and who operates his employer's motor vehicle only in the casual course of his employment, and not as a public or common carrier, may drive such vehicle upon procuring only an operator's license.

#### **MOTOR VEHICLES**

**Opinion 2348-52**

Leonard M. Campbell,  
City Attorney, Denver,  
August 15, 1952.

Municipal police vehicles generally are not exempt from registration under the Uniform Motor Vehicle Law, but such vehicles are exempt if used as ambulances or for the purpose of conveying prisoners.

**LIQUORS—CITIES AND TOWNS—  
COUNTIES**

Hon. Felix L. Sparks,  
District Attorney,  
August 15, 1952.

**Opinion 2349-52**

In the absence of proof for 3.2% beer is in fact intoxicating, licensing authorities of counties, cities and towns have power to regulate the sale of such fermented malt beverages by imposing restrictive hours of sale by retail establishments, even though more restrictive than those provided by state statute.

**HIGHWAYS**

Mark U. Watrous, Chief Engineer,  
August 18, 1952.

**Opinion 2350-52**

The headquarters office for the Department of Highways must be at Denver.

**MOTOR VEHICLES  
MORTGAGES**

Averill C. Johnson, Director,  
August 19, 1952.

**Opinion 2351-52**

Where a chattel mortgage of an automobile is given, properly filed for record, and duly shown on the certificate of title, notice of the mortgagee's rights is thereby given to the world. The lien of the mortgage is thereby preserved and is prior to mechanic's and warehouseman's liens which may thereafter arise. Foreclosure of the later liens can be effective only against the equity of the mortgagor, and cannot affect the rights of the mortgagee under the prior mortgage.

**AGRICULTURE**

Paul W. Swisher, Commissioner,  
August 19, 1952.

**Opinion 2352-52**

Potato chips, shoestring potatoes, and French fried potatoes are principal products of manufacture, and potatoes shipped for conversion into such products are not shipped "for by-product purposes" within the meaning of *Sec. 84, Chap. 69, 1935 C.S.A.* (Do not concur in Atty Gen Opinion No. 1607-49, but agree with Opinion No. 336-41)

**ELECTIONS**

Sam T. Taylor,  
August 20, 1952.

**Opinion 2353-52**

1. A candidate who has withdrawn may run on independent ticket. 2. A candidate who has not accepted may run on independent ticket. 3. Vacancies in office must be filled 35 days before primary.

**SCHOOLS**

J. Burton Vasche,  
Commissioner of Education,  
August 21, 1952.

**Opinion 2354-52**

Proceeds of school district bonds may be invested by school directors in U. S. Government bonds during reasonable time pending construction of school buildings.

**SCHOOLS**

Miles Eloe,  
August 28, 1952.

**Opinion 2355-52**

Under *S.B. 55, 38th General Assembly (Chap. 60, S. L. 1952)* tuition in excess of the prescribed rate may be charged if agreed between the boards of education.

**LIQUORS**

William D. Blood,  
Manager of Safety,  
August 25, 1952.

**Opinion 2356-52**

Where a husband is the owner and licensee of a retail liquor establishment, the mere fact that he files joint income tax returns with his wife is insufficient to establish that the wife is financially interested in the liquor establishment, and does not alone preclude the wife's acquiring an interest as lessor of another retail liquor establishment.

**SCHOOLS—FUNDS**

Department of Education,  
August 25, 1952.

**Opinion 2357-52**

(Ford Foundation—American Heritage Program)

(1) There is specific authorization for the state treasurer to accept Ford Foundation funds as the custodian thereof. (2) There is implied authority for the State Library to disburse such funds as the agent of The American Library Association.

**HEALTH****Opinion 2358-52**

State Department of Public Health,

August 26, 1952.

(The Brookvale Alcoholics Cooperative Ranch)

The Brookvale Alcoholics Cooperative Ranch is not a health establishment within the meaning of *Chap. 208, S. L. 1947, Sec. 5 (14) (15)* or the regulations of the Colorado State Board of Public Health.

**BARBERS****Opinion 2359-52**

State Board of Barber Examiners,

August 29, 1952.

1. State Board of Barber Examiners may legally collect and deposit fines levied by a Justice of the Peace against violators of the State Barbering Law.

2. The Board has no discretion to return any fines so collected to the county in which said fines were levied.

**LIQUORS—CITIES AND TOWNS****Opinion 2360-52**

William D. Blood,

Manager of Safety and Excise,

August 27, 1952.

1. A person licensed for the sale of alcoholic liquors at retail may also be licensed to sell fermented malt beverages at retail or have a financial interest in an establishment licensed to sell fermented malt beverages at retail.

2. A person licensed to sell fermented malt beverages at retail may acquire a financial interest in an establishment licensed to sell alcoholic liquors at retail.

3. A person may be licensed to sell fermented malt beverages at retail in more than one location, or being so licensed for one location, may acquire a financial interest in another establishment licensed to sell fermented malt beverages at retail.

**GAME AND FISH****Opinion 2361-52**

Game and Fish Commission,  
August 28, 1952.

1. Remittances should be made at exact times and upon exact terms under rules made by the Commission.

2. Upon failure of any licensed agent to remit all fees collected or remit unsold licenses together with such stubs, the commission can lawfully make demand upon proper bonding company for payment of the account.

3. There is no statutory duty imposed upon the State Auditor to make demand upon Director and/or other bonded and responsible employees for accountability of all revenues due and payable to the Game Cash Fund.

4. No state officer can waive or compromise the rights of the state. Only a court judgment can determine the amount of liability.

5. Under *Sec. 173, Ch. 73, 1935, C.S.A.*, as amended, the individual, etc., is required as a condition precedent to the issuance of licenses to furnish "a bond to secure all moneys collected"; and unless he can give evidence that the license forms remain unissued in his hands or have been spoiled in the course of issuance, then such agent must remain financially accountable to the state of the value of such license forms.

**SCHOOLS—TAXATION****Opinion 2362-52**

Earl A. Wolvington,  
September 4, 1952.

The term "statutory tax levies" as used in *Sec. 39, Chap. 142, 1935 C.S.A.*, as amended, includes a mill tax levied by school districts.

**COUNTIES—SCHOOLS—ELECTIONS****Opinion 2363-52**

Ms. Alma M. Harris,  
September 5, 1952.

County offices should not be closed on primary election day.



**ACCOUNTANCY****Opinion 2364-52**

F. Tillman Browne, CPA,

September 9, 1952.

The state board of accountancy has no power by statute or under present standards and rules of conduct to take disciplinary action against a registered or certified public accountant who is convicted in federal court of failing to file his own individual income tax returns. The conviction amounts only to a misdemeanor under *Chap.* 145 (a) of the Internal Revenue Code.

**CITIES AND TOWNS—TAXATION****Opinion 2365-52**

William L. Lloyd,

September 10, 1952.

The provisions of *Chap.* 56, *S. L.* 1952, relating to the approval of "all statutory tax levies" yielding in excess of the preceding year's tax revenues plus 5% are inapplicable to home rule cities. There is no objection to home rule cities following the provisions of said *Chap.* 56 until the question is finally determined judicially.

**CITIES AND TOWNS—HOSPITALS****Opinion 2366-52**

C. H. Allen,

September 11, 1952.

(1 & 2) The town or city is responsible for the hospital and medical bills for prisoners that become ill while in jail. This is true regardless of the originating cause of the sickness or injury.

(3 & 4) Where the jail, calaboose, etc., serves the purpose of a hospital, medical center, first aid station, dormitory, the city is again liable for the reasonable care of such patients until such time as they are turned over to the county under *Sec. 4, Chap.* 124, 1935 *C.S.A.*

**HIGHWAYS—CIVIL SERVICE****Opinion 2367-52**

Mark U. Watrous,

September 12, 1952.

1. This is an administrative question, resting solely within the province of the civil service commission under its constitutional authority to classify and grade all employment inside the

classified service, so that all persons in the classified service shall be graded and compensated for equal service; (2) that, from the facts presented, the civil service commission is not removing the employee from the position of Foreman I, but is correcting an error in the classification of the position, so that Mr. Nickson, as Foreman I, will neither be performing the duties of a Foreman II for the compensation of a Foreman I, nor, after taking and passing an examination for Foreman I, be elevated to a classification of Foreman II, and be permanently certified to a position for which he was never examined or certified.

### SCHOOLS

**Opinion 2368-52**

Burtis Taylor,  
Acting Commissioner of Education,  
September 12, 1952.

School District Bonds may be contracted for the purpose of taking up registered warrants.

### ELECTIONS

**Opinion 2369-52**

Edith C. Kiel, County Clerk,  
September 15, 1952.

Where a clear case of clerical mistake in the certificate occurred the judges and clerks of election should be notified and the error corrected by them pursuant to *Sec. 260, Chap. 59, 1935 C.S.A.*

### Motor Vehicles—Liquors (Violations and Penalties)

**Opinion 2370-52**

Hon. Clyde Fugate,  
Director of Revenue,  
September 17, 1952.

One who aids and abets another to commit the crime of driving while under the influence of intoxicating liquor, if charged as an accessory and prosecuted and convicted as such, is subject to the same penalty as if charged and convicted as a principal. If so convicted, his operator's and chauffeur's licenses would be subject to mandatory revocation.

**COUNTIES—COUNTY TREASURER**

Leon H. Snyder,  
County Attorney,  
September 18, 1952.

**Opinion 2371-52**

A deputy county treasurer may not sign checks or cash warrants when the treasurer is in the city or in his office and is not disabled to perform his duties.

**AGRICULTURE—HAIL INSURANCE  
STATE TREASURER  
STATE CONTROLLER**

Paul W. Swisher,  
September 22, 1952.

**Opinion 2372-52**

Where the Hail Insurance Fund contains insufficient money to pay outstanding insured hail losses on October 1, but expects to receive sufficient funds by collection of assessed hail indemnity taxes after the following January 1, certificates of indebtedness therefor cannot be issued. Instead, anticipation warrants must be issued on or about October 1, by the State Controller and mailed to the respective loss claimants. Upon presentation to and endorsement by the State Treasurer, such warrants draw interest at the rate of 4 per cent per annum from the date of presentation. They may be so presented by and endorsed for the benefit of the loss claimant or his agent for collection, or they may be purchased by and endorsed for the benefit of a central agency if such arrangements can be made by the State Treasurer.

**INSTITUTIONS—CITIES AND TOWNS**

J. Price Briscoe, Director,  
September 22, 1952.

**Opinion 2373-52**

A municipality may annex property owned by the State provided the statutory procedure is followed. See *Day v. City of Salem*, 65 Or. 114, 131 P. 1028; *Secs. 293 (1) to 293 (9), Chap. 163, 1935 C.S.A.*, as amended.

**SHERIFFS—MORTGAGES—MOTOR VEHICLES**

George W. Cope, Sheriff,  
September 26, 1952.

**Opinion 2374-52**

Conditional sales contract requires sheriff to release car on demand, without lienor obtaining a writ of replevin in case of default in payment on contract. 76 Colo. 125.

**SCHOOLS****Opinion 2375-52**

Burtis E. Taylor, Acting Commissioner of Education,  
September 26, 1952.

No statutory provision exists which would permit a school board to penalize a teacher for not completing a teacher's contract by deducting a portion of salary due under a previous contract that was completed.

**LAND BOARD—FEDERAL**

Board of Land Commissioners,  
October 2, 1952.

**Opinion 2376-52**

(Government—insured mortgage loans—  
Subordination to oil and gas leases)

The State Board of Land Commissioners may subordinate its interests as to oil royalties without impairing its loan security when the loan is 100% government insured. The execution of a subordinate agreement in this situation would not be contrary to the requirements of *Chap. 146, Sec. 48, 1935 C.S.A.*

**COLORADO STATE HOSPITAL**

Dr. F. H. Zimmerman,  
October 9, 1952.

**Opinion 2377-52**

In order for a conservator to gather in the assets of a lunatic person, it is first necessary to have a general adjudication of insanity and commitment from the county court. The Juvenile Court commitment from the City and County of Denver is not such an adjudication and commitment.

**GAME AND FISH—CONTROLLER**

Thomas L. Kimball, Director,  
October 10, 1952.

**Opinion 2378-52**

1. The Director of the Game and Fish Department is not authorized to draw vouchers against funds which are not appropriated.
2. Drawing of vouchers for damage awards against your appropriation for 1952 does not violate *Chap. 232, S. L. 1949*.
3. Vouchers in payment of damage awards during fiscal year 1952-53 should be drawn against "Maintenance and Operation" (*Line 2, Sec. 14(d), Ch. 14, S. L. 1952*)

**COUNTY COURTS—ESTATES—OLD AGE PENSIONS****Opinion 2379-52**

Hon. W. V. Kennett,  
Judge of Elbert County Court,  
October 10, 1952.

*Section "Third", Sec. 195, Ch. 176, 1935 C.S.A., as amended, controls the order and rank of claims filed in estates, other than those of the State. This rule obtains in the estates of old age annuitants, as well as in those of other decedents.*

**CONTROLLER  
SUPERINTENDENT OF PUBLIC BUILDINGS****Opinion 2380-52**

James Merrick, Superintendent,  
October 10, 1952.

The Public Building Division cannot proceed to acquire by purchase or condemnation, additional land for building sites adjacent to the present Capitol properties under authority of *Secs. 18 and 28, Ch. 158, 1935 C.S.A.*, unless funds have been or are appropriated for the purpose. See also *Sec. 33, Art. V, State Const.*, and *Sec. 3(d), Ch. 118, S. L. 1947.*

**CITIES AND TOWNS—MORTGAGES  
TAXATION****Opinion 2381-52**

G. S. Cosand,  
October 14, 1952.

A municipality purchasing property on which a tax lien exists, in effect is not required to pay such tax because such lien cannot be enforced.

**TAX COMMISSION—LEGISLATION****Opinion 2382-52**

John R. Seaman, Chairman,  
October 2, 1952.  
(Re. H.B. 20, 38th Gen. Assembly)

1. The five per cent limitation imposed by *H.B. 20*, does not apply to each individual county fund but only to the aggregate amount of all county funds.

2. The one mill levy for road purposes provided in *Sec. 2, Chap. 128, S. L. 1947*, may be reduced to comply with the intent of the five per cent limitation imposed by *H.B. 20* without the county losing the benefit of state funds.

**BANK COMMISSIONER**

**Opinion 2383-52**

Frank E. Goldy,  
October 3, 1952.

A drive-up window not connected with the bank building is not considered a violation of the branch banking laws, as amended. (*Chap. 89, S. L. 1951*)

**BANK COMMISSIONER**

**Opinion 2384-52**

Frank E. Goldy,  
October 17, 1952.

(Money Lenders Act)

1. Credit life, health and accident insurance premiums may not be included as a part of the cost of a loan under the 1913 Act without violation thereof.

2. A licensee under the 1913 Act may require the borrower to purchase casualty insurance upon personal property pledged as security for the repayment of the loan.

3. Casualty insurance charges required by the licensee under the 1913 Act are considered charges incident to the making of the loan, but insurance premiums for life and health and accident insurance charges are not to be considered charges incident to the loan under said 1913 Act.

**GOVERNOR—STATE HOSPITAL**

**Opinion 2385-52**

Hon. Dan Thornton,  
October 7, 1952.

1. The Governor cannot transfer a prisoner from the Penitentiary or Reformatory to the State Hospital for treatment alone, but when transferred under *Sec. 27, Ch. 105, 1935 C.S.A.*, as amended, the prisoner may receive such ordinary treatment as is incidental to custodial care.

2. The Governor may transfer prisoners under said *Sec. 27* for custodial care.

3. Where a minor insane prisoner needs special hospital and medical treatment, which is beyond such ordinary treatment, the consent of the parents of such minor should be first obtained or where the parents are divorced, that of the parent to whom the court has confided the minor's care and custody.

#### NURSE EXAMINERS

Opinion 2386-52

Joy Erwin, R.N.,  
October 23, 1952.

Nurses throughout the nation are licensed under the same examination and grading system. Passing grades vary from about 420 to a low of 225, according to the requirements of the various states. In reciprocal licensure, the state board of nurse examiners has the discretion to determine what persons possess qualifications substantially equivalent to those required in Colorado.

#### RACING COMMISSION

Opinion 2387-52

H. A. Christensen,  
October 27, 1952.

An overpayment to wagerers directly resulting from a mistake by employes of a licensee is not within the meaning of the word "overpayment" as the same is used in *Sec. 11, Chap. 207, S. L. 1949 (Racing Act)*

#### WELFARE—CHILDREN

Opinion 2388-52

Earl Kouns, Director,  
October 27, 1952.

Within the meaning of *Sec. 89, Chap. 33, 1935 C.S.A.* an order for a deserting father to make support payments is not a resource to be considered in determining the monthly budgetary needs for dependent children.

#### INDUSTRIAL COMMISSION—ELECTIONS

Opinion 2389-52

S. Wesley Johnson, Organizer,  
October 28, 1952.

1. *Sec. 296, Chap. 59, 1935 C.S.A.* itself provides that any person entitled to vote at an election shall be allowed two hours to do

so without deduction from his usual salary or wages "except when such employee is employed and paid by the hour."

2. As to the interpretation of the term "hours of work" there is no statutory interpretation of this term, therefore, each individual contract must be examined for its own definition of "hours of work," and allowance for overtime pay.

#### **ELECTIONS—CITIES AND TOWNS**

Leonard M. Campbell, **Opinion 2390-52**  
October 30, 1952.

There is no provision under *Secs. 214 and 215, Ch. 59, 1935 C.S.A.*, permitting jurors locked up on the day of an election to vote by absentee ballots.

#### **BANKS—PUBLIC UTILITIES**

Frank E. Goldy, **Opinion 2391-52**  
November 6, 1952.

(Selling registered checks thru non-banking outlets)

The selling by a private contract carrier licensed under the P.U.C. and in no wise connected with a bank which engages in a part of its business in selling registered checks does not constitute a branch bank within the meaning of *Sec. 61, Chap. 18, 1935 C.S.A.*

#### **SECURITIES COMMISSION**

Curtis White, **Opinion 2392-52**  
November 12, 1952.

The use of the "identifying statement" under the Securities and Exchange Commission prior to registration in Colorado does constitute a violaton of *Chap. 148, Sec. 3, 1935 C.S.A. (Securities Act)*

#### **ELECTIONS**

John L. Rice, **Opinion 2393-52**  
Asst. District Attorney,  
November 13, 1952.

When the tally marks of votes cast do not conform to the words and figures in the judge's certificate of votes cast, the certificate is controlling, but where the number of votes cast for all candidates for an office is in excess of the number of people actually voting, then the county canvassing board may properly request that the election judges correct such mistake.



**ELECTIONS****Opinion 2394-52**

Hon. John N. Mabry,  
District Attorney,  
November 14, 1952.

A showing that the tally exceeds the number of ballots issued is sufficient grounds for the court to exercise its discretion in ordering a recount.

**CONTROLLER—GOVERNOR—LEGISLATION—JUDGES****Opinion 2395-52**

James A. Noonan,  
November 17, 1952.

(Salary of Supreme, District & County Judges)

1. The amendment to *Sec. 18, Art. VI, Colo. Const.* will take effect from and after the date of the official declaration of the vote thereon by proclamation of the Governor, but not later than thirty days after the vote has been canvassed. (*Sec. 1, Art. V, Colo. Const.*)

2. *Chap. 170, S. L. 1951*, becomes effective simultaneously with *Sec. 18, Art. VI, Colo. Const.*

3. No further legislation is necessary to make the amendment or statute effective. (*Peo. v. Goodykoontze, 22 Colo. 507*)

**ENGINEERS BOARD—LEGISLATION****Opinion 2396-52**

N. E. Langsteiner, Asst. Sec.,  
November 24, 1952.

Where a statute undertakes to occupy the entire field of regulation of a given profession, and recites an express repeal of a former statute covering the same subject, the repealing clause should be considered as having been intended to be effective contingent upon the validity of the remainder of the new statute. If the new statute be unconstitutional in its entirety, the repealing clause should be regarded as ineffective and the former law considered to be as effective as though no attempt at its repeal had ever been made. If the whole of *Chap. 161, S. L. 1951*, be declared to be unconstitutional, then *Chap. 62, 1935 C.S.A.* should be regarded as remaining in full force and effect.

**SOIL CONSERVATION**

Kenneth W. Chalmers, Sec.,  
November 24, 1952.

**Opinion 2397-52**

The Board has no power or authority to contribute its funds to any private agency, even though the private agency proposed to use such funds for the purpose of publishing a periodical magazine or pamphlet which would contain reports of the activities of the board.

**CITIES AND TOWNS—STATE AUDITOR**

Hon. Homer F. Bedford,  
December 1, 1952.

**Opinion 2398-52**

(Annual audit of City of Georgetown)

If the Georgetown charter does not specifically exempt it from the provisions of *Ch.* 193, *S. L.* 1945, it is required to make such report to the state auditor, if it "spends in excess of ten thousand dollars per annum."

**ESTATES—COUNTY COURTS—FEES**

Hon. N. F. Nelson, Judge,  
December 1, 1952.

**Opinion 2399-52**

A docket fee to be charged decedent's estate by the county court is and must be based upon the value of the property listed in the inventory filed with the court by the executor or administrator thereof. If there is joint tenancy property listed in the report of the inheritance tax commissioner, the value of such joint tenancy property is not to be included in the value of the estate filed in the county court, in order to determine the amount of the docket fee due thereon.

**BUREAU OF MINES**

Colorado State Bureau of Mines,  
December 1, 1952.

**Opinion 2400-52**

Under *Sec.* 287, *Vol.* 4, *Chap.* 110, 1935 *C.S.A.*, the following conclusions have been reached:

1. The Minnequa Plant of the C. F. & I. should be inspected by the Colorado Bureau of Mines.

2. (a) Rock wool processing plants which use smelter slag for making rock-wool are not properly inspected by the Colorado Bureau of Mines.
  - (b) Mica and beryllium grinding plants are properly inspected by the Colorado Bureau of Mines.
  - (c) Pottery plants which make high grade metallurgical porcelains are not properly inspected by the Bureau of Mines.
  - (d) Chemical plants which produce acids or sulphur from base pyritic ores are properly inspected by the Bureau of Mines.
  - (e) Perlite exfoliating plants are not properly inspected by the Bureau of Mines.
3. Cement and plaster plants are not properly inspected by the Bureau of Mines.
4. A slag dump is not properly inspected by the Bureau of Mines.
5. Rock dressing and rock crushing plants contiguous to quarries are not subject to inspection by the Bureau of Mines.
6. Those public and quasi-public excavations set forth in paragraph 6 of the statement of fact above, are properly inspected by the Bureau of Mines. Gravel pits furnishing gravel to State highways are also subject to inspection by the Bureau of Mines.
7. Brick, tile and porcelain plants contiguous to clay mines or pits are not subject to inspection by the Bureau of Mines.
8. Gravel plants which produce gold as a by-product are subject to inspection by the Bureau of Mines.
9. The Commissioner of Mines may require production figures from Colorado mine operators. *Sec. 318, Chap. 110, 1935 C.S.A.* may or may not apply to production figures required by the Commissioner of Mines, according to relevancy of those figures to safety.

**STATE ENGINEER—CONTROLLER—CIVIL SERVICE****Opinion 2401-52**

M. C. Hinderlider,

December 2, 1952.

- (a) Annual leave means vacation with pay (Sec. 1 (1) *Art. XIII, Civil Service Rules*);
- (b) A part time employee cannot accumulate annual leave

unless his employment is for six months or more of each year. (*Sec. 1, (7), Art. XIII, Civil Service Rules*);

(c) Such employee, like other state employees, cannot accumulate more than 30 days of annual leave (*Sec. 1 (2), Art. XIII, Civil Service Rules*);

(d) "The amount of unused annual leave to the credit of each employee at the end of any calendar year shall be certified to the Commission by February 1st of each year by the head of the department or by the employee. Failure to report such unused leave by specified date will mean the forfeiture of such carry-over leave." (*Sec. 1(3), Art. XIII, Civil Service Rules*);

(e) Your budget, when made up, should include anticipated expenditures for such annual leave and, therefore, there should be no annual deficit;

(f) If, through unforeseen circumstances, your appropriation is insufficient to pay the salaries of deputy water commissioners and vacation pay to those who are entitled thereto, then you are required to proceed pursuant to *Sec. 7, Ch. 162, S. L. 1949*, as amended by *Ch. 175, S. L. 1951*.

(g) *Sec. 23(1), Ch. 153, 1935 C.S.A.*, provides that "any moneys unexpended from the appropriation for any fiscal year or for any biennial period" or "encumbered as provided by law or as prescribed by the state controller," shall revert to the general fund or the special fund from which the appropriation was made.

## COURTS

Opinion 2402-52

L. W. McDaniel,  
Asst. District Attorney,  
December 2, 1952.

(Small claims court)

Small claims courts have jurisdiction over the matter of issuing summons to a defendant who lives in another county only in cases in which the defendant resides in the county of the forum, or which are based upon a contract to perform an obligation in the county of the forum; the court cannot in either case acquire jurisdiction over the person of a defendant unless he voluntarily submits thereto or be served within the county of the forum with a copy of the plaintiff's affidavit and the court's order for appearance. There is no statutory authority for the issuance of summons in actions brought in small claims courts.

**PAROLE—GOVERNOR**

Wayne K. Patterson, Director,

**Opinion 2403-52**

December 3, 1952.

*(Ch. 147, Sec. 6, S. L. 1951)*

1. When *Sec. 547* is read in the light of the authorities, the words "Board of Parole" should be substituted for the word "Governor" in *Secs. 547 and 549* and, when so substituted, it will be seen that the Parole Board has fully succeeded to the authority of the Governor to grant and revoke paroles.

2. A paroled prisoner still retains the status of a prisoner, but is permitted to go without the confines of the prison under the terms of a parole agreement which he signs upon being paroled; upon the breach of the terms thereof, the parole is subject to revocation by the Parole Board and the parolee subject to be returned to the confines of the penal institution from which he was paroled—there to serve out his remaining sentence, as provided by *Secs. 549 and 550*.

3. *Sec. 3(d), Ch. 147, S. L. 1951*, indicates two courses of procedure for the revocation of paroles,—

(a) Upon the motion of the board itself and (b) upon the findings and recommendations of the several district judges. Where the board revokes upon its own motion, it must establish a uniform procedure of revocation under its rule-making power. (*Sec. 3(d), Ch. 147, S. L. 1951*)

Where the board revokes upon the recommendation of the district judges, the procedure is outlined in *Sec. 6, Ch. 147, S. L. 1951* and must be followed.

4. A summary hearing or proceeding is informal in all respects. In no sense of the word does it arise to the dignity of a trial. It is my conclusion the parolee should not be assigned legal counsel by the court; that the parolee should have the right to rebut the Parole Board's charges of violation of parole by witnesses of his own choosing; the cross-examination of witnesses by either side should not be permitted in such summary hearing.

5. Such "summary hearing" as the title implies, is not a criminal trial, but is an informal hearing before the court and should be entitled as to so indicate: "In the Matter of the Revocation of the Parole of John Doe, Parolee"; it should be docketed and a fee collected by the clerk for docketing the same; the witnesses should not be endorsed on the report made to the court; it is a new proceeding and should in no case carry the original case number under which conviction was had.

6. The district attorney is not required to appear for the Parole Department in a contested case of revocation of parole, but may do so of his own volition.

**COUNTY JUDGE—COUNTIES**

Robert Valdez, County Judge,

**Opinion 2404-52**

December 2, 1952.

You continue as appointee judge until the term for which you were elected begins; at that time you can qualify as the duly elected county judge for the regular four year term; in either event, you are entitled to the compensation provided under *Ch. 43, S. L. 1952*, upon the governor's proclamation, which in this case was on December 1, 1952.

2. *Ch. 43, S. L. 1952* becomes effective, as to county judges' salaries, upon the same date as does *Sec. 18, Art. VI, Colo. Const.*; and thereafter continues upon that basis until changed by the legislature.

**SCHOOLS—A. & M. COLLEGE  
STATE OFFICERS**

James R. Miller,

**Opinion 2405-52**

December 3, 1952.

A faculty member of a state educational institution may be personally liable for injuries suffered by students in regular courses of instructions supervised by such member, if such faculty member's negligence causes such injury.

**COUNTIES—FEDERAL**

G. S. Cosand, County Attorney,

**Opinion 2406-52**

December 4, 1952.

Where the federal government is doing flood control work on Timpas Creek, the county commissioners cannot give the federal government assurances of non-liability for torts committed by the federal government in the prosecution of such control project.

**INDUSTRIAL SCHOOL—COURT—DISTRICT ATTORNEY**

George V. Kempf,

**Opinion 2407-52**

Deputy District Attorney,

December 5, 1952.

Where a fifteen year old girl is convicted of murder in the second degree, the trial court may properly sentence her under *Sec. 48, Chap. 131, 1935 C.S.A.* to the Girls Industrial School at Mt. Morrison.

**DISTRICT ATTORNEY CRIMINAL LAW****Opinion 2408-52**

George Fischer,  
Assistant District Attorney,  
December 5, 1952.

The trial court does not have jurisdiction to hear, consider or determine a motion to reduce sentence which is filed after the court has adjourned for the term in which the sentence was imposed.

**AGRICULTURE—GAME AND FISH—  
CIVIL SERVICE****Opinion 2409-52**

Colo. Department of Agriculture,  
December 10, 1952.

1. Where the civil service commission has found that an employee is entitled to a determined number of days of vacation pay, the employee has a claim against the state for vacation leave.
2. If an appropriation for the fiscal year ending June 30, 1952, was not encumbered for this claim, then you cannot lawfully voucher this claim, but must leave the claimant to proceed under *Secs. 25-32, Ch. 153, 1935 C.S.A.* as amended by *Ch. 232, S. L. 1949.*

**LIQUOR—SECRETARY OF STATE****Opinion 2410-52**

Hon. George J. Baker,  
December 11, 1952.

Under *Sec. 3 (n)* of the Liquor Code of 1935, as amended (*Sec. 17 (n)*, *Chap. 89, 1935 C.S.A.* as amended) it is unlawful to consume alcoholic liquors in a retail business establishment which does not hold a retail liquor license but in which a number of persons have assembled through common usage or by general or indiscriminate invitation, express or implied. Whether a given establishment is a "public place" within which the consumption of alcoholic liquors is prohibited is for factual determination, but under the circumstances recited above it would appear to be a violation of the Liquor Code as amended.

**PUBLIC UTILITIES COMMISSION****Opinion 2411-52**

Joseph W. Hawley, Chairman,

December 11, 1952.

(Southern Union Gas Company's Claim for Refund)

The proper time limit for filing claims against the State of Colorado for refunds as a result of overpayment of fees charged by the state upon application of a company for approval of certain security issues, is *one year*.

**COUNTY JUDGE—FEES AND SALARIES****Opinion 2412-52**

Harry F. Anderson, County Attorney,

December 11, 1952.

A county judge may act as his own clerk and retain fees of the court to compensate him as clerk.

**COUNTIES—JUSTICES OF THE PEACE  
FEES AND SALARIES****Opinion 2413-52**

E. H. Stinemeyer, County Attorney,

December 12, 1952.

1. In view of *Lancaster v. Com.*, 115 Colo. 261, 171 P. (2d) 987, the person appointed to fill the vacancy in the office of justice of peace in Fremont County was and is entitled to the increase in salary fixed by the legislature prior to his appointment, and during the unexpired term for which he was appointed. 2. In view of the fact the amendment to *Sec. 18, Art. VI, Colo. Const.* is limited to judges of courts of record, it does not apply to justices of the peace. Consequently, the appointed justice continues to draw the compensation allowed by said *Chap. 44* for the balance of the term under authority of *Lancaster v. Com.*, *supra*.

**COSMETOLOGY****Opinion 2414-52**

Beryl W. Maus, Executive Secretary,

December 16, 1952.

A course of instruction in a "revolutionary New Method of hair styling" as advertised in a newspaper must comply with *Sections 3, 4, and 5 of Chapter 42, 1935 C.S.A.*



**STOCK INSPECTION BOARD****Opinion 2415-52**

Ed Paul, Brand Commissioner,  
December 16, 1952.

Where a cow bears two brands and either owner of the brand could be the owner of the animal, the board should place the money received from the sale of the cow in the Estray Fund and retain the same until such time as a court has determined the ownership of the said cow and by judgment awarded them the proceeds from the sale, or the claimants, by agreement, have arrived at such amicable settlement between themselves as will authorize the board to pay over such sale proceeds.

**LIQUORS****Opinion 2416-52**

William D. Blood, Manager of Safety,  
December 18, 1952.

A property owner, whether citizens or alien and whether or not licensed under the Liquor Code of 1935, as amended, may lease as many of his parcels of property as he desires to licensees for the sale of alcoholic liquors. Such leases may provide for rentals in an amount equal to a stated percentage of the gross or net income of the business of the licensee conducted on the premises without violating statutory prohibitions against multiple financial interests in licensed establishments, so long as the relationship between owner and lessee is strictly that of landlord and tenant and the owner has no voice in the conduct of the business and no right to a share of the profits as such.

A single individual may not lawfully be a partner in a partnership licensed to sell alcoholic liquors at retail, and at the same time own shares of stock in a corporation also licensed to sell such liquors at retail.

**CITIES AND TOWNS****Opinion 2417-52**

Kenneth T. Colwell,  
December 18, 1952.

A municipality must invest its funds according to *Section 126(1), Chap. 176, 1935 C.S.A.* and it may not invest by the standards of *Sec. 126 (5)* of the same chapter.

**LIQUORS—FEDERAL****Opinion 2418-52**

Hon. George J. Baker,

December 19, 1952.

1. Excise taxes levied upon fermented malt beverages and malt liquors by *Secs. 9 and 38, Chap. 89, 1935 C.S.A.*, as amended, are not applicable to beverages which are transported by a manufacturer or wholesaler to a military reservation located within the State of Colorado but owned by and under the exclusive jurisdiction of the United States, and disposed of within the confines of such reservation. The fact that such beverages may be sold to and consumed by persons or governmental agencies located within such reservation is not sufficient to relieve them from the application of the tax; transportation and disposition by the wholesaler or manufacturer are the elements which exempt the beverages from excise tax.

2. Excise taxes previously paid upon fermented malt beverages and malt liquors sold to governmental agencies located within federally owned and controlled military reservations may not be refunded to the purchasing agency.

**ACCOUNTANCY****Opinion 2419-52**

C. B. Neville, C. P. A.,

December 22, 1952.

*Sec. 12(c), Chap. 76, S. L. 1937*, does not require a "resident member" or "resident manager" of an accounting partnership to reside in the city in which the office of the partnership is located.

**PUBLIC INSTITUTIONS—  
PENITENTIARY****Opinion 2420-52**

J. Price Briscoe,

December 24, 1952.

When approved by the Governor and Controller, the Department of Public Institutions may make a personal service contract with an engineer to make a study and plans for a sewage plant from the Penitentiary's Mill Levy Building Fund not to exceed \$1500.00.

**PUBLIC INSTITUTIONS—  
SOLDIERS AND SAILORS HOME**

J. Price Briscoe, **Opinion 2421-52**  
December 26, 1952.

When approved by the proper public officials, the Board at the Soldiers and Sailors Home may make a personal service contract with an engineer and architect to make a study and estimate of costs for rehabilitation from the institution's mill levy building fund not to exceed \$900.00.

**MEDICAL EXAMINERS**

State Board of Medical Examiners, **Opinion 2422-52**  
December 26, 1952.

Examining doctors of the hepatitis project would not be practicing medicine without a license in Colorado under the provisions of *Chap. 227, S. L. 1951*, and would come within the exemptions of *Sec. 6 of Chap. 227*.

**GAME AND FISH**

Thomas L. Kimball, Director, **Opinion 2423-52**  
December 26, 1952.

*Sec. 244, Chap. 73, 1935 C.S.A.*, as amended, authorizes Game and Fish Commission to print and disseminate pamphlets and bulletins within its appropriation, but does not authorize commission to make any charge therefor. In order to charge a fee or subscription for such printed matter, legislative authority must be first obtained as well as legislative authority for the disposition of the funds received therefrom, similar to that given in *Chap. 188, S. L. 1951*.

**LEGISLATURE—COUNTIES—  
VETERANS**

Stafford Painter, State Representative, **Opinion 2424-52**  
December 29, 1952.

If the county veterans' service officer is not holding some other office that is incompatible with such legislative office, the said county veterans' service office itself is an employment and not an office and is not incompatible with the office of legislator.

**CIVIL SERVICE****Opinion 2425-52**

State Civil Service Commission,  
December 30, 1952.

The right to draw sick leave upon the time an employee will be severed from his position as a provisional is a matter that arises under the rules of the commission and calls only for the interpretation of its rules and its application to the facts involved as the commission may determine them to be.

An employee on an eligible list has no greater nor lesser rights than other eligibles on the list.

**STATE PENITENTIARY—  
DISTRICT JUDGE****Opinion 2426-52**

Harry Tinsley, Acting Warden,  
December 31, 1952.

After expiration of the term the sentencing judge cannot recall a prisoner from the state penitentiary and resentence him so that the eleven days which he laid in the county jail may be counted as time which he spent in the state penitentiary in the serving of his sentence.

**PART II**  
**CASES PENDING AND DISPOSED OF**  
**IN ALL COURTS**

**1951-1952**



**BEFORE THE SUPREME COURT OF THE UNITED STATES  
OF AMERICA**

**Docket No. 10**

Page  
No.

182 *Jack B. Tenney, The Senate Fact-Finding Committee on UnAmerican Activities et al., v. William Patrick Brandhove.* No. 338. Certiorari—construction of “Civil Rights.”

200 *In re The Victor American Fuel Company, Debtor.* No. 13118. Bankruptcy.

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO**

**Docket No. 10**

388 *United States of America v. Certain Lands Situate in the County of Larimer, et al.* No. 3614. Condemnation.

**Docket No. 10**

432 *United States of America v. 61.41 Acres of Land, More or Less, Situate in the Counties of Washington, Weld and Morgan, et al.* No. 3478. Condemnation.

**Docket No. 11**

254 *United States of America v. The State of Colorado.* No. 4215. Violation of federal laws regarding stock and brand inspection fees.

**BEFORE THE INTERSTATE COMMERCE COMMISSION**

**Docket No. 11**

175 *In the Matter of the Application of The Denver and Intermountain Railroad Company for a Certificate of Public Convenience and Necessity Permitting the Abandonment of Freight Operation Between Denver, Colorado, and Golden, Colorado.* Finance Docket No. 17595.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF COLORADO**

**Docket No. 10**

Page No.	
156	<i>U. P. RR. Co. Grade Crossing in Kit Carson, Colorado. U. S. Highway No. 287.</i>
191	<i>State Highway Department, Larimer County. Application No. 10895. Grade Crossing, State Highway No. 14.</i>
194	<i>State Highway Department, Huerfano County. Application No. 10939. Grade Crossing, State Highway No. 111.</i>
201	<i>State Highway Department, Pueblo County. Grade Crossing, State Highway No. 1.</i>
203	<i>State Highway Department, Cheyenne County. Grade Crossing, County Road.</i>
229	<i>State Highway Department, Jefferson County. Grade Crossing. Application No. 11127. Denver-Boulder Turnpike.</i>
298	<i>State Highway Department, San Miguel County. Grade Crossing. Application No. 11295. State Highway No. 145.</i>
299	<i>State Highway Department. Weld County. Grade Crossing. Application No. 11219. State Highway No. 3.</i>
301	<i>State Highway Department, El Paso/Pueblo Counties. Grade Crossing. State Highway No. 1.</i>
305	<i>State Highway Department, Jefferson County. Grade Crossing. State Highway No. 182.</i>
339	<i>State Highway Department, Delta County. Grade Crossing. State Highway No. 65.</i>
356	<i>In the Matter of the Regulations Governing Clearances on Railroads with Reference to Side and Overhead Structures, Parallel Tracks, Crossings of Public Roads, Highways and Streets. Case No. 5032.</i>
372	<i>State Highway Department, Lincoln County. Grade Crossing, State Highway No. 71 in Limon.</i>
393	<i>State Highway Department, La Plata County. Grade Crossing, State Highway No. 10.</i>



Page  
No.

- 394 *State Highway Department, Boulder County. Grade Crossing, Denver-Boulder Turnpike, State Highway No. 121.*
- 409 *D&RGW RR Co., Mesa County. Grade Crossing at the Fruitvale Store Crossing. Application No. 11531.*
- 431 *State Highway Department, Lincoln County. Grade Crossing, State Highway No. 71.*

**Docket No. 11**

- 24 *Department of Highways, Yuma County. Grade Crossing, State Highway No. 59, Town of Yuma.*
- 25 *Department of Highways, Sedgwick County. Grade Crossing, State Highway No. 23.*
- 26 *Department of Highways, Archuleta County. Grade Crossing, State Highway No. 151.*
- 31 *Atchison, Topeka, and Santa Fe Railway Co., El Paso County. For widening of public crossing. Application No. 11590.*
- 144 *Intrastate Freight Rates and Charges in Colorado Found to Cause Unjust Discrimination, etc. Interstate Commerce Commission No. 30959. Investigation of Colo. Intrastate Freight Rates.*
- 185 *State Highway Commission, Gunnison County. Grade Crossing, State Highway No. 135, in Crested Butte.*
- 200 *State Highway Commission, Garfield County. Grade Crossing, State Highway No. 82 in Glenwood Springs.*
- 240 *In the Matter of the Application of R. A. Goodall, 112 West First Street, Ogallala, Nebraska, for Authorization to Construct Pipe Line. Application No. 12072.*

**SUPREME COURT OF THE STATE OF COLORADO**

**Docket No. 10**

- 129 *Fred A. Lombardi v. People of the State of Colorado. No. 16620. Burglary and grand larceny.*
- 167 *Richard McKenna v. People of the State of Colorado. No. 16629. Accessory to murder.*
- 171 *Clarence O. Moore v. People of the State of Colorado. No. 16633. Short check.*

Page No.	
172	<i>James Earnest Eachus v. People of the State of Colorado.</i> No. 16634. Illegal selling of meat.
185	<i>Joe Gallegos v. The People of the State of Colorado.</i> No. 16650. Grand larceny.
187	<i>Bert Styles v. Steve De Angelis &amp; Ray F. Garrett.</i> No. 16649. Habeas Corpus (Extradition; Desertion).
206	<i>People of the State of Colorado v. Charles J. Harrah.</i> No. 16842. Suit to recover public lands.
253	<i>In the matter of Olen L. Bell and James L. King.</i> No. 16700. Contempt proceeding.
262-A	<i>The People of the State of Colorado and the Public Utilities Commission v. Mountain States Telephone and Telegraph Co. et al.</i> No. 16709. Complaint for declaratory judgment.
262-B	<i>Mountain States Telephone and Telegraph Company v. City and County of Denver, et al.</i> No. 16711. Validity of 1947 Denver telephone rates and P.U.C. jurisdiction.
264	<i>Lowell John Block v. People of the State of Colorado.</i> No. 16713. Involuntary manslaughter.
270	<i>John T. Richardson et al., v. People.</i> No. 16667. Action on two Appearance Bonds.
300	<i>Clarence O. Moore v. People of the State of Colorado.</i> No. 16730. Embezzlement.
312	<i>LeRoy Basil McManaman v. James F. Quine, Jr., et al.</i> No. 16735. Habeas Corpus (extradition).
314	<i>James Alexander Smith v. Norman Short, Sr., et al.</i> No. 16737. Habeas Corpus (extradition).
331	<i>John Woodrow McNeal v. The People of the State of Colorado.</i> No. 16743. Indecent liberties with a child.
335	<i>People v. H. C. Dolph.</i> No. 16579. False pretences and attempting to commit false pretences.
340	<i>Anthony Colosacco v. The People of the State of Colorado.</i> No. 16754. Burglary and larceny.
342	<i>In the Matter of the Estate of Hester M. Bayly, Deceased, et al., v. Neil Tasher, et al.</i> No. 16552. Inheritance Tax Matter.

Page No.	
346	<i>Charles Eckhardt v. The People of the State of Colorado.</i> No. 16757. Assault and battery.
348	<i>Oscar W. Merritt vs. The People of the State of Colorado.</i> No. 16756. Grand larceny.
349	<i>Richard Lacy Rosier v. People of the State of Colorado.</i> No. 16758. Assault to murder.
352	<i>In the Matter of Margarito Cedillo, Jr.</i> No. 16957. Statutory rape.
359	<i>Charles Marvin Russell and James C. Coffey v. People.</i> No. 16763. Breaking and entering a motor vehicle.
366	<i>Robert F. Ray v. The People.</i> No. 16770. Embezzlement.
367	<i>Ella Hewitt Tate v. People.</i> No. 16769. Murder.
369	<i>Robert Cassinetti and Betty Jane Cassinetti v. District Court of El Paso County, et al.</i> No. 16762. Original action in Prohibition and Mandamus.
370	<i>Harold Clelland Moore v. Russell Battaglia, et al.</i> No. 17044. Denial of barber license.
381	<i>City of Colorado Springs v. The Public Utilities Commission.</i> No. 16741. Municipal water matter.
410	<i>People, on Relation of Denver. Publ. Co. v. District Court Costilla County, et al.</i> No. 16786. Writ of prohibition.
417	<i>Walter Erwin v. People.</i> No. 16794. Burglary.
438	<i>People v. San Luis Valley Water Conservancy District, et al.</i> No. 16817. Petition in the nature of a Writ of Quo Warranto.

**Docket No. 11**

5	<i>James H. Johnson v. The Colo. State Board of Examiners of Architects, et al.</i> No. 16857. Licensing matter.
9	<i>John Edwin Wesner v. The People of the State of Colorado.</i> No. 16829. Assaulting a child and taking indecent liberties.
14	<i>Sally White v. People of the State of Colorado.</i> No. 16837. Confidence game.
16	<i>People of the State of Colorado v. Wm. G. Newer.</i> No. 16838. Contempt.

Page No.	
44	<i>People ex rel. Dunbar v. D. W. Schmitt, et al.</i> No. 16856. Contempt.
49	<i>Frank W. Lackner v. People of the State of Colorado.</i> No. 16858. Bastardy.
51	<i>State of Colorado v. Estate of Mary Winder Petzoldt, M. I.</i> No. 16860. Maintenance costs of State Hospital inmate.
52	<i>Charlie Eckhardt v. People of the State of Colorado.</i> No. 16859. Drunken driving.
65	<i>People v. Clarence Oliver Moore.</i> No. 16865. Disbarment proceedings.
72	<i>Kurt Ernest Heinze v. The People of the State of Colorado.</i> No. 16872. Driving under the influence of liquor, 2nd offense.
73	<i>L. Leon McBride v. People of the State of Colorado.</i> No. 16873. Confidence game.
78	<i>Grey Graham v. The People of the State of Colorado.</i> No. 16877. Confidence game.
108	<i>People v. Merle M. Marshall.</i> Disbarment proceedings.
112	<i>People vs. Lloyd L. Brown.</i> Contempt.
113	<i>People ex rel. Dunbar v. The Proposed Toll Gate Sanitation District, et al.</i> No. 16893. Quo warranto.
114	<i>In re Interrogatories by the Governor.</i> Request for the opinion of the Supreme Court of Colorado re Civil Service Appropriation.
123	<i>Dale Shreeves v. The People of the State of Colorado.</i> No. 16903. Assault.
143	<i>Colo. State Board of Examiners of Architects, et al. v. The District Court in and for Jefferson County, et al.</i> Architect's licensing matter.
180	<i>Edward Phillip Hahn, Jr. v. People.</i> No. 16822. Breaking and entering a motor vehicle; habitual criminal.
186	<i>Marie Barber v. People.</i> No. 16942. Insane person.
193	<i>Parker Crommett Kendall v. The People.</i> No. 16948. Insane person.

Page No.	
204	<i>Carolyn Kostele v. Lake County Department of Public Welfare.</i> No. 16708. Old age pension.
207	<i>Orville Geisler v. People in the Interest of Michael William Geisler,</i> No. 16963. Dependency of a minor child.
232	<i>Orville R. Sharp v. People.</i> No. 16988. Burglary.
233	<i>Colorado Contractors Ass'n, et al. v. Public Utilities Commission of the State of Colorado.</i> No. 16986. P.U.C. matter.
252	<i>F. B. Lane v. People of the State of Colorado.</i> No. 16999. Confidence game.
257	<i>Citizens' Committee for Fair Property Taxation v. William L. Warner as County Assessor of Pueblo County, et al.</i> No. 17004. County taxation matter.

#### STATE OF COLORADO, DISTRICTS COURTS

Number of Quiet Title cases handled: Docket 10.....	142
Docket 11.....	176
Total.....	318

#### Docket No. 10

130	<i>Ralph E. Hutchinson v. C. N. Feast, Game and Fish Commissioner of the State of Colorado.</i> No. 5746, La-Plata County. Damage by wild animals.
131	<i>John W. Thrailkill, et al. v. Cabs, Inc., et al.</i> City and County of Denver. Declaratory judgment.
132	<i>People ex rel. Curtis White v. Business Title Guaranty Co., et al.</i> City and County of Denver No. A-69246. Securities matter.
133	<i>Colorado Placers, Inc. v. Curtis White.</i> City and County of Denver No. A-66588. Securities matter.
134	<i>R. E. Seago and Ray Shearer v. Game and Fish Commission of the State of Colorado.</i> Montrose No. 6337. Damage to crops.
137	<i>People ex rel. Curtis White v. e'Tobyne Oil Company, et al.</i> City and County of Denver No. A-74201. Securities matter.

Page No.	
138	<i>Business Title Guaranty Co. v. Luke Kavanaugh and Curtis White.</i> City and County of Denver. Declaratory judgment, insurance matter.
144	<i>W. F. Perkins v. King Soopers, et al.</i> City and County of Denver. Injunction against selling articles at less than cost.
145	<i>Carl A. Biggs v. Hunt Winn and George Baker.</i> Boulder County No. 11759. Liquor matter.
146	<i>George L. Byrnes, et al. v. George J. Baker and E. G. Chappelow.</i> Weld County No. 11784. To restrain from removing non-gambling devices from liquor places.
148	<i>Julia Hay v. Paul W. Swisher, Commissioner of Agriculture of the State of Colorado.</i> City and County of Denver. Produce dealers license.
151	<i>Joseph L. McCrary d/b/a Pine Room, et al. v. George J. Baker, Secretary of State of the State of Colorado.</i> City and County of Denver. Injunction on liquor matter.
155	<i>People ex rel A. C. Johnson, Director of Revenue of the State of Colorado v. Amy G. Smith, Alamosa County.</i> Garnishment.
157	<i>State Highway Department and Board of County Commissioners of Montrose County v. D. Lewis Williams, et al.</i> Montrose County. Highway matter.
159	<i>Leo L. Spears v. Carl Ph. Schwalb, et al.</i> City and County of Denver. Tort.
161	<i>George L. King and Clair O. Coy, et al. v. Marion W. Schuler, et al. John F. Healy, et al.</i> Larimer County. Foreclosure of mechanic's lien.
162	<i>Board of County Commissioners of Jefferson County and the State Highway Department of the State of Colorado v. Carl Hosman, et al.</i> Jefferson County. Highway matter.
168	<i>National Insurance Company v. Luke J. Kavanaugh, as Commissioner of Insurance for the State of Colorado.</i> City and County of Denver No. A-75161. Insurance matter.

- Page  
No.
- 177 *Board of County Commissioners of Pueblo County and State Highway Department of the State of Colorado v. Frank Masciantonio, et al.* Pueblo County. Condemnation suit.
- 178 *Board of County Commissioners of Adams County and the State Highway Department of the State of Colorado.* Adams County. Condemnation suit.
- 179 *Frank Duac and Raymond W. Woodward v. George J. Baker.* Arapahoe County. Suit to compel issuance of liquor license and for costs.
- 193 *Denver Sewer Pipe and Clay Co. v. Engineering Construction Company, et al.* City and County of Denver. Mechanic's lien.
- 202 *Empire Petroleum Co. v. Averill C. Johnson.* No. A-67316. Declaratory judgment re sales tax law.
- 206 *People of the State ex rel. the Attorney General v. Charles J. Harrah.* City and County of Denver. Suit to recover public lands.
- 212 *Joe Vidano v. George W. Cope and the State of Colorado.* Gunnison County No. 5257. Accident involving State Highway Patrolman.
- 213 *Betty Ada Reynolds v. James D. Mullins.* La Plata County No. 5782. Traffic accident involving patrol car.
- 219 *Denver Tramway Corp. v. Averill C. Johnson.* City and County of Denver. Sales-use tax matter.
- 220 *Charles Ginsberg v. Centennial Turf Club, Inc.,* No. 75640. City and County of Denver. Questioning whether or not track is "gambling."
- 221 *Charles Ginsberg v. Mile High Kennel Club, Inc.* No. 75640. City and County of Denver. Questioning whether or not track is "gambling."
- 223 *Board of County Commissioners of the County of Douglas, et al. v. Walter J. Scott and Ida M. Scott.* Douglas County. Highway matter.
- 225 *Theodore H. Kleeman v. Henry B. Gruenwald and Dorothy Gruenwald.* Elbert County, No. 1392. Property rights of a mental incompetent.

Page No.	
226	<i>Granby Ditch and Reservoir Company v. C. V. Hallenbeck, et al.</i> Delta County. To enjoin diversion of water from Granby Ditch.
227	<i>State of Colorado v. Roy Sibcy d/b/a Home Oil Company.</i> Kiowa County No. 444. Attachment for motor fuel excise taxes.
228	<i>State of Colorado v. Stanley Blue Flame Gas and Equip. Co. et al.</i> Alamosa County No. 2516. Attachment for motor fuel excise taxes.
230	<i>Willie Mayre Short v. Dr. F. H. Zimmerman.</i> Pueblo County No. 34292. Habeas Corpus.
236	<i>R. A. Herzig v. Cleland L. Feast, et al.</i> Jefferson County No. 7452. Damage action.
238	<i>In the Matter of the Revocation of the Privilege of Operating a Motor Vehicle on the Highways of the State of Colorado of Gordon Kenneth Roper.</i> Garfield County No. 4215.
239	<i>W. J. Hazlett, et al. v. William Gaunt, Chairman, et al.</i> Adams County No. 5728. Constitutionality of School Reorganization Act.
245	<i>Davis Moore, Edward Miller, et al. v. City and County of Denver, et al.</i> City and County of Denver. Suit in Equity (Denver Library Commission).
252	<i>People of the State of Colorado ex rel. Curtis White v. Roger Gormly, et al.</i> City and County of Denver No. A-77427. Securities matter.
255	<i>General Outdoor Advertising Co., Inc. v. Martin Goodman, The Board of County Commissioners, et al.</i> Arapahoe County. Re county ordinance.
261	<i>James A. Reed, Orin W. Reed, et al. v. Roger Fluckey, Water Commissioner.</i> Conejos County. Action for writ of mandamus, injunction and damages.
265	<i>People ex rel. J. Price Briscoe v. Addie C. Riggs.</i> Clear Creek County No. 9527. Claim for payment of costs of Colo. State Hospital inmate.
266	<i>People v. Dorothy Hattell Goebel Geeson.</i> City and County of Denver. Claim for support and maintenance at State Home and Training School.



Page No.	
267	<i>O. A. Anderson v. The Town of Westminster.</i> District Court, Adams County. Testing a City Ordinance.
271	<i>Otto G. Wiehe v. C. N. Feast.</i> La Plata County, No. 5814. Damage by wild game.
272	<i>Commissioners, Jefferson County, et al v. Wilbur Shephard, et al.</i> Jefferson County. Condemnation proceeding.
276	<i>Adams County Board of Commissioners et al. v. A. X. Erickson.</i> Condemnation proceedings (for Valley Highway).
283	<i>Beaver Park Co. v. M. C. Hinderlider, et al.</i> Fremont County, No. 6757. To restrain diversion of water from Beaver Park Reservoir.
284	<i>In the Matter of the Application of Pat Masterson for Writ of Habeas Corpus.</i> City and County of Denver, No. 40048.
285	<i>Pueblo County Commissioners v. Lottie S. Endsley, et al.</i> Pueblo County. Condemnation suit.
289	<i>First National Bank in Dallas, Texas, v. Lazy B. Ranch, et al.</i> Jefferson County, No. 7520. Foreclosure of deed of trust.
292	<i>Gibraltar Colorado Life Co. v. Luke J. Kavanaugh.</i> City and County of Denver, No. A-78304. Release and withdrawal of deposits.
302	<i>Sam B. Cox v. Averill C. Johnson, et al.</i> City and County of Denver, No. A-78404. Automobile driver's license suspension.
307	<i>State of Colorado v. Delbert C. McIrwin.</i> Kit Carson County. Care and maintenance of Colorado State Hospital inmate.
310	<i>In the Matter of Supplemental Adjudication of Water Rights for Irrigation Purposes in Water District No. 67, Irrigation Division No. 2.</i> Bent County, No. 418. Plum Creek Stock Reservoir water rights.
313	<i>In the Matter of the Estate of Harry E. Levy, M. I.</i> City and County of Denver, No. 59433. Care and maintenance of inmate of Colorado State Hospital.

Page No.	
320	<i>State Highway Department v. W. S. Broderick, et al.</i> Adams County. Condemnation proceedings.
325	<i>State of Colorado v. H. W. Gossard, et al.</i> City and County of Denver. Action in interpleader.
328	<i>Board of County Commissioners, Adams County, et al. v. W. C. Walden, et al.</i> Adams County. Condemnation proceedings.
334	<i>O. J. Ferrell and Helen May Ferrell vs. State Highway Department.</i> Logan County. Damages.
351	<i>Donald C. Turner v. W. F. Ward, et al.</i> Pueblo County, No. 34629. Action for an injunction and to declare an ordinance unconstitutional.
352	<i>In the matter of Margarito Cedillo, Jr.</i> Fremont County, No. 6783. Statutory rape.
358	<i>Board of County Commissioners of Weld County v. J. J. Stroh, et al.</i> Petition in condemnation.
370	<i>Harold Clelland Moore v. Russell Battaglia, et al.</i> No. A-80217. Denial of application for license to barber.
376	<i>Milo J. Flanders v. First National Bank of Pueblo, et al.</i> No. 34404. Corporation matter.
377	<i>Upjohn Company v. State of Colorado, et al.</i> City and County of Denver. Income tax matter.
382	<i>Centennial Turf Club, Inc. v. Colorado Racing Commission, et al.</i> Arapahoe County No. 9285. Action for declaratory judgment.
384	<i>Colorado Contractors Assn. Inc. v. Public Utilities Commission.</i> City and County of Denver, No. A-79748. Declaratory judgment.
389	<i>Moffat County Board of Commissioners, et al. v. J. E. Luttrell, et al.</i> Action in condemnation.
401	<i>In the Matter of the Supplemental Adjudication of Priorities of Water Rights in Water District No. 38, in Irrigation Div. No. 5 of the State of Colorado.</i> Garfield County.
402	<i>R. E. Hutchinson, et al. v. C. N. Feast.</i> La Plata County. Mandamus.

Page No.	
408	<i>Marion G. Lyon v. Ernie Bessire, et al.</i> Garfield County, No. 6354. Auto-truck accident.
412	<i>Helen D. Rosener v. Mrs. Eugene Revelle, et al.</i> Jefferson County, No. 7741. Mandamus.
413	<i>Montrose County Commissioners v. Zella McCollum, et al. Clarence B. Sanburg v. Montrose County Commissioners.</i> Montrose County, No. 6683 and No. 6670. Quiet title and declaratory judgment.
415	<i>People ex rel. A. C. Sudan v. Jefferson County Board of Commissioners.</i> Jefferson County, No. 7760. Petition for declaratory judgment.
416	<i>R. T. Davis, Jr. v. State of Colorado, et al.</i> City and County of Denver. Income tax refund.
423	<i>Otto Maul, et al. v. Francis M. Day, et al.</i> Adams County, No. 5859. School matter.
430	<i>Catherine Liggett Barr v. Wm. E. Rose, et al.</i> Kiowa County, No. 472. Judgment for refund of taxes, plus costs.

**Docket No. 11**

2	<i>City &amp; County of Denver v. Nancy Broussard, et al.</i> City and County of Denver, No. A-81378. Condemnation.
3	<i>People v. Harry Feldman, et al.</i> City and County of Denver, No. A-81103. Inheritance tax matter.
4	<i>City and County of Denver v. A. S. Brodhead, et al.</i> City and County of Denver. Petition for a declaratory judgment.
5	<i>James H. Johnson v. Colo. State Board of Examiners of Architects, et al.</i> Jefferson County, No. 7822. Licensing matter.
20	<i>In the Matter of the Supplemental Adjudication of Rights to the Use of Water in the Water District No. 30, Irrigation Division No. 7, Rio Las Animas River, etc.</i> La Plata County, No. 1751.
21	<i>In the Matter of the Petition of Lubert Williams.</i> City and County of Denver. Criminal Action No. 40447; Pueblo County, No. 35016. Habeas Corpus.

Page No.	
22	<i>Doris Pearson v. City and County of Denver, et al.</i> City and County of Denver. Questioning the constitutionality of a city ordinance.
30	<i>William Reagan v. Motor Vehicle Department of the State of Colorado.</i> Logan County, No. 8450. Motor vehicle matter.
33	<i>People of the State of Colorado v. Walter S. Perkins, et al.</i> No. C-83, Clear Creek County.
42	<i>Lloyd Printz v. Pueblo, A Municipal Corporation, et al.</i> Pueblo County, No. 34986. Testing the housing authority of the City of Pueblo.
43	<i>People v. Commercial Bank of Leadville.</i> Lake County. Violation of banking laws.
54	<i>Harvey, William Helgoth v. Averill C. Johnson, et al.</i> Phillips County, No. 2517. Operator's license revocation.
56	<i>Northwestern Auto Company v. Averill C. Johnson, et al.</i> City and County of Denver, No. A-82510. Review of sales tax assessment.
61	<i>Holland Furnace Company, et al. v. Town of Brush, Colorado.</i> Morgan County, No. 7920. Declaratory judgment—testing the constitutionality of a city ordinance.
64	<i>Pueblo County Board of Commissioners v. Mary Zigich, et al.</i> Pueblo County. Condemnation.
66	<i>La Plata Board of County Commissioners v. Helen M. Tinker, et al.</i> La Plata County. Condemnation.
68	<i>South Denver Finance Co. v. Regents of University of Colorado.</i> City and County of Denver. Declaratory judgment.
69	<i>Lee T. Richardson v. Bernard E. Teets, et al.</i> City and County of Denver. Violation of Colorado Employment Security Act.
70	<i>Albert M. Lucero v. Roy Best.</i> Fremont County, No. 6881. Habeas Corpus.
71	<i>L. A. Yenter, et al. v. George J. Baker, et al.</i> City and County of Denver. Declaratory judgment.

Page No.	
74	<i>Flora Leo v. George J. Baker.</i> Chaffee County No. 4140. Liquor license suspension.
75	<i>William A. Holesworth v. George J. Baker.</i> Chaffee County No. 4141. Liquor license suspension.
76	<i>People ex rel. Milo J. Flanders v. Pueblo.</i> Pueblo County No. 35102. Quo warranto.
83	<i>Victor W. Haflich v. Averill C. Johnson.</i> City and County of Denver. Income tax matter.
84	<i>In the Matter of the Petition of Walter Potter for a Writ of Habeas Corpus.</i> City and County of Denver No. 40602. Habeas Corpus.
85	<i>In the Matter of the Petition of Ralph Martin Gonzales for a Writ of Habeas Corpus.</i> City and County of Denver, No. 40606. Habeas Corpus.
105	<i>Maxwell Inc. v. The Unemployment Compensation Commission of Colorado and Bernard E. Teets.</i> City and County of Denver. Unemployment compensation matter.
107	<i>Ben H. Cook, et al. v. The City and County of Denver.</i> City and County of Denver. Testing the constitutionality of a city ordinance.
116	<i>Lila Birehead v. Public Employees Retirement Board, et al.</i> City and County of Denver. Declaratory judgment.
117	<i>Oren K. Sheldon and Marguerite Sheldon v. John Henry Monaghan, et al.</i> City and County of Denver. Judgment for damages.
121	<i>Janice T. Fortner v. Averill C. Johnson, et al.</i> City and County of Denver. Claim for sales tax refund.
124	<i>In the Matter of the Petition of Clarence C. Van De Venter.</i> Arapahoe County, No. 9533. Liquor license investigation by Town of Littleton.
133	<i>In the Matter of the Adjudication of Priorities of Right to the use of Water for Irrigation and Other Beneficial Purposes in Water District No. 65 in Water Division No. 1 of the State of Colorado.</i> No. 872, Phillips County.

Page No.	
134	<i>Protocrats, Inc. v. City and County of Denver, et al.</i> City & County of Denver, No. A-83656. Declaratory judgment.
145	<i>In the Matter of the Assignment of Jones Brothers Equipment &amp; Irrigation Co., et al.</i> Finney County Kansas. Assignment for benefit of creditors.
148	<i>Hazel Dell Moore, et al. v. DeKalb Calvin Arthur, et al.</i> City and County of Denver. Suit for personal injuries and damages to an automobile. (Highway Department matter.)
149	<i>In the Matter of the Adjudication of Priorities of Rights to the Use of Water in Water District No. 12 of the State of Colo.</i> Fremont County, No. 6913. Water.
155	<i>Lester F. Welch v. Harry W. Wall, Jr., et al.</i> Adams County, No. 4412. License revocation—drunken driving.
159	<i>W. Eason Williams v. Colo. State Board of Medical Exam., et al.</i> City and County of Denver, No. A-84508. Medical license revocation.
161	<i>In the Matter of Eli Miller, an Applicant for a License to Operate a Motor Vehicle.</i> Pueblo County, No. 35322.
163	<i>People v. Robert A. Rivera.</i> Jefferson County, No. 1748. Burglary.
165	<i>The Forbush Company v. Mike DeAngelo.</i> Pueblo County. Garnishee summons.
166	<i>Mamie P. Bean, et al. v. Tom T. Urano, et al.</i> City and County of Denver. Damages for personal injuries and automobile damages.
167	<i>Gunnison County Commissioners, et al. v. Anton Verzuh, et al.</i> Gunnison County. Petition in condemnation.
169	<i>Ruben Shank v. State Athletic Commission, et al.</i> City and County of Denver. Licensing matter.
170	<i>George G. Everett v. Tom Kimball, et al.</i> Chaffee County, No. 4175. Judgment for damages to pasture land.
174	<i>Robert A. Arnett v. Guy W. Miles, Jr.</i> Jefferson County. Assault and battery charges against a state patrolman.

Page No.	
176	<i>Don Griffith v. Colo. State Board of Examiners of Architects, et al.</i> City and County of Denver, No. A-84749. Licensing matter.
182	<i>People v. R. L. Freeman and Charles W. Garton.</i> Pueblo County, No. 29695. Kidnapping.
183	<i>People ex rel. F. H. Zimmerman v. Theodore G. Sponsel.</i> La Plata County. Care and maintenance costs of an inmate of Colo. State Hospital.
197	<i>Nicholas S. Pedotto, et al. v. A. S. Brodhead, et al.</i> City and County of Denver. Taxation matter involving State Tax Commission and State Board of Equalization.
199	<i>Pueblo County Commissioners, State Highway Department v. Harry Ciruli, et al.</i> Pueblo County. Condemnation suit.
203	<i>State of Colorado v. Monier B. Fleming, et al.</i> Sedgwick County. To quiet plaintiff's title to certain minerals.
205	<i>Frederick Donald Harper v. Clyde P. Fugate.</i> City and County of Denver. Action in mandamus (restoration of driver's license).
206	<i>Edith L. McDonald v. City of Glenwood Springs, et al.</i> Garfield County. Declaratory judgment—injunction.
208	<i>Fidelity Mutual Life Insurance Company v. Joseph Richard Kendrick, et al.</i> City and County of Denver. Complaint in foreclosure.
215	<i>Union Pacific Railroad Company, et al. v. Oil and Gas Conservation Commission, et al.</i> City and County of Denver, No. A-84408. Oil and gas conservation.
216	<i>People v. John W. Davis and Charles W. Garton.</i> Fremont County. Assault with intent to commit murder.
217	<i>People v. Arthur Fisk, Jr., John D. Henebry, and Lee Mora.</i> Fremont County. Accessory during the fact.
218	<i>People v. James B. Sherbondy and Orley William Matthews.</i> Fremont County No. 6938. Assault with intent to murder.

Page No.	
219	<i>People v. James B. Sherbondy and Orley William Matthews.</i> Fremont County, No. 6939. Assault with intent to commit murder.
222	<i>Margaret I. Campbell, et al. v. Allied Milling and Lumber Mfg. Co., et al.</i> City and County of Denver. Employment security matter.
224	<i>In the Matter of the Supplemental Adjudication of the Priority of Appropriation of Water, etc., District No. 53.</i> Eagle County, No. 1123.
227	<i>People v. Joe Guerrero.</i> City and County of Denver. Information No. 40808. Violation of parole.
248	<i>El Paso County Board of Commissioners, et al. v. R. G. Weninger, P. P. Greiner, et al.</i> El Paso County. Condemnation proceedings.
249	<i>Nat S. Sachter v. Colorado State Board of Examiners of Architects, et al.</i> City and County of Denver. Licensing matter.
251	<i>In the Matter of the Supplemental Adjudication of the Priority of Appropriation of Water for All Beneficial Purposes, Water District No. 58, State of Colorado.</i> Routt County, No. 2902. Finger Rock Water System rearing ponds.
259	<i>David Lee Davis v. Carroll G. Bryan.</i> City and County of Denver. Motor vehicle matter — revocation of a chauffeur's license.

### COUNTY COURTS

#### Docket No. 10

183	<i>In the Matter of the Suspension of the Privilege of Operating a Motor Vehicle on the Highways of the State of Colorado of Ernest LeRoy Higgins, Horace, Kansas.</i> Prowers County.
189	<i>In the Matter of the Estate of Margaret O'Reilly, M. I.</i> No. 32835. Claim for care and maintenance costs.
210	<i>In the Matter of the Appeal of Herbert Edward Collins</i> from the Suspension of His Operator's License by the State of Colorado, Department of Revenue, Div. of Motor Vehicles. Weld County, No. 10617.



Page No.	
211	<i>In the Matter of the Estate of Lenora P. Kleeman, M. I.</i> Elbert County, No. 811. Appointment of a conservator, and settlement of claim for care.
263	<i>Estate of Willis W. Case, Jr., Deceased.</i> City and County of Denver, No. 52901. Petition to expend monies from the estate.
341	<i>In the Matter of the Estate of James N. Thomas, a/k/a Demitre N. Thomas, Deceased.</i> City and County of Denver, No. 88891. Inheritance tax matter.
395	<i>In the Matter of the Estate of Mary F. Lathrop.</i> City and County of Denver, No. 93367. Citation to attend probate of will.
443	<i>Charles Harrison Rash v. C. H. Gunn.</i> Montezuma County, No. 3323. Mandamus.

**Docket No. 11**

47	<i>In the Matter of the Estate of Anna K. Reinbold, Deceased.</i> City and County of Denver, Estate No. 81560. Escheat.
48	<i>In the Matter of the Estate of Alta Warren, Deceased.</i> City and County of Denver, Estate No. 77963. Escheat.
51	<i>State of Colorado v. Estate of Mary Winder Petzoldt, M. I.</i> Arapahoe County, Estate No. 4372. Maintenance of inmate of Colo. State Hosp.
86	<i>People of the State of Colorado in the Interest of Wilfred Andrew Pearce, an Insane Person.</i> Pueblo County, No. 35743. Appointment of guardian ad litem.
164	<i>In the Matter of the Estate of Charles Lind.</i> City and County of Denver, No. 93847. Claim for care and maintenance of inmate of Colo. State Hosp.
181	<i>In the Matter of the Suspension of the Privilege of Operating a Motor Vehicle on the Highways of the State of Colorado of John D. Chavez.</i> Conejos County; No. 30591.
194	<i>Claude W. Taylor and Rachel Taylor v. William A. Wright.</i> Weld County. Damages by car operated by Highway Department employee.
223	<i>In the Matter of the Estate of Theda Carrico.</i> Pueblo County, No. 20389. Estate of mental incompetent.

Page No.	
228	<i>In the Matter of the Estate of Louise Foster, Deceased.</i> City and County of Denver, No. 93849. Estate matter.
238	<i>Walter C. Southard, Jr., v. Billie Jean Long, et al.</i> City and County of Denver. Vital statistics—recording of a birth.
255	<i>In the Matter of the Estate of Hannah L. Bats.</i> Probate No. 91110. Care and maintenance of an insane person.

#### JUVENILE COURT, CITY AND COUNTY OF DENVER

##### Docket No. 11

92	<i>In the Matter of the Petition of Betty Vinyard, Mother, for the Relinquishment of a Child.</i> City and County of Denver, No. S-1655 and S-2105. Relinquishment for adoption.
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#### Before the CIVIL SERVICE COMMISSION of the State of Colorado

##### Docket No. 10

347	<i>People ex rel. Richard J. Allen vs. J. P. Stephens.</i> Insubordination.
398	<i>Mark U. Watrous v. Nikki Rahoutis.</i> Unsatisfactory and inefficient service. Case No. 221.

##### Docket No. 11

98	<i>J. Price Briscoe v. Roy Best.</i> Suspension proceedings.
125	<i>The People ex rel. James Merrick v. Richard J. Allen.</i> No. 228. Action for dismissal.
158	<i>State Game and Fish Department v. Leonard Hudnall.</i> Action for removal from service.

#### Before the ACCOUNTANCY BOARD of the State of Colorado

##### Docket No. 10

368	Re: <i>Merwyn L. McCarthy, C.P.A.</i> Revocation of license.
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Before the **SECRETARY OF STATE** of Colorado**Docket No. 10**Page  
No.

- 403 *In the Matter of Suspension of a Liquor License of Edward J. Jordan, Doing Business as Wolhurst Saddle Club.*

Before the Board of **FUNERAL DIRECTORS AND EMBALMERS** of the State of Colorado**Docket No. 11**

- 171 *In the Matter of Ivan J. Joss.* For revocation of license or other disciplinary action.

Before the Board of **MEDICAL EXAMINERS** of the State of Colorado

- 172 *In the Matter of George A. Glenn, M. D.* License revocation.

**INDUSTRIAL COMMISSION CASES**

1951-52

**In the Supreme Court of Colorado**

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Aetna Casualty, et al. v. Industrial Comm.</i>	16997	Pending
<i>Bennett's Restaurant v. Ind. Comm.,.....</i> <i>et al. ....</i>	16939	Pending
<i>Billings Ditch Co. v. Ind. Comm., et al.</i>	16927	Award Reversed
<i>Bransall v. Ind. Comm., et al.....</i>	16911	Award Affirmed
<i>Cole Co. v. Ind. Comm., et al.....</i>	16582	Award Affirmed
<i>Conover, et al. v. Ind. Comm., et al.....</i>	16790	Award Affirmed
<i>Continental Cas. Co., et al. v. Ind. Comm.,</i> <i>et al. ....</i>	16681	Award Affirmed
<i>Deines Bros., et al. v. Ind. Comm., et al.</i>	16774	Award Reversed
<i>Employer's Mut. Liab. Co., et al. v.</i> <i>Industrial Comm., et al.....</i>	16654	Award Reversed
<i>Gates Co. v. Ind. Comm., et al.....</i>	16645	Award Affirmed
<i>Ind. Comm., et al. v. Alsbaugh.....</i>	16715	Award Affirmed
<i>Ind. Comm., et al. v. Corwin Hospital,</i> <i>et al. ....</i>	16802	Award Affirmed

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Ind. Comm., et al. v. Coal Co.....</i>	16772	Award Reversed
<i>Ind. Comm., et al. v. Daniels, et al.....</i>	16719	Award Affirmed
<i>Ind. Comm., et al. v. Dundan, et al.....</i>	16932	Award Reversed
<i>Ind. Comm., et al. v. Golden Cycle Corp.</i>	16879	Award Affirmed
<i>Ind. Comm., et al. v. LaForet Camps.....</i>	16778	Award Affirmed
<i>Ind. Comm., et al. v. Plains Utility Co., et al. ....</i>	16979	Pending
<i>Ind. Comm., et al. v. Royal Indemnity Co., et al. ....</i>	16642	Award Affirmed
<i>Journeymen Barbers v. Ind. Comm.....</i>	16885	Pending
<i>Kiewit Co., et al. v. Ind. Comm. et al.....</i>	16694	Award Affirmed
<i>Neely-Towner Motor Co. v. Ind. Comm....</i>	16606	Award Affirmed
<i>Nelson, et al. v. Ind. Comm., et al.....</i>	16901	Award Affirmed
<i>Pacific Emp. Ins. Co., et al. v. Ind. Comm., et al. ....</i>	16983	Pending
<i>Safeway Stores, et al. v Ind. Comm., et al.</i>	16621	Award Affirmed
<i>State Fund v. Ind. Comm., et al.....</i>	16793	Award Reversed
<i>University of Denver, et al. v. Ind. Comm., et al. ....</i>	16945	Pending

#### **Alamosa County**

<i>Cole Co. v. Ind. Comm., et al.....</i>		Award Affirmed
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#### **Arapahoe County**

<i>Conover, et al. v. Ind. Comm., et al.....</i>	9044	Award Affirmed
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#### **City and County of Denver**

<i>Aetna Casualty, et al. v. Ind. Comm., et al. ....</i>	A 85174	Award Affirmed
<i>American Mut. Ins. Co., et. al., v. Ind. Comm., et al. ....</i>	A 85315	Award Reversed
<i>Armour &amp; Co. v. Ind. Comm., et al.....</i>	A 71348	Settled
<i>Austin Co., et al. v. Ind. Comm., et al.....</i>	A 86668	Pending
<i>Bennett's Rest. v. Ind. Comm., et al.....</i>	A 79606	Award Affirmed
<i>Bransall v. Ind. Comm., et al.....</i>	A 78143	Award Affirmed
<i>Brecht Candy Co. v. Local 219 et al.....</i>	A 78683	Settled
<i>Calif. Co., et al. v. Ind. Comm., et al.....</i>	A 85139	Award Affirmed
<i>Coal Co. v. Ind. Comm., et al.....</i>	A 77777	Award Reversed
<i>C. F. &amp; I. v. Ind. Comm., et al.....</i>	A 74005	Award Affirmed
<i>Continental Cas. Co., et al. v. Ind. Comm., et al. ....</i>	A 82224	Award Affirmed

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Continental Cas. Co., et al., v. Ind. Comm., et al.</i> .....	A 74694	Award Affirmed
<i>Corwin Hosp., et al. v. Ind. Comm., et al.</i> .....	A 77776	Award Reversed
<i>Crow, et al. v. Ind. Comm., et al.</i> .....	A 76690	Remanded
<i>Crow, et al. v. Ind. Comm., et al.</i> .....	A 79329	Award Reversed
<i>Cudahy v. Ind. Comm., et al.</i> .....	A 71836	Award Affirmed
<i>Davis, et al. v. Ind. Comm., et al.</i> .....	A 64008	Settled
<i>Deines, et al. v. Ind. Comm., et al.</i> .....	A 73319	Award Affirmed
<i>Dennis v. Ind. Comm., et al.</i> .....	A 85081	Award Affirmed
<i>Distel v. Ind. Comm., et al.</i> .....	A 85544	Remanded
<i>Employers Mut. Liability Co., et al. v. Ind. Comm.</i> .....	A 74269	Award Affirmed
<i>Esquire, Inc., et al. v. Ind. Comm., et al.</i> .....	A 84159	Dismissed
<i>Gow v. Ind. Comm., et al.</i> .....	A 79337	Award Affirmed
<i>Hallack &amp; Howard v. Ind. Comm., et al.</i> .....	A 74403	Referred
<i>Hansen, et al. v. Ind. Comm., et al.</i> .....	A 77368	Remanded
<i>Hawkeye, et al. v. Ind. Comm., et al.</i> .....	A 81646	Award Affirmed
<i>Ideal Laundry v. Ind. Comm., et al.</i> .....	A 74329	Dismissed
<i>Ind. Comm. v. Journeymen Barbers</i> .....	A 79242	Award Affirmed
<i>Jones &amp; Hezlep, et al. v. Ind. Comm., et al.</i> .....	A 77337	Award Affirmed
<i>Knox, et al. v. Ind. Comm., et al.</i> .....	A 71195	Remanded
<i>Knox, et al. v. Ind. Comm., et al.</i> .....	A 77738	Award Affirmed
<i>La Foret Camps, et al. v. Ind. Comm., et al.</i> .....	A 76149	Award Reversed
<i>Mauser v. Ind. Comm., et al.</i> .....	A 84912	Pending
<i>Meyers Drug Co. v. Ind. Comm., et al.</i> .....	A 72892	Pending
<i>Montgomery Ward v. Ind. Comm., et al.</i> .....	A 86525	Pending
<i>Neely Towner, et al. v. Ind. Comm., et al.</i> .....	A 72228	Award Affirmed
<i>Nelson, et al. v. Ind. Comm., et al.</i> .....	A 71594	Award Affirmed
<i>Pacific Emp. Ins. Co., et al. v. Ind. Comm., et al.</i> .....	A 85166	Award Affirmed
<i>Phillips v. Ind. Comm., et al.</i> .....	A 74542	Dismissed
<i>Pitts v. Ind. Comm., et al.</i> .....	A 86394	Remanded
<i>Plains Utility Co. v. Ind. Comm., et al.</i> .....	A 84151	Award Reversed
<i>Resurrection Co., et al. v. Ind. Comm., et al.</i> .....	A 85694	Award Affirmed
<i>Rocky Mountain Co., et al. v. Ind. Comm., et al.</i> .....	A 74645	Award Affirmed
<i>Royal Idem. Co., et al. v. Ind. Comm., et al.</i> .....	A 65908	Award Reversed

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Safeway Stores, et al. v. Ind. Comm., et al.</i> .....	A 68527	Award Affirmed
<i>Shepard's, et al. v. Ind. Comm., et al.</i> .....	A 72560	Pending
<i>State Fund v. Ind. Comm., et al.</i> .....	A 77923	Award Affirmed
<i>Terpenning v. Ind. Comm., et al.</i> .....	A 85467	Award Affirmed
<i>University of Denver, et al. v. Ind. Comm., et al.</i> .....	A 80779	Award Affirmed
<i>U.S.F.&amp;G.Co., et al. v. Ind. Comm., et al.</i> .....	A 82428	Award Affirmed
<i>Yates v. Ind. Comm., et al.</i> .....	A 86233	Pending

**El Paso County**

<i>Fontana v. Ind. Comm., et al.</i> .....	30420	Pending
<i>Golden Cycle Corp. v. Ind. Comm., et al.</i> ...	29951	Award Reversed
<i>Lasher v. Ind. Comm., et al.</i> .....	30569	Dismissed
<i>Sears Roebuck v. Ind. Comm., et al.</i> .....	28538	Pending

**Kit Carson County**

<i>Uher v. Ind. Comm., et al.</i> .....	4088	Award Affirmed
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**La Plata County**

<i>Conliff v. Ind. Comm., et al.</i> .....	5687	Award Affirmed
<i>McIntyre v. Ind. Comm., et al.</i> .....	5700	Award Affirmed

**Morgan County**

<i>Daniels v. Ind. Comm., et al.</i> .....	7778	Award Reversed
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**Otero County**

<i>Woolen v. Ind. Comm., et al.</i> .....	6284	Award Affirmed
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**Pueblo County**

<i>Tucker v. Ind. Comm., et al.</i> .....	33970	Pending
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**Rio Grande County**

<i>Billings Ditch Co. v. Ind. Comm., et al.</i> .....	5272	Award Affirmed
<i>Blain v. Ind. Comm., et al.</i> .....	5269	Award Affirmed

**Yuma County**

<i>Duncan, et al. v. Ind. Comm., et al.</i> .....	4095	Award Rev. in Pt.
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**ESCHEATS PAID INTO STATE TREASURY FOR PERIOD  
FROM JANUARY 1, 1951, TO JANUARY 1, 1953**

<i>Counties</i>	<i>Number</i>
Adams .....	2
Arapahoe .....	1
Boulder .....	1
Chaffee .....	1
Denver .....	71
El Paso .....	5
Garfield .....	1
Jefferson .....	1
Kit Carson .....	1
La Plata .....	1
Logan .....	1
Moffat .....	1
Otero .....	2
Pueblo .....	4
Rio Blanco .....	1
Routt .....	1
Weld .....	2





**PART III**  
**INDEX TO THE OPINIONS OF THE**  
**ATTORNEY GENERAL**

**NOTE: Opinion Number Follows Each Lead**



# INDEX

	Page
<b>A</b>	
<b>ABSTRACTORS</b>	
Non-resident abstractor (2329-52).....	128
<b>ACCOUNTANTS</b>	
C. P. A. entitled to practice until license revoked (2187-51).....	86
Designation "C. P. A." or "Registered Accountant" used in connection with assumed name (2307-52).....	122
May issue certificate to non-resident C. P. A. (2081-51).....	56
No disciplinary action for failure file fed. income tax (2364-52).....	137
Power to make and enforce rules (1923-51).....	13
Residence of "resident member" or "resident manager" (2419-52).....	154
<b>ADAMS STATE TEACHERS COLLEGE (see STATE COLLEGES)</b>	
<b>ADVERTISING AND PUBLICITY</b>	
Display of liquor advertisements (2250-52).....	105
Use of state flag (2045-51).....	45
<b>AGRICULTURE COLLEGE, STATE BOARD OF AGRICULTURE (see STATE COLLEGES)</b>	
<b>AGRICULTURE DEPARTMENT (Director of Markets, Dairy Commission)</b>	
Agricultural by-products (2352-52).....	133
"Cash buyer" defined (2155-51).....	76
Cloud seeding from aircraft (2303-52).....	120
Fence law applies to trespass by humans and sheep (1925-51).....	14
Funds—disposition of (2047-51).....	46
Grading of fruits and vegetables (2343-52).....	131
Hail Insurance Fund—insufficient money (2372-52).....	139
Jurisdiction over control of Brucellosis in beef cattle (2190-51).....	87
Labeling requirements mandatory (2202-52).....	91
Produce dealers licenses (1953-51).....	21
Reactor brands for reactor cattle (2228-52).....	98
Shipments of cull potatoes (2159-51).....	78
Stock Inspection Fund—appropriation and purpose thereof (2145-51).....	74
<b>ALIENS</b>	
Oath of allegiance (2041-51).....	44
<b>ANATOMICAL BOARD</b>	
Burial expenses reimbursed by F. S. A. (2244-52).....	103
<b>APPROPRIATIONS (see PUBLIC FUNDS)</b>	
<b>ARCHITECTS</b>	
Licensed architects required to prepare plans on school building, sub- Fire station (2291-52 2308-52).....	117, 122
Reciprocity license—within discretion of board (2102-51).....	62
<b>ARCHIVIST (see PUBLIC RECORDS)</b>	
<b>B</b>	
<b>BANKS AND BANKING</b>	
Drive-up window not violation branch banking law (2383-52).....	142
Insurance premiums for life and health and accident insurance charges under Money Lenders Act of 1913 (2384-52).....	142
Sale by bank of checks thru retail merchant constitutes branch banking (2087-51).....	58
Selling registered checks thru non-banking outlets (2391-52).....	144
Unclaimed bank funds held in trust (2234-52).....	100
<b>BARBERS</b>	
Disposition of fines (2359-52).....	135
Proposed bill not "revenue raising" (2191-51).....	87
<b>BASIC SCIENCE (see CHIROPRACTORS, MEDICAL BOARD)</b>	
Bond for secretary (2258-52).....	107
Revocation of certificate (2186-51).....	86
<b>BEER AND WINES (see LIQUORS)</b>	
<b>BOARD OF COUNTY COMMISSIONERS (see COUNTY OFFICERS)</b>	
<b>BOARD OF STANDARDS OF CHILD CARE (see CHILDREN)</b>	
<b>BONDS (see CITIES AND TOWNS, SCHOOLS, STATE TREASURER,   etc.)</b>	
<b>BUILDING SUPERINTENDENT</b>	
May not acquire additional land adjacent to capitol properties (2380-52).....	141
No statutory authority to execute lease for portion of capitol building (2116-51).....	66
Property acquired by state subject to Home Rule City regulation (1960-51).....	22

## C

Page

## CATTLE (see LIVESTOCK)

## CHILDREN (Home for Dependent Children, Board of Standards of Child Care, etc.)

Board of Control may use funds to hire foster parents (2260-52).....	108
Board of Education no control over curriculum (2168-51).....	80
Children may be placed in licensed foster homes (2267-52).....	110
Employees at state home under civil service (2150-51).....	75
Grandparents not liable (2336-52).....	130
Illegitimate children may inherit from parents (2072-51).....	54
Juvenile and county courts unrestricted power over awarding custody (2221-52).....	97
Natural parents nor county financially liable (2141-51).....	73
Support payments of deserting father (2388-52).....	143

## CHIROPRACTORS

Per diem pay of board members (1950-51).....	20
Qualifications of applicants (1956-51).....	21

## CHIROPODY (see MISCELLANEOUS, MEDICAL BOARD)

## CITIES AND TOWNS

Annexation of state property by municipality (2373-52).....	139
Audits—City of Georgetown (2398-52).....	146
City manager form of government (2046-51).....	46
City ordinance—cannot regulate sale, etc. (2056-51).....	49
Contributions used for construction sewerage facilities (2166-51).....	79
Contributions to county hospitals—second class cities (1993-51).....	32
Council manager form of government—second class cities (2130-51).....	70
Distribution tax monies to municipal corporations, etc. (2331-52).....	129
Improvement districts—assessment of costs (2050-51).....	47
Fire district tax (2251-52).....	105
Fire protection districts—organization (2224-52).....	97
Fire protection district—Town of Eaton (2289-52).....	116
Fireworks law—cap guns defined (2117-51).....	66
Graduation of classification of town of Arvada (2203-52).....	91
Investment of municipal funds (2417-52).....	153
Initiated ordinance—filing time (2149-51).....	75
Jurors, voting by absentee ballot (2390-52).....	144
Jury commissioner—City of Denver (1955-51).....	21
Lands of city included soil conservation district (1963-51).....	23
Lands excluded from soil conservation district (2215-52).....	95
Legal status of Manitou Springs (2204-52).....	92
Licenses financial interests; multiple licenses (2360-52).....	135
Licensing authorities power to impose restrictive hours (2349-52).....	133
Municipal appointments vested in city council (2268-52).....	110
Municipality purchasing property on which tax lien exists (2381-52).....	141
Municipal elections—second class cities (2231-52).....	99
Payment of medical bills of prisoners confined in jail (2366-52).....	137
Power of town marshal (2042-51).....	45
Property acquired by state subject to Home Rule regulation (1960-51).....	22
Reclassification of town of Brush (2259-52).....	107
Rent control—termination of (1965-51).....	24
Sales tax on cigarettes—no power to impose (2295-52).....	118
Salaries of officers—second class cities (1987-51).....	30
Separate entrance to beauty salon—city ordinance (2135-51).....	71
Statutory tax levies—Home Rule Cities (2365-52).....	137
Status of officers—second class (1990-51).....	31
Tie elections (2170-51).....	81
Use of unbudgeted and unappropriated surplus funds (2059-51).....	49
University of Colo. pay assessments to Boulder for trunk line sewers (2212-52).....	94
When sale of liquor not prohibited on election day (2322-52).....	126

## CIVIL DEFENSE

Appropriation, how expended (2002-51).....	34
Civil Defense Act (1970-51).....	25
Contracts entered into with federal government (2209-52).....	93
Defense equipment—reimbursement to government (1959-51).....	22
Loyalty oaths (2310-52).....	123
Travel and maintenance expenses of volunteers (2067-51).....	52

## CIVIL SERVICE

Adequate appropriation—legislative power (2261-52).....	108
Allotment requests on work program—apportionment (2323-52).....	126
Annual leaves in State Engineer's office (2401-52).....	147
All of Sec. 1, Chap. 148, S. L. 1947, applicable to officers and employees having civil service status (2195-51).....	89
Assignment of employees—administrative function (2094-51).....	60
Classification of foreman in highway dept. (2367-52).....	137

	Page
Commission can require specific qualifications not in statute (2074-51)	54
Convicted person, completing sentence, eligible to hold appointment (2029-51)	41
Competitive examination lists—administrative (2082-51)	56
Deputy com. of education under civil service (2078-51)	55
Employees of state home under civil service (2150-51)	75
Employees of statute revision committee exempt from civil service (2163-51)	79
Felony conviction; disfranchisement (2333-52)	129
Parolee—examination application (1981-51)	28
Payment of deceased employee's accumulated annual leave (2077-51)	55
Protestant on eligible list; filing time (2075-51)	54
Rights of employees discharged from armed services (2311-52)	123
Salaries of employment security employees (2293-52)	117
Sick leave rights of provisional (2425-52)	156
Statutory per diem of members of boards and commissions (1927-51, 1945-51, 2114-51)	14, 19, 65
Status of officers and teachers at Ridge and Grand Jct. (2083-51)	56
Suspension proceedings (1915-51, 2110-51)	11, 64
Transfer of employees (1996-51)	33
Vacation pay (2409-52)	151
Veterans preference (1969-51)	25
World War II ceased 12 noon 12/31/46 (2211-52)	94
<b>COAL MINING</b>	
Captive mines—fees and tonnage taxes (1958-51)	22
H. B. 212, 1951 S. L. (1982-51, 1986-51)	28, 30
License fees (2134-51)	71
<b>COLORADO GENERAL HOSPITAL (see HOSPITALS)</b>	
<b>COLORADO STATE AGRICULTURAL COLLEGE (see STATE COLLEGE)</b>	
<b>COLORADO STATE BOARD OF EMBALMING EXAMINERS (see EMBALMERS)</b>	
<b>COLORADO STATE COLLEGE OF EDUCATION (see STATE COLLEGES)</b>	
<b>COLORADO STATE HOSPITAL (see HOSPITALS)</b>	
<b>COLORADO STATE PLANNING COMMISSION (see PLANNING COMMISSION)</b>	
<b>COLORADO PSYCHOPATHIC HOSPITAL (see HOSPITALS)</b>	
<b>CONSTITUTIONAL LAW</b>	
Amendment No. 1, relating to compensation and services of judges; no further legislation necessary to make effective (2395-52)	145
Drainage districts—compensation—incumbent directors (2066-51)	51
Fire Protection Districts—organization (2224-52)	97
Pledging net income self-liquidating projects not a "debt" (2092-51)	59
<b>CONTRACTS</b>	
Civil defense contracts (2209-52)	93
Contracts invalid—in excess of unincumbered balance; beyond term of executing officer (1977-51)	27
Highway bids—advertising; rejection (2197-51, 2279-52)	89, 113
Highway contract forms revised under reorganization (2240-52)	102
Highway claims—presentation, payment date, etc. (2140-51)	72
Game and Fish contract with out of state fur agencies (2292-52)	117
Land board—unexpired leases; revision of rentals (2226-52)	98
"Public employer" does not include independent contractor (2175-51)	82
<b>CONTROLLER</b>	
Acquisition of additional land to state capitol (2380-52)	141
Allotment requests on civil service work program (2323-52)	126
Annual leave—state engineer's office (2401-52)	147
Appointment and salary of legislator filling vacancy (2100-51)	61
Defense equipment—Federal government cannot be reimbursed in advance (1959-51)	22
Fees collected by racing commission handled by controller (2104-51)	63
Hail insurance fund—insufficient money (2372-52)	139
Highway Office Building Authority Fund (2207-52)	93
Judges' compensation under Amendment No. 1 (2395-52)	145
Office hours outside of Denver (1997-51)	33
Payment of deceased employee's accumulated annual leave (2077-51)	55
Payroll deduction of union dues (2121-51)	67
Statutory per diem pay to members of boards and commissions (1927-51, 1945-51, 1950-51, 2114-52)	14, 19, 20, 65
Statutory per diem—attending meetings away from residence (2103-51)	62

	Page
State accounts—closing date (2037-51).....	43
State owned cars pay toll charges (2241-52).....	102
Vouchers of Game and Fish—method (2378-52).....	140
<b>COSMETOLOGY</b>	
Advertising of instruction courses in newspapers (2414-52).....	152
Instructor's license issued to board members individually (2058-51).....	49
Licensed managing cosmetologist—qualification (2264-52).....	109
Powers and duties (2136-51).....	71
Renewal—expired licenses (2005-51).....	75
Sale of false hair pieces not included in "cosmetology" (2242-52).....	103
Separate license for haircutting (2206-52).....	93
Separate entrance to beauty salon—city ordinance (2135-51).....	71
Temporary permits (2342-52).....	131
<b>COUNTIES (see COURTS)</b>	
Bonus funds—oil and gas leases (2301-52).....	120
County highway equalization board; per diem pay (2179-51).....	84
County Hospital Board—no discretion re county hospital (1943-51).....	18
County veterans service officer—hold office of legislator (2424-52).....	155
Fees—counties fourth class (1989-51).....	81
Financial aid to private hospitals (2133-51).....	71
May regulate county zoning plan (2253-52).....	106
Not liable in forest fires—third persons (2097-51).....	60
Offices not closed primary election day (2363-52).....	136
Power to name, etc. public roads, streets, unincorporated areas (2236-52).....	100
Regulation of sale 3.2% beer (2349-52).....	133
Required to advertise sale of land (2027-51).....	41
Successor to resigned public officer—salary (2008-51).....	35
Salary J. P. filling vacancy (2413-52).....	152
Sales tax on cigarettes—no power to impose (2295-52).....	118
Signatures on county warrants by mechanical means (2055-51).....	48
Sobriety tests paid by county (1980-51).....	28
Social security for employees county hospitals (2105-51).....	63
Status county official convicted on federal charge (2327-52).....	128
<b>COUNTY OFFICERS</b>	
<b>Assessor</b>	
Assess levy on mineral interests (2119-51).....	66
Assess erroneous taxes on real property (2345-52).....	132
<b>Clerks and Recorders</b>	
Fees of county clerk (2252-52).....	106
<b>Commissioners</b>	
Can pay group insurance for county employees (2007-51).....	35
County zoning plan—regulation (2253-52).....	106
Insurance policies purchased on county vehicles (2247-52).....	104
Local public health building—county building—financing (2003-51).....	34
No authority to present proposal on ballot re existing hospital (2282-52).....	114
No power regulating closing hours dance halls, etc. (2171-51).....	81
Power to name, etc., public roads and streets (2236-52).....	100
Signatures by mechanical means (2099-51).....	61
<b>Justices of the Peace</b>	
Fines for violations on public highways (2288-52).....	116
J. P.'s are county officers (1954-51).....	21
J. P.'s excluded from Sec. 2 (b) (3) Chap. 237, 1935 C. S. A. (2319-52).....	125
Jury authority to assess fine in J. P. court (1975-51).....	26
Precinct office—absentee voters ballots (2328-52).....	128
Salary of J. P. filling vacancy (2413-52).....	152
<b>Public Trustee</b>	
Notary fees (1968-51).....	24
<b>Sheriffs</b>	
Expenses incurred apprehending parolees—payment (2299-52).....	119
Fee for making return of summons (2109-51).....	64
Mileage fee (2174-51, 2280-52).....	82, 113
Salary filling vacancy (2126-51).....	69
Salary paid from fees (1947-51).....	19
Under conditional sales contract must release car on demand (2374-52).....	139
<b>Surveyors</b>	
Employment of county surveyor (2233-52).....	100
<b>Treasurers</b>	
Must register school warrants in excess of levies (1937-51).....	17
Purchaser tax exempt property after March 1 not require to pay assessment (2208-52).....	93

	Page
Unclaimed bank funds—disposition (2234-52).....	100
When deputy may not sign checks (2371-52).....	139
COURTESY PATROL (see HIGHWAY PATROL)	
COURTS (District Judges, County Judges, Clerks)	
Adoption proceedings (2032-51).....	42
County judge power to commit defendant for observation (2337-52) ..	130
County judge power to commit insane persons (2338-52).....	130
Docket fees (2237-52, 2399-52).....	101, 146
Jury authority to assess fines in J. P. court (1975-51).....	26
Juvenile and county courts unrestricted power awarding custody (2221-52).....	97
One dollar tax levied on all civil cases (2001-51, 2019-51, 2057-51) ..	34, 38, 49
Order of claims filed in estates (2379-52).....	141
Relinquishment proceedings (2346-52).....	132
Salary of court employes (2011-51).....	36
Sentencing of 15 year girl (2407-52).....	150
Sealed envelope containing will—opening (2006-51).....	35
Small claims court—summons—jurisdiction (2402-52).....	148
Transfer of mental defectives—court's jurisdiction (1917-51).....	11
Unclaimed inheritances (2283-52).....	114
U. S. does not pay docket fee in water adjudication proceeding (1944-51)	18
<b>Clerks</b>	
Salary increase not applicable (2008-51).....	35
<b>County Judges</b>	
Act as own clerk and retain fees (2412-52).....	152
Appointee judge—salary (2404-52).....	150
Assisting county judges—per diem (2034-51, 2188-51).....	42, 86
Power to fix clerk's compensation—Class 111 county (2062-51).....	50
Rights of surviving joint tenant (2131-51).....	70
<b>District Judges</b>	
Effective date of appointment—salary (2043-51).....	45
Expert witness fees (2053-51).....	48
CRIMINAL LAW (see PENITENTIARY)	
County court power to commit defendant (2337-52).....	130
County court power to commit insane persons (2338-52).....	130
Game wardens no authority to arrest traffic violators (2093-51).....	59
Governor issue pardons (2158-51).....	78
Person convicted of felony serve as school board member (2298-52) ..	119
Sale 3.2% beer to Indians (2302-52).....	120
Trial court no jurisdiction in reducing a sentence (2408-52).....	151
<b>D</b>	
DAIRY COMMISSIONER (see AGRICULTURE)	
DEAF AND BLIND	
Board of Education cannot set up curriculum (2198-51).....	89
Gifts—may accept but not sell (1918-51).....	12
State cannot be sued for damage actions (2214-52).....	95
DENTISTS (DENTAL BOARD)	
Dental Hygienists (1962-51).....	23
Dental Practices Act—violations (1971-51).....	25
DEPENDENT, DELINQUENT CHILDREN (see CHILDREN)	
DIRECTOR OF MARKETS (see AGRICULTURE)	
DISTRICT ATTORNEYS (see STATE OFFICERS)	
DRAINAGE DISTRICTS (see WATER)	
<b>E</b>	
ELECTIONS	
Affidavit registration limited (2249-52).....	105
Candidates—Independent ticket—vacancies (2353-52).....	134
Correction of clerical mistake in certificate (2369-52).....	138
County commissioners may not submit proposal on ballot re existing hospital; expenditure (2282-52).....	114
County offices not closed on primary (2363-52).....	136
Eligibility for designation (2341-52).....	131
Failure to file designation papers on time (2326-52).....	127
Graduated classification organization—when held (2203-52).....	91
Initiated ordinance—filing time—publication (2149-51).....	75
Inhabitants on government property—residence (2227-52).....	98

	Page
Interpretation of "hours of work"—time-off on election day (2389-52)	143
Jurors—voting by absentee ballot (2390-52)	144
Justice of peace and constable—precinct offices (2328-52)	128
Legal status of Town of Manitou Springs (2204-52)	92
Paper ballots not permitted with voting machines (2275-52)	112
Person serving sentence barred from holding office of trust (2333-52)	129
Procedure for becoming city of second class (2231-52)	99
Purging of names—city election (2332-52)	129
Recount (2394-52)	145
Registration in county branch office (2340-52)	131
Sale of liquor—when not prohibited on election day (2322-52)	126
Tally marks (2393-52)	144
Tie elections (2170-51)	81
Write-in names (2339-52)	130
<b>EMBALMERS</b>	
License by reciprocity (1942-51)	18
Qualifications for licensure (2223-52)	97
Statutory per diem of directors (2114-51)	65
<b>EMPLOYEES (see EMPLOYEES RETIREMENT, CIVIL SERVICE)</b>	
Salaries fixed by legislature (2293-52)	117
State cannot be sued for torts of its employees (2269-52)	110
Toll charges—employee may be reimbursed (2241-52)	102
Volunteers of civil defense—expenses (2067-51)	52
<b>Employees Retirement</b>	
Employee receive both assigned annuity and his own (2173-51)	82
Refund of deductions—cessation of employment (2101-51)	62
Judges retirement act (2068-51)	52
Status of personnel Moffat Tunnel Commission (2256-52)	107
<b>ENGINEERS, STATE BOARD OF EXAMINERS</b>	
Adjudication proceedings (2132-51)	70
Annual leaves of employees (2401-52)	147
Budget and work programs (2049-51)	46
Classification of engineers (2096-51)	60
Corporations and partnerships—registration (2054-51)	48
Effect of constitutionality of Chap. 161, S. L. 1951—Prouty v. Heron, (2396-52)	145
Injunction decreed—judicial determination (2162-51)	73
Refund of fees (2400-51)	90
<b>EMPLOYMENT SECURITY (also UNEMPLOYMENT COMPENSATION)</b>	
Banking account for department (2129-51)	69
County hospital employees under social security (2105-51)	63
District attorneys and employees—county social security program (2107-51)	63
J. P.'s excluded from act (2319-52)	125
Salaries fixed by legislature; federal funds (2293-52)	117
<b>ESTATES AND ESCHEATS (see COURTS)</b>	
Adoptive parents inherit estate adopted child (2028-51)	41
Clerk of county judge cannot open sealed envelope containing will (2006-51)	35
Docket fee in decedent's estate (2399-52)	146
Estate of mental incompetent—State Hospital (2324-52)	127
Order of claims filed in estates (2379-52)	141
Rights of surviving joint tenants (2131-51)	70
Unclaimed inheritances (2283-52)	114
<b>EXTRADITIONS (see PENITENTIARY, PARDONS AND PAROLES)</b>	
<b>F</b>	
<b>FEDERAL (see also WAR, VETERANS, OLD AGE PENSIONS, PUBLIC WELFARE, EMPLOYMENT SECURITY, WATER, etc.)</b>	
County commissioners cannot assure government of non-liability on flood control work (2406-52)	150
Distribution of 2c gasoline tax (2245-52)	103
Employees of soil conservation district not subject to social security act (1930-51)	15
Excise taxes not applicable beverages transported to military reservation; refund (2418-52)	154
Flood control project—John Martin Reservoir (2230-52)	99
Inhabitants on government property—residence (2227-52)	98
Land board—housing administration—mortgage insurance (2218-52)	96
Land board may subordinate its interest in oil royalties (2376-52)	140
Special fed. tax on slot machines (2146-51)	74
State-federal appropriation—promote forest lands (2220-52)	96
State Reformatory penal institution surplus food purposes (2271-52)	111
U. S. does not pay docket fee water adjudication (1944-51)	18



	Page
<b>FEES—SALARIES</b> (see COUNTY AND STATE OFFICERS, COURTS, BOARDS, etc.)	
Expert witness fees of physicians (2053-51).....	48
Incumbent drainage district directors compensation (2066-51).....	51
<b>FIRE DISTRICTS, PREVENTION</b> (see CITIES AND TOWNS, MISCELLANEOUS)	
<b>FIREMEN'S AND POLICEMEN'S PENSION FUNDS</b> (see POLICEMEN'S AND FIREMEN'S PENSIONS)	
<b>FOOD INSPECTION</b> (see HEALTH)	
<b>FORT LEWIS SCHOOL</b> (see STATE COLLEGES)	
<b>FRUITS AND VEGETABLES</b> (see AGRICULTURE DEPARTMENT)	

## G

<b>GAME AND FISH</b>	
Abating pollution on Animas River (2287-52).....	115
Assignment of employees (2094-51).....	60
Beaver control Act of 1951 (2232-52).....	99
Beaver—injured party may not destroy (1926-51).....	14
Contracts in excess of unnumbered balance; extend beyond term of executing officers (1977-51).....	27
Construction of verb "is" (2115-51).....	66
Disposition of fines (2063-51).....	51
Expenses—subscriptions for magazines (2165-51).....	79
First issue—original publication (2022-51).....	39
"Fishing Easement Fund" (2172-51).....	81
Game Wardens authority in making traffic violation arrests (2093-51).....	59
Grazing fees (2073-51).....	54
"Hunters Carnival" registration cards (2148-51).....	75
Indians—license (2122-51).....	67
Lost abstracts—Red Feather Lake (2051-51).....	47
License to fish in water designated Class "A" (2038-51).....	44
Magazine—third class printing (2026-51).....	41
Multiple sales licenses (2064-51).....	51
Out-of-State fur sales contracts (2292-52).....	117
Printing and disseminating of pamphlets; legislative action to charge (2423-52).....	155
Rent or lease its surface land (2010-51).....	36
Personnel may render damage control service (2152-51).....	76
Right of owner of bed of natural fresh water to fish (2112-51).....	65
Powers and duties of Director (2284-52).....	114
Resident antelope license refund (2263-52).....	109
Remittance of fees; no compromise of liability; individual furnish bond, etc. (2361-52).....	136
Season regulation published in newspapers (1920-51).....	12
Sec. 8, Chap. 89, 1935 C. S. A. not violated by a fishing contest (2069-51).....	52
State's Acceptance under Public Act No. 415 (2086-51).....	57
State may purchase fire protection (1961-51).....	23
Status of diaries (Hudnall) (2272-52).....	111
Unserved claims—settlement (2079-51).....	55
Vacation pay of employees (2409-52).....	151
Vouchers—method for handling (2378-52).....	140
Where state acquired land prior to certain date—not liable for tax (1951-51).....	20
<b>GAS AND OIL CONSERVATION</b> (see OIL INSPECTOR)	
<b>GENERAL ASSEMBLY</b> (see LEGISLATURE)	
<b>GOVERNOR</b> (see STATE OFFICERS)	

## H

<b>HEALTH</b> (Vital Statistics)	
Additional hospital categories—licensing (2192-51).....	87
Appointment of hearing officers outside of dept. (2023-51).....	39
Brookvale Alcoholics Coop. Ranch not health establishment (2358-52).....	135
County Commissioners no authority to present proposals on ballot re existing hospital (2282-52).....	114
County commissioners erect local health building; financing (2003-51).....	34
County Hospital Board—does not have discretion to establish county hospital (1943-51).....	18
District health treasurer—salary (2153-51).....	76
Grading of restaurants (2304-52).....	121
Licensing and standards of hospitals operated by governmental units (1940-51).....	17

	Page
Master plumbers (2020-51).....	39
No control of brucellosis in beef cattle (2190-51).....	87
Obstetrical facilities in general medical and surgical hospitals (2033-51).....	42
Plumbing fees; permit (1916½-51).....	11
Right of county or district health dept. to hold title to real property (2305-52).....	121
Retirement plan—town and district health depts. (2106-51).....	63
Rule 20, Sanitary Engineering Standards (2076-51).....	55
Special and limited health regulations (2060-51).....	50
Sanitary district formation—sewage service contract for state pen (1992-51).....	31
State Chemist—status (1939-51).....	17
Status of Tom Roseberry—license (2316-52).....	124
Surplus Property (1978-51).....	27
Tourist camps—regulation (2277-52).....	112
<b>HIGHWAY PATROL</b>	
Axle load allowed on highways (2315-52).....	124
Abandoned motor vehicles—disposition (2325-52).....	127
Penalty provisions in violation cases (2189-51).....	87
Sobriety tests—paid by county (1980-51).....	28
<b>HIGHWAYS</b>	
Axle load allowed on highways (2315-52).....	124
Allocation of funds for experimental test (2052-51).....	47
Bids—advertising; rejection (2197-51, 2279-52).....	89, 113
Classification of foreman—civil service jurisdiction (2367-52).....	137
County highways (2035-51, 2036-51).....	43
Denver-Boulder turnpike—ton mile tax (2274-52).....	112
Distribution of tax moneys to municipal corporations (2331-52).....	129
Headquarters offices in Denver (2350-52).....	133
Distribution of two cent gasoline tax under Chap. 128, S. L. 1947 (2245-52).....	103
Fines for violations on public highways (2288-52).....	116
Naming of public roads, streets; numbering of houses, etc., fund for private cemeteries (2236-52).....	100
Per diem pay—county highway equalization board (2179-51).....	84
Presentation of claims; payment date (2140-51).....	72
Possession of excess of right of way—fencing leases (1931-51).....	15
Revised contracts—reorganization (2240-52).....	102
State owned cars pay toll charge (2241-52).....	102
<b>HISTORICAL SOCIETY (see PUBLIC RECORDS)</b>	
<b>HOSPITALS</b>	
County financial aid to private hospitals (2133-51).....	71
County hospital board—discretion (1943-51).....	18
Licensing and standards of hospitals and similar ones operated by governmental units (1940-51).....	17
Medical board—no authority staffing hospitals (1999-51).....	33
<b>Colorado General Hospital</b>	
Collection for medical attendance where patient carries medical care insurance (2124-51).....	68
Criminally insane inmates—procedural provisions (2015-51).....	37
<b>Colorado State Hospital</b>	
Adjudication and commitment of lunatics — conservator — assets (2377-52).....	140
Estate of mental incompetent (2024-51, 2324-52).....	40, 127
Furnishing information to police—paroled inmate (2143-51).....	73
Judge county court power to commit defendant (2337-52, 2338-52).....	130
Parole of insane inmate (see Opinion 2286-52) (2265-52).....	109
Public contracts—performance—procedure (1916-51).....	11
Should not divide claim against inmate; conservator — payment (2098-51).....	61
Transfer of inmates to Ridge and Grand Junction (1917-51).....	11
Transfer of prisoners—Governor's powers; special medical care—consent (2385-52).....	142
<b>Psychopathic Hospital</b>	
Collection for medical attendance (2124-51).....	68
Collection of inmate's accounts (2315-52).....	125
Non-voluntary patient—admittance—procedure (2243-52).....	103
<b>I</b>	
<b>INCOME TAX (see REVENUE DEPARTMENT)</b>	
<b>INDIANS</b>	
Sale of 3.2% beer (2302-52).....	120

	Page
<b>INDUSTRIAL COMMISSION (WORKMEN'S COMPENSATION, F. E. P.)</b>	
Anti-discrimination act of 1951, Chap. 217 (2276-52).....	112
Civilian employees at federal installations subject to workmen's compensation (2120-51).....	67
Fire protection district—workmen's compensation (2289-52).....	116
Public employer defined (2175-51).....	82
S. B. 29, S. L. 1951—effective date (2031-51).....	42
Soil conservation district subject to workmen's compensation (2290-52).....	116
Time-off on election day (Sec. 296, Chap. 59, 1935 C. S. A.) (2389-52)....	143
<b>INDUSTRIAL SCHOOLS (BOYS—GIRLS)</b>	
Board of education cannot set up curriculum (2199-51, 2201-51).....	90
Sentencing of 15 year old girl convicted for murder (2407-52).....	150
<b>INHERITANCE AND GIFT TAX</b>	
Sec. 8, Chap. 85, 1935 C. S. A. applies to "bank accounts" etc. (2262-52)	108
<b>INSANE PERSONS (see HOSPITAL)</b>	
<b>INSURANCE (Hail Insurance, Mutual Benefit Associations)</b>	
County commissioners can pay remuneration for county employees to maintain group insurance plan (2007-51).....	35
Dividends not taxable under Sec. 14, Chap. 87, 1935 C. S. A. (2266-52) ..	109
Group insurance policy—issuance to labor union (2235-52).....	100
Guaranty fund of mutual fire insurance co.—money advanced is liability (1967-51).....	24
Hail insurance fund—insufficient money (2372-52).....	139
Mutual benefit association—adopt actuarially sound table—children under five (2095-51).....	60
University of Colo. insure in mutual insurance company (1921-51).....	12
Withdrawal of deposits by fire insurance co. (1529-51).....	15
<b>INTOXICATING LIQUORS (see LIQUORS)</b>	
<b>IRRIGATION (see WATER)</b>	
<b>J</b>	
<b>JUSTICES OF THE PEACE (see COUNTY OFFICERS, COUNTIES)</b>	
<b>JURIES</b>	
Jury commissioner and employes—Denver (1955-51).....	21
<b>L</b>	
<b>LABOR (see INDUSTRIAL COMMISSION)</b>	
<b>LAND—LAND BOARD COMMISSIONERS</b>	
Bonus funds for oil and gas leases (2301-52).....	120
Counties not liable—third persons—forest fires (2097-51).....	60
Expired leases to competitive bidders (2226-52).....	98
Fed. Housing Administration — cooperative — mortgage insurance (2218-52).....	96
Fed. insured mortgage loans—oil and gas leases (2376-52).....	140
Forestry dept.—state-federal appropriation (2220-52).....	96
House Joint Res. No. 4, Ch. 202, S. L. 1937, limited to assessing leases (2009-51).....	36
Mill tax on oil production (2154-51).....	76
Mineral lease applications (2065-51).....	51
Mineral rights—Ft. Lewis School (1985-51).....	29
Non-producing mining claims (2254-52).....	106
Right to incorporate provision in existing lease (2309-52).....	122
State Mineral Patents Nos. 1 to 19 (2217-52).....	96
<b>LEGAL RESIDENCE (see ELECTIONS, SCHOOLS, etc.)</b>	
<b>LEGISLATURE—LEGISLATION</b>	
Bang's disease, dairy and range cattle law (1966-51).....	24
Captive mines—fees and tonnage taxes (1953-51).....	22
Classification of engineers (2096-51).....	60
County financial aid to private hospitals (2133-51).....	71
County veterans service officer—legislator—not incompatible (2424-52)	155
Concurrent resolution amendments to constitution—presented at regular session (1948-51).....	19
District attorneys and employees—social security program (2107-51)	63
H.E. 20—five percent limitation (2382-52).....	141
H.E. 201—one dollar tax on civil actions (2001-51, 2019-51, 2057-51)	34, 38,
	49
H.E. 220—adoption proceedings (2032-51).....	42
H.E. 222, 223, 241—effective date (2012-51).....	36
H.E. 2 (2nd session)—chauffeur's licenses (2239-52).....	102

	Page
H.B. 291—retirement plan—town and district health depts. (2106-51)	63
H.B. 331—teachers pensions (2080-51)	56
H.J. Res. 4, Ch. 202, S. L. 1937—land leases (2009-51)	36
H.B. 169—game and fish leases (2010-51)	36
Fireworks law—cap guns defined (2117-2118-51)	66
Legislator filling vacancy—salary (2100-51)	61
Medical Practices Act 1951—application (2151-51)	75
Mill tax on oil production (2154-51)	76
Organization of fire protection districts, etc. (2224-52)	97
Per diem compensation—medical board members (2103-51)	62
Public employer defined (2175-51)	32
Proposed bill re convict labor—not in Governor's call (2213-52)	94
Prospective vacancy appointments by Governor (1949-51)	20
S.B. 29—effective date (2031-51)	42
S.B. 46—not within Governor's call—state institutions (2222-52)	97
S.B. 255—Game and Fish magazines (2022-51)	39
S.B. 296—compensation—assisting county judge (2034-51)	42
State Board of Forestry—appropriation—federal (2220-52)	96
State representative—clerk of district court—not incompatible (2314-52)	124
LICENSES (see under various boards)	
LICENSE TAX (see under object taxed)	
LIQUOR	
Agreements for exclusive franchise (2296-52)	118
Accessory subject to same penalty as principal if convicted of drunken driving, license revoked (2370-52)	138
City of Pueblo cannot enact ordinance regulating sale but can regulate same (2056-51)	49
County commissioners no power to regulate closing hours of dance halls (2171-51)	81
Display of liquor advertisements—no regulatory power (2250-52)	105
Excise tax on shipments to military reservations; refund (2418-52)	154
Financial interests of husband and wife (2356-52)	134
Fishing contest—not violation (2069-51)	52
Hearings before issuing licenses (2285-52)	115
Licenses financial interests; multiple licenses (2360-52)	135
Licensing authorities power to impose restrictive hours of sale by retail establishments (2349-52)	133
Local authorities concurrent power with state—regulation—licenses, etc. (1964-51)	23
Multiple leasing of licensed premises; multiple ownership (2416-52)	153
Public place defined (2410-52)	151
Transactions between sign display service co. and retail licensees—not violation of liquor code (2313-52)	123
Sale to Indians (2302-52)	120
Special federal tax on slot machines (2146-51)	74
Public information concerning sales by brand name (2113-51)	65
When sale of liquor not prohibited at elections (2322-52)	126
LIVESTOCK, STATE BOARD OF STOCK INSPECTION COMMISSIONERS	
Bang's disease, dairy and range cattle defined (1966-51)	24
Estray fund (2312-52)	123
Brucellosis in beef cattle—control (2190-51)	87
Proceeds from sale of cow bearing two brands (2415-52)	153
Reactor brands for reactor cattle—no objection (2228-52)	98
State accounts—when officially closed (2037-51)	43
Stock Inspection Fund (2145-51)	74
Trespass—fence law (1925-51)	14
Venue for prosecution (2248-52)	104
LOAN COMPANIES (see BANKS AND BANKING)	
LOTTERIES, GAMBLING	
Special federal tax on slot machines (2146-51)	74
M	
MEDICAL BOARD	
Announcement—violation (2320-52)	126
Examining doctors of the hepatitis project—exempt (2422-52)	155
Formal proof of citizenship not necessary for taking examination (2270-52)	111
Home care by interns, residents and medical students (2182-51)	85
Licensed chiropract not entitled to use of narcotics (2025-51)	40
Members cannot draw per diem compensation attending meetings away from residence (2103-51)	62
No authority to issue opinions re staffing to hospital boards (1999-51)	33
Overcharge of fee—not cause for revocation of license (1984-51)	29

	Page
Practice of chiropody in connection with business establishments (2180-51) .....	84
MENTAL DEFECTIVES, STATE HOME AND TRAINING SCHOOLS AT RIDGE AND GRAND JUNCTION (see also COLORADO STATE HOS- PITAL)	
Board of Education no authority over curriculum (2183-51) .....	85
Liability for payment of mental defectives (1973-51) .....	26
Transfer of inmates from Colo. State Hospital—procedure (1917-51) ..	11
MINES COMMISSIONER	
Interpretation of Sec. 287, Chap. 110, 1935 C. S. A. (2400-52) .....	146
Use of Diesel Locomotives underground (1957-51) .....	22
MISCELLANEOUS	
Actions against state (2214-52) .....	95
State may purchase fire protection (1961-51) .....	23
MORTGAGES	
Chattel mortgages on automobile (2351-52) .....	133
Municipality purchasing property on which tax lien exists—no tax required (2381-52) .....	141
MOTOR FUEL (see REVENUE DEPARTMENT)	
MOTOR VEHICLES	
Accessory subject to same penalty as principal if convicted of drunken driving; license revoked (2370-52) .....	138
Abandoned motor vehicles on highways (2325-52) .....	127
Axle load allowed on highways (2315-52) .....	124
Chattel mortgage (2351-52) .....	133
Chauffeurs licenses (2239-52, 2347-52) .....	102, 132
Conditional sales contract requires sheriff to release car on demand (2374-52) .....	139
County funds used to purchase insurance policies on county vehicles (2247-52) .....	104
Fees under H. B. 222 (2000-51) .....	33
Fines for violations on public highways (2288-52) .....	116
Game wardens no authority to arrest traffic violators (2093-51) .....	59
Municipal police vehicles (2348-52) .....	132
Motor Vehicle Certificate of Title Act— theft, etc. (1988-51) .....	30
Operators and chauffeurs licenses—highway construction (2089-51) ..	53
Safety Responsibility Law—refund (1919-51, 1946-51) .....	12, 19
Specific ownership tax—collection (1994-51) .....	32
State owned cars pay toll charges (2241-52) .....	102
Transportation of firearms—private automobiles (2334-52) .....	129
MUTUAL BENEFIT ASSOCIATION (see INSURANCE)	
<b>N</b>	
NATIONAL GUARD	
Active members exempt from jury duty (2084-51) .....	57
Appropriation—used for paving for military purposes (2127-51) .....	69
NEWSPAPERS	
Designation of legal newspapers (2300-52) .....	120
Hunting, fishing season regulation—publication in newspapers (1920-51)	12
NOTARIES PUBLIC	
Public trustees—notary fees (1968-51) .....	24
NURSE EXAMINERS, STATE BOARD	
Qualifications—examinations—licenses (1974-51, 2021-51, 2386-52)	26, 39, 143
<b>O</b>	
OIL INSPECTOR (Gas and Oil Conservation Commission)	
Mechanical devices inspected for distributing distillates (1972-51) .....	26
Manifolds for unloading more than one class of fuels—regulation (2030-51) .....	41
Performance bond (1976-51, 2013-51) .....	27, 37
OLD AGE PENSIONS	
Benefits from teachers emeritus retirement fund deductible (2091-51)	59
Order of claims filed—estates of old age annuitants (2379-52) .....	141
Payment to non-citizens—violation of constitution (1936-51) .....	16
Qualifications for old age pension (1991-51) .....	31
OPTOMETRIC, STATE BOARD OF	
Six months internship may not be required if qualified otherwise (2257-52) .....	107

	Page
<b>P</b>	
PENITENTIARY (see PARDONS AND PAROLES)	
Personal service contract for sewage plant (2420-52).....	154
Proposed bill re convict labor (2213-52).....	94
Protection of officers performing lawful duties (2297-52).....	119
<b>Pardons and Paroles</b>	
Expenses incurred in apprehending parolees (2299-52).....	119
Parole of insane inmates (2265-52, 2286-52).....	109, 115
Pardons and paroles—power of board, governor; granting, revoking, etc. (2158-51, 2176-51, 2178-51, 2196-51, 2426-52, 2403-52).....	78, 82, 83, 89, 149, 156
PHARMACY	
Confiscation of drugs (2014-51).....	37
Resolution of board restricted (2004-51).....	34
PLANNING COMMISSION	
Naming, re-naming, etc. public roads and streets—authority; private cemeteries (2236-52).....	100
Property acquired by state subject to home rule regulation (1960-51)	22
PLUMBING (see HEALTH)	
POLICE AND FIREMEN'S PENSION	
Volunteer firemen—retirement (2216-52).....	95
PRINTING (see PURCHASING AGENT)	
PROBATE LAW (see COURTS)	
PUBLIC BUILDINGS (see BUILDING SUPERINTENDENT)	
PUBLIC FUNDS	
Anticipation warrants (2128-51).....	69
Bonus funds for oil and gas leases (2301-52).....	120
Civil defense appropriation (2002-51).....	34
Collection of one dollar on civil cases; remitted to state treasurer (2281-52).....	113
Insurance policies on county vehicles; county fund (2247-52).....	104
Ford Foundation American Heritage Program (2357-52).....	134
Unclaimed bank funds—disposition (2234-52).....	100
PUBLIC INSTITUTIONS, DIRECTOR	
Annexation of property by municipality (2373-52).....	139
Burial expenses of executed person (2147-51).....	74
Protection of officers performing lawful duties (2297-52).....	119
Personal service contract—rehabilitation (2421-52).....	155
Personal service contract—sewage plant (2420-52).....	154
Status of officers and teachers at Ridge and Grand Jct. (2083-51).....	56
PUBLIC RECORDS	
No conflict between H. B. 221 and 98 (2071-51).....	53
PUBLIC UTILITIES	
Denver-Boulder Turnpike—ton-mile tax (2274-52).....	112
Highway contractors—permits—pay ton mile tax (2139-51).....	72
Rule 17a, P. U. C. rules and regulations (2156-51).....	77
Selling registered checks by private contract carriers (2391-52).....	144
Southern Union Gas Co's. claim for refund (2411-52).....	152
PUBLIC TRUSTEE (see COUNTY OFFICERS)	
PUBLIC WELFARE (see OLD AGE PENSIONS)	
Liability of grandparent (2336-52).....	130
Old age pensions fund—separate fund within county welfare fund (2164-51).....	79
Reciprocal agreement—exchange of feeble-minded (2137-51).....	72
Support payments of deserting father (2388-52).....	143
<b>R</b>	
RACING COMMISSION	
Funds collected—quasi trust funds—controller (2104-51).....	63
Horse race meets held on track of another licensed operator (1928-51).....	14
"Over-payment" as used in act. (2387-52).....	143
No authority to collect fee from licensed horsemen (2169-51).....	81
REFORMATORY	
Penal institution for surplus food distribution (2271-52).....	111

	Page
RESTAURANTS (see HEALTH)	
REVENUE DEPARTMENT	
Basis for computation of capital gains (1979-51).....	27
Christian Science churches subject to sales tax (2194-51).....	88
Distribution of tax moneys to municipal corporations (2331-52).....	129
Safety Responsibility Law (1919-51, 1946-51).....	12, 19
Unfair Practices Act—license fee fund (2085-51).....	57
<b>S</b>	
SALES TAX (see REVENUE DEPARTMENT)	
SCHOOLS—ELEMENTARY AND HIGH SCHOOLS (for institutions of higher learning see STATE COLLEGES)	
Board of Education no authority to set up curriculums at various institutions (2167-51, 2168-51, 2183-51, 2198-51, 2199-51, 2201-51).....	30, 85, 89, 90
Board of Education may not prohibit free education to six-year-old children (2161-51).....	78
Enrollment fee in kindergarten (2238-52).....	101
Ford Foundation—American Heritage Program (2357-52).....	134
Former powers of State Superintendent vested in new Commissioner of Education (1935-51).....	16
Investment of school district bonds (2354-52).....	134
Leasing school property to oil companies (2294-52).....	113
Liability for injuries suffered by students (2405-52).....	150
Oath of allegiance (1933-51, 1952-51, 2041-51).....	16, 20, 44
Organization—new school district (2016-51, 2044-51).....	37, 45
Person convicted of felony serve as school board member (2298-52).....	119
Registration of warrants in excess of levies (1937-51).....	17
Sale of bonds by third class districts (2088-51).....	58
School building—licensed architect (2308-52).....	122
School district bonds contracted to take up registered warrants (2368-52).....	138
State Commissioner—powers and duties (2018-51, 2138-51, 2142-51).....	38, 72, 73
Status of new Board under H. R. 900, amended by H. B. 308 (2123-51).....	68
Statutory tax levies defined (2362-52).....	136
Teachers emeritus retirement benefits—deducted from OAP (2091-51).....	59
Teachers pensions under Emeritus Act and local retirement plan (2080-51).....	56
Teachers failure to complete contract (2375-52, 2335-52).....	140, 129
Teachers tenure (1983-51, 2252-52).....	29, 106
Teachers retirement (2321-52).....	126
Travel expenses of prospective candidates for Com. of Education (1995-51).....	32
Tie vote—special school election (2061-51).....	50
Tuition (2355-52).....	134
Use of protectographic signer (2185-51).....	86
SCHOOL OF MINES (see STATE COLLEGES)	
SECURITIES	
Dividends of investment contract (2039-51).....	44
Distribution of prospectuses (2193-51).....	83
Foreign securities corporations—advertising (2225-52).....	93
Use of "Identifying Statement" (2392-52).....	144
SOCIAL SECURITY (see OLD AGE PENSIONS, EMPLOYMENT SECURITY, PUBLIC WELFARE)	
SOIL CONSERVATION	
By-laws (2344-52).....	131
Annexation—election (2317-52).....	125
Employees—not subject to federal social security act (1930-51).....	15
Formation of districts—elections (2070-51).....	53
Funds—private agency (2397-52).....	146
Land owned by municipality may be included (1963-51).....	23
Lands not within incorporated municipalities not excluded (2215-52).....	95
Land use ordinance—application (2184-51).....	85
Negligence—bailments (2108-51).....	64
Subject to workmen's compensation (2290-52).....	116
SOLDIERS AND SAILORS (see VETERANS, WAR)	
Tangible personal property—subject to taxation (2330-52).....	128
Personal service contract for rehabilitation purposes — payment (2421-52).....	155
SPECIFIC OWNERSHIP TAX (see MOTOR VEHICLES, SCHOOLS, ELECTIONS, TAXATION)	

	Page
<b>STATE COLLEGES</b>	
<b>Adams State College</b>	
Oath of allegiance (1933-51).....	16
<b>Colo. A. &amp; M. (State Board of Agriculture)</b>	
Economics and sociology—one dept. (1932-51).....	15
Liability for injuries suffered by students (2405-52).....	150
Personal property—not subject to taxation (1938-51).....	17
Sale of animals (2160-51).....	78
Teachers oath of allegiance (1933-51, 1934-51, 1952-51).....	16, 20
Use of city storm sewage facilities (2181-51).....	84
<b>Colo. State College of Education</b>	
Powers and duties of State Com. of Education (2018-51, 2138-51, 2142-51).....	38, 72, 73
<b>Ft. Lewis A. &amp; M.</b>	
Building purchased by Alumni—control (2273-52).....	111
Liability against state—injuries to athletic squad members or employees (2229-52, 2269-52).....	99, 110
Mineral rights—state has fee simple title (1985-51).....	29
Permanent Endowment Fund (2306-52).....	121
<b>School of Mines</b>	
Fed. loan assistance for housing project (2017-51).....	38
Resolution—contributions, gifts, etc. (2048-51).....	46
Trustees may pledge net income from projects (2092-51).....	59
<b>University of Colorado</b>	
Accounts of inmates—collection (2318-52).....	125
Fed. loan assistance (2040-51).....	44
Insurance in mutual companies (1921-51).....	12
Liability for experimental surgery, etc. (2125-51).....	68
Medical Practices Act of 1951 (2151-51).....	75
Revenue bonds—payment, etc. (2246-52).....	104
Trunk line sewers—no assessments to Boulder (2212-52).....	94
<b>STATE OFFICERS</b>	
Liable for injuries suffered by students (2405-52).....	150
No liability against state for injuries sustained by athletes (2229-52)...	99
<b>Auditor</b>	
Annual audit of City of Georgetown (2398-52).....	146
State accounts—closing date (2037-51).....	43
<b>District Attorneys</b>	
Abandoned motor vehicles on highways—disposition (2325-52).....	127
District attorneys and employes—county social security program (2107-51).....	63
Status of Tom Roseberry as licensed plumber (2316-52).....	124
Trial court may sentence 15 year old girl (2407-52).....	150
Trial court no jurisdiction in reducing sentence (2408-52).....	151
Violation—venue for a prosecution (2248-52).....	104
<b>Governor</b>	
Allotments on civil service work program (2323-52).....	126
Fed. flood control projects—federal monies—school purposes only (2230-52).....	99
No statutory authority to execute lease for portion of state capitol (2116-51).....	66
Pardons and paroles—governor's powers (2158-51, 2177-51).....	78, 83
Proposed bill re convict labor (2213-52).....	94
Prospective vacancy appointments (1949-51).....	20
Rent control—termination—effect (1965-51).....	24
S. J. Res. 30—county publicity (1998-51).....	33
Transfer of inmates to Ridge and Grand Jct. (1917-51).....	11
Transfer of prisoners (2385-52).....	142
<b>Secretary of State</b>	
Advertising of liquor displays (2250-52).....	105
Distribution of two cent gasoline tax (2245-52).....	103
Hearing before issuing liquor license (2285-52).....	115
Public information re liquor sales by brand name (2113-51).....	65
<b>Treasurer</b>	
Anticipation warrants (2128-51).....	69
Collection one dollar civil actions—remitted to treasurer (2281-52)...	113
Fed. flood control projects—federal monies—school purposes only (2230-52).....	99



ATTORNEY GENERAL OF COLORADO

201

	Page
Hail insurance fund (2372-52).....	139
Consolidating cash accounts—retain identity (2090-51).....	58
Refunds—Motor Vehicle Safety Responsibility Law (1919-51, 1946-51).....	12, 19
Unclaimed inheritances (2283-52).....	114
<b>Statute Revision</b>	
Adoption of a statutory compilation (2205-52).....	92
Exempt from civil service (2163-51).....	79

**T**

TAX COMMISSION (see TAXATION)

TAXATION

Collection of one dollar tax civil actions (2001-51, 2019-51, 2057-51).....	34, 38, 49
Contiguous means touching (1941-51).....	18
Fire district tax—owner subject (2251-52).....	105
Five per cent limitation H. B. 20 (2332-52).....	141
Levy on mineral interests (2119-51).....	66
Non-producing mining claims (2254-52).....	106
Personal property of A. & M. subject to taxation (1938-51).....	17
Personal property—federal reservation (2278-52).....	113
Privately owned personal property on federal owned property (2111-51).....	65
Real property—assessment (2345-52).....	132
Sales tax on cigarettes (2295-52).....	118
Statutory tax levies—home rule cities (2362-52, 2365-52).....	136, 137
Tangible personal property—members armed services (2330-52).....	123
Tax liens—property purchased by municipality (2381-52).....	141
Tax exempt property after March 1 (2208-52).....	93

TOWNS (see CITIES AND TOWNS)

**U**

UNEMPLOYMENT COMPENSATION (see EMPLOYMENT SECURITY)

UNIVERSITY OF COLORADO (see STATE COLLEGES)

