

Biennial Report
of the
ATTORNEY GENERAL
of the
STATE OF COLORADO



Years 1953-1954

DUKE W. DUNBAR
Attorney General

Publication Approved by James A. Noonan, Controller

ATTORNEYS GENERAL OF COLORADO
From the Organization of the State

A. J. Sampson.....	1877-1878
Charles W. Wright.....	1879-1880
Charles H. Toll.....	1881-1882
David F. Urmy.....	1883-1884
Theodore H. Thomas.....	1885-1886
Alvin Marsh.....	1887-1888
Samuel W. Jones.....	1889-1890
Joseph H. Maupin.....	1891-1892
Eugene Engley.....	1893-1894
Byron L. Carr.....	1895-1898
David M. Campbell.....	1899-1900
Charles C. Post.....	1901-1902
Nathan C. Miller.....	1903-1906
William H. Dickson.....	1907-1908
John T. Barnett.....	1909-1910
Benjamin Griffith.....	1911-1912
Fred Farrar.....	1913-1916
Leslie E. Hubbard.....	1917-1918
Victor E. Keyes.....	1919-1922
Russell W. Fleming.....	1923
Wayne C. Williams.....	1924
William L. Boatright.....	1925-1928
Robert E. Winbourn.....	1929-1930
John S. Underwood.....	1930
Clarence L. Ireland.....	1931-1932
Paul P. Prosser.....	1933-1936
Byron G. Rogers.....	1936-1940
Gail L. Ireland.....	1941-1944
H. Lawrence Hinkley.....	1945-1948
John W. Metzger.....	1949-1950
Duke W. Dunbar.....	1951-1954

PERSONNEL
DEPARTMENT OF LAW

DIVISION OF LEGAL AFFAIRS

DUKE W. DUNBAR, Attorney General

H. LAWRENCE HINKLEY, Deputy Attorney General
(resigned 7/22/53)

FRANK A. WACHOB, Deputy Attorney General
(appointed 7/23/53)

CHARLES M. SOLLER, First Assistant
(appointed 7/23/53; resigned 12/31/53)

OMER L. GRIFFIN, First Assistant
(transferred from Inheritance Tax Department as Assistant 1/1/54; appointed First Asst. 9/1/54)

Assistant Attorneys General

ROBERT F. CARR	JAMES D. PARRIOTT, JR.
NORMAN H. COMSTOCK	(resigned 5/16/53)
JOHN M. EVANS	WILBUR M. PRYOR, JR.
SAMUEL R. FREEMAN	DONALD B. ROBERTSON
(appointed 12/1/54)	WILBUR ROCCHIO
RICHARD F. HITE	WENDELL P. SAYERS
(resigned 4/30/53)	WILLIAM T. SECOR
JOHN P. HOLLOWAY	ROBERT S. WHAM
JACK E. KENNEDY	(appointed 5/16/53;
PATRICIA H. MALOY	resigned 12/17/53)
(appointed 12/1/53)	HENRY E. ZARLENGO

ANN G. LANDY, Administrative Assistant III

JOSEPHINE J. BARROWS, Clerk-Stenographer I

ELEANOR GIACOMOZI, Clerk-Stenographer II
(certified 11/22/54)

SARA GRAY, Clerk-Stenographer II
(resigned 12/1/54)

EDITH HEZMALHALCH, Clerk-Stenographer II

ELIZABETH V. KITTO, Clerk-Stenographer II

ELIZABETH PICKARD, Clerk-Stenographer II
(transferred to Board of Health 4/20/53)

MARY D. POPE, Clerk-Stenographer II

INHERITANCE TAX DEPARTMENT

NEIL TASHER, Assistant Attorney General and Inheritance Tax
Commissioner

OMER L. GRIFFIN, Assistant Attorney General
(transferred to Attorney General's office 1/1/54)

WILLIAM H. MOULTON, Assistant Attorney General

CATHERINE H. COURSEY, Administrative Assistant

Inheritance Tax Analysts

DAVID CREGER MICHAEL J. O'HARA MERLE GIBSON

Inheritance Tax Appraisers

CHARLES GAST

SAMUEL TELEP

FRED HUNT

ROBERT LEE

Clerks and Stenographers

LENA DINSMORE

ANN COGAN

CLEORA VINE

MARY SPENCER

VERA B. DECOU

PHYLLIS RUDDY

LEGISLATIVE REFERENCE OFFICE

JACK E. KENNEDY, Director

CLAIR T. SIPPEL, Secretary

DIVISION OF SECURITIES

CURTIS WHITE, Commissioner

ROBERT S. DAVIES, Assistant Securities Commissioner

RHODA SON, Secretary

January 11, 1955

HONORABLE ED. C. JOHNSON
Governor of Colorado
State Capitol
Denver, Colorado

Dear Governor Johnson :

As required by law, I respectfully submit herewith the Biennial Report of the Attorney General, covering the period beginning January 1, 1953, and ending December 31, 1954.

Respectfully,

DUKE W. DUNBAR

Attorney General

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF COLORADO

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. The Department also handles all escheat estates.

During the period from January 1, 1953 to January 1, 1955, there was collected in inheritance taxes the sum of \$4,928,778.05 and in gift taxes the sum of \$552,687.61. During this period 15,707 estates were processed which is the largest number of estates handled by the department since it was established in 1913.

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, 1953 to December 31, 1954

	1953	1954
Receipts from fees	\$ 7,285.50	\$10,792.50
Original prospectuses filed	88	174
Renewal prospectuses filed	68	61
Supplemental prospectuses filed	22	8
Dealers' registrations in effect at end of year	140	188
Salesmen's registrations in effect at end of year	480	522

The securities business in this state experienced a tremendous growth during the last half of the year 1954. This growth was occasioned in part by the rapid development of the City of Denver and its recognition as the financial center of the western states. However, the principal reason was the sudden and spectacular boom in the uranium business which resulted in the promotion of a great many uranium mining companies and extensive speculative trading in the shares issued by such companies. It now seems likely that this uranium boom will continue indefinitely and will far exceed the speculation in gold mining stocks of a generation ago.

This growth in the securities business has had a serious effect on this office. Inasmuch as the number of personnel employed by the Division is the same as it was fifteen years ago and the legislative appropriation for maintenance and operation is less than at any time during such period, it has been utterly impossible to cope with the increased volume of business and resulting work load that has descended upon us, notwithstanding the best efforts of the personnel of the Division. As a result, we are constantly confronted with a backlog of business. Hence, inevitable and unavoidable delays occur in processing applications. These delays cause ill feeling on that part of the public which is compelled by law to do business with this department. The only remedy for this situation is to completely reorganize the Division and provide sufficient funds and personnel to do the job contemplated by the statutes administered by this office. It is imperative that some relief be granted.

Injunctions permanently restraining the sale of securities were obtained against F. W. Dressler and Investors Services, Inc., Gold Range, Inc., and Noah Edwards. Dressler also pleaded guilty to a criminal charge of selling stock by means of a cheating and swindling transaction and was placed on probation. This office is aware of several matters which should be investigated with a view towards possible civil or criminal prosecution. However, it has been impossible to undertake any investigative or enforcement work in recent months.

The personnel of the Division consists of Curtis White, Securities Commissioner, Robert S. Davies, Assistant Securities Commissioner, and Rhoda Son, secretary.

PART I
DIGEST OF OFFICIAL OPINIONS OF THE
ATTORNEY GENERAL

NOTE: A copy of each opinion is on file under a number corresponding with that of the digest thereof.

CIVIL DEFENSE**Opinion 2427-53**

General Henry L. Larsen, Director
 Civil Defense Agency
January 2, 1953

There is no authority under the civil defense act whereby the governor may control or suspend the sale of property during a proclaimed emergency.

**CIVIL DEFENSE
FEDERAL****Opinion 2428-53**

General Henry L. Larsen, Director
January 2, 1953

Executing an agreement with federal civil defense agency which relates to minimum standards will not infringe on state rights but may result in the loss of benefits if the state refuses to comply with the federal requirements.

SCHOOL OF MINES—SCHOOLS**Opinion 2429-53**

Mr. Gurnett Steinhauer, Business Manager
 School of Mines
January 6, 1953

There is no authority in the law for the board of trustees of the School of Mines to expend state funds for transportation costs incurred in connection with inter-collegiate athletics.

RACING COMMISSION**Opinion 2430-53**

H. A. Christensen, Executive Secretary
January 8, 1953

Under a rule-making power of the racing commission, it is proper to promulgate a rule fixing the minimum age to which persons are permitted to place wagers, and such rule may be enforced by providing for reasonable penalties.

HIGHWAYS**Opinion 2431-53**

Adolph Zulian
 Department of Highways
January 16, 1953

The highway department is not legally obligated to provide culverts in the portions of a ditch which have not been used for many years.

COSMETOLOGY**Opinion 2432-53**

Department of Cosmetology

January 19, 1953

Under Sec. 14, Chap. 19, 1935 C.S.A., it is not necessary for a properly licensed barber to hold a cosmetology license to do shampooing.

PUBLIC UTILITIES**Opinion 2433-53**

Max Kaitz, Chairman

Colo. State Legislative Committee

January 23, 1953

(Unfit and unsanitary express cars)

Under Art. 4, Sec. 25, Chap. 137, 1935 C.S.A., the Public Utilities Commission would have authority to investigate and make findings and orders relative to unfit or unsanitary express cars.

PUBLIC UTILITIES—CORPORATIONS—EMPLOYEES**Opinion 2434-53**

Hon. Sam T. Taylor

State Senator

January 26, 1953

(Private and quasi-private corporations—pay days)

Since railroads are private corporations in nature they are subject to Secs. 200, 201 and 207, Chap. 97, C.S.A. 1935, covering time of payment of wages to employees.

PROBATE LAW—COUNTY JUDGE**Opinion 2435-53**

Charles H. Allen, Attorney

January 27, 1953

Whenever two persons hold as joint tenants with the right of survivorship, upon the death of one, the whole interest passes to the survivor. But this right does not extend to growing crops nor to crops already harvested. *Pritchard v. Walker*, 22 Ill. App. 286, 121 Ill. 221.

GAME AND FISH**Opinion 2436-53**

State Game and Fish Commission

January 29, 1953(Complimentary subscriptions of
Conservation Magazine)

Unappropriated funds from the game cash fund to the Department of Education Division may be used to purchase complimentary subscriptions of the Conservation Magazine, as part of the Division's educational program, as limited by action of the commission under date of April 11, 1951.

TAXATION—STATE COLLEGES**Opinion 2437-53**

Senator Leonard M. Bentley

January 30, 1953

The property of a foreign state university located within the state and used for educational purposes would come within the exemptions of Sec. 22, Chap. 142, 1935 C.S.A. without further legislation.

CIVIL SERVICE RETIREMENT**Opinion 2438-53**

Hon. F. R. Carpenter

State Representative

February 6, 1953

Neither the legislature nor the civil service commission can force retirement of persons within the classified civil service except upon the grounds specified in Sec. 13, Art. XII, State Constitution.

LEGISLATION—GOVERNOR—OIL AND GAS—TAXATION**Opinion 2439-53**

Honorable Dan Thornton

February 9, 1953

(Re severance tax on oil and gas)

1. A severance tax imposed on oil and gas produced in the State of Colorado would be an excise tax, which would not be subject to constitutional allocation.

2. Under Colo. Constitution, which permits classifications, a larger percentage or rate of income tax could be levied against income from the production of oil and gas in this state than is levied against income from other persons or corporations.

3. It is my opinion that such a tax could not be levied in lieu of ad valorem taxes now levied upon the leasehold and royalty rights of producing oil companies.

4. The ad valorem tax now levied on leasehold rights is a tax on real estate, and is subject to uniformity provisions of the state constitution. A replacement of this tax by either a severance tax or an income tax would be governed by the conclusion in No. 3 above. The same would apply to a tax levied on a royalty interest.

5. Such an allocation to counties and school districts for school and county purposes cannot be made as the same would be violative of Sec. 7, Art. X of the constitution. However, a portion of the monies realized from a severance tax may be allocated to school districts or to counties from the general fund so long as the General Assembly, by declaration of policy, considers the same to be for general state purposes and such counties or districts are used merely as distributing agents for the expenditure of such monies.

LEGISLATION—PUBLIC INSTITUTIONS

Opinion 2440-53

J. Price Briscoe, Director

Dept. Public Institutions

February 9, 1953

The legislature must expressly confer power upon the home and training schools at Ridge and Grand Junction to purchase land for use of the school before expenditures can be made from the appropriations.

At present no such substantive authority exists at either Ridge or its Grand Junction addition (Sec. 55, Chap. 105, 1935 C.S.A.)

DEPARTMENT OF EMPLOYMENT SECURITY

Opinion 2441-53

Bernard E. Teets

Executive Director

February 11, 1953

The Benefits Account in the bank should be transferred from the Industrial Commission to the Department of Employment Security. Rescinding former opinion dated November 9, 1938, since the act was amended in 1941.

CIVIL SERVICE

Opinion 2442-53

State Civil Service Commission

February 17, 1953

Your question No. 14 on application for examination concerns itself entirely with the practicality of the language used in eliciting

factual information as to applicant's prior political activities and involves a question of fact and not of law.

MOTOR VEHICLES—SCHOOL FOR DEAF AND BLIND

Opinion 2443-53

A. L. Brown, Superintendent

School for Deaf and Blind

February 17, 1953

A bus owned by the School for Deaf and Blind and used in the transportation of pupils to and from concerts, athletic events, etc. is a school bus within the meaning of the motor vehicle laws. Persons who operate such bus for the described purposes are required to obtain a special chauffeur's license, but are not subject to regulations of the State Board of Education governing the qualifications of school bus drivers.

COUNTIES

Opinion 2444-53

Hume S. White, County Attorney

February 17, 1953

(Formation of cemetery district
in two counties)

The formation of a cemetery district to serve Pitkin and Eagle counties could not be formed under the authority of Chapter 45C, 1935 C.S.A., as amended.

CITIES AND TOWNS

Opinion 2445-53

O. F. Adams, City Attorney

February 20, 1953

(Financing of city sewage district)

The town of Trinidad may extend its sewer mains to an impecunious area of town which is unable to finance a sewer district. Such extension may be accomplished under Secs. 28-41, Chap. 163, 1935 C.S.A. or under Sec. 10, Chap. 163, 1935 C.S.A., or under Chap. 45, Secs. 231-241, 1935 C.S.A. In view of the available methods, it would be a useless fiction for the city as an entity to borrow from its own general fund for the purpose of constructing such lines.

**UNIVERSITY OF COLORADO—
FAIR TRADES**

Opinion 2446-53

Robert I. Hislop
Asst. to Business Manager
February 20, 1953

The bookstores of the University of Colorado in our opinion are not subject to the Fair Trade Act.

STATE PENITENTIARY

Opinion 2447-53

Harry Tinsley, Acting Warden
February 20, 1953
(Computation of time)

“If a statute providing for credits to a prisoner for good behavior is capable of two constructions, that construction should be adopted which would entitle the prisoner to his discharge at the earliest time.” (Ex parte Blocker, 69 Colo. 259.)

SCHOOLS

Opinion 2448-53

Mr. Dean Johnson
County Attorney
February 23, 1953

A county or school district may legally become a member of a mutual insurance company or association and purchase or secure proper policies of fire and liability insurance from such companies.

CITIES—POLICEMEN'S PENSION

Opinion 2449-53

John H. Marsalis
City Attorney
February 24, 1953

A policeman who has served for a period of twenty years and has reached the age of sixty years required under the provisions of Chap. 163, 1935 C.S.A. may elect to accept a pension based on age and service or he has the right, if he also qualifies, to request instead a pension based on disability.

GOVERNOR—LEGISLATION

Hon. Dan Thornton
February 25, 1953

Opinion 2450-53

(Governor's action re concurrent resolutions)

No action on the part of the governor is necessary in connection with a concurrent resolution which has been properly adopted by the general assembly.

MOTOR VEHICLES—ESTATES

Clyde P. Fugate, Director

Opinion 2451-53

Department of Revenue

February 27, 1953

(Transfer of ownership of motor vehicle by request or by intestacy)

Sec. 12, Chap. 114, S.L. 1949, provides only that upon transfer of ownership of a motor vehicle by bequest or by intestacy, a new certificate of title may be issued to the applicant "upon presentation of such proof of ownership of such vehicle as the Director may reasonably require."

LEGISLATURE—PUBLIC UTILITIES COMMISSION

Hon. Clayton B. Knowles

Opinion 2452-53

State Representative

February 27, 1953

(H.B. 115, 39th General Assembly)

After examination of H.B. 115 and upon review of various sections of Art. IV, Chap. 137, 1935 C.S.A., and especially Section 30 of the within statute, it is our opinion that Section 30 authorizes and empowers the Public Utilities Commission to make rules to promote the public safety by public utilities. Such requirements are included within Sec. 30 and are the same as would be embodied in the proposed H. B. 115.

COAL MINES

Thomas Allen, Chief Inspector

Opinion 2453-53**March 4, 1953**

From the passage of Chap. 56, S. L. 1913 to and including Chap. 228, S.L. 1951, it has been and is the expressed intent of the legislature that "All buildings and structures erected within three hundred feet of any mine opening shall be made of fireproof material"; that this would include the tipple, shaft head frame, and all other structures within 300 feet of the mine opening.

**UNIVERSITY OF COLORADO—
CITIES AND TOWNS**

University of Colorado

Opinion 2454-53**March 9, 1953**

The use of state-owned property is controlled by a municipal zoning ordinance and it must meet the conditions into which it moves or be prepared to support its action within the bounds of Secs. 14 and 15, Art. II, Colo. Const.

CIVIL SERVICE—EMPLOYEES**Opinion 2455-53**

James R. Miller, Secretary
 State Board of Agriculture
March 11, 1953

Retirement of civil service employees at age of 70 is not compulsory.

LEGISLATURE—SALARIES AND FEES**Opinion 2456-53**

Hon. Peter Culig, Jr.
 State Senator
March 12, 1953

The terms of the senators elected in November, 1948, and the representatives elected in November, 1950, continue until the convening of the session of the legislature on January 6, 1953, and are entitled to the compensation attached to the legislative offices up to, but not after, midnight of January 6, 1953.

SCHOOLS—PUBLIC RECORDS**Opinion 2457-53**

Burtis E. Taylor
 Acting Commissioner of Education
March 16, 1953

Minutes of executive session of board of education are public records and subject to inspection under reasonable regulation.

**GAME AND FISH
 CONTROLLER
 STATE AUDITOR**

Opinion 2458-53

Thomas L. Kimball
 Executive Director
March 17, 1953

(Use of prenumbered receipt books)

Chap. 153, Sec. 82, 1935 C.S.A. which required the use of pre-numbered receipt books, has been repealed by Sec. 9 of Chap. 118 of the S.L. 1947, also known as the Administrative Code of 1947. The use or non-use of pre-numbered receipt books is therefore an administrative matter to be worked out with the State Auditor and Controller as to details.

**HEALTH
COUNTY COMMISSIONERS**

Dr. Crozier S. Hart **Opinion 2459-53**
 Health Officer
 Trinidad, Colorado
March 18, 1953

(Compensation of employees of
 District Health Department)

The Health Officer of a district health department has the power to fix compensation and expense allowances, with the approval of the board of health, for all employees of a district board of health.

LAND BOARD—CONTRACTS

Board of Land Commissioners **Opinion 2460-53**
March 20, 1953

(State Leases No. 25202 and 25209)

Chap. 134, Sec. 101, 1935 C.S.A. forbids the sale of state lands which are covered by immunity leases except by voluntary surrender of the lease or by cancellation of the leases thru breach of covenant. Sec. 64, Chap. 134, 1935 C.S.A. prohibits the sale of state land within the boundaries of city limits during the term of the lease except upon application by the lessee.

GAME AND FISH—CONTRACTS

Game and Fish Commission **Opinion 2461-53**
March 20, 1953

(Exchange agreement
 Sprague Brothers etc. known
 as the Tamarack Ranch)

Where an "exchange of use" contract does not expire until 1954, but the other contracting parties have breached the contract, such contract may be declared terminated and the premises be let to other parties or the commission can ignore the breach and continue to use the exchanged land as during the preceding years until the lease has expired by lapse of time. This is an administrative question and not one of law.

CITIES AND TOWNS

Ruth Rous **Opinion 2462-53**
 City Attorney
March 23, 1953

Sec. 110, Chap. 163, 1935 C.S.A. applies only to incorporated towns.

MEDICAL EXAMINERS

Board of Medical Examiners **Opinion 2463-53**
March 26, 1953

The requirement of citizenship for medical licensure provided for in Sec. 7 (2), Chap. 227, S.L. 1951 (Medical Practices Act) does not apply to Italian nationals because of the Treaty of Friendship, Commerce and Navigation of 1948 between the United States and Italy. The treaty being the supreme law of the land.

PLANNING COMMISSION

State Planning Commission **Opinion 2464-53**
March 23, 1953

Chap. 163, S. L. 1947 repeals Chap. 90, S. L. 1945.

**COUNTY JUDGES—COUNTY CLERKS
FEES AND SALARIES**

Harry F. Anderson **Opinion 2465-53**
 County Attorney
March 25, 1953
 (See No. 2412-52)

The conclusions expressed herein are advisory only.

1. Fees collected by clerk of county court must be deposited with the county treasurer, as is prescribed by law.
2. Said fees should be deposited with the county treasurer, and such clerk as is appointed by the county judge should be paid from the county general fund such salary or compensation as the county judge may fix *with the approval of the county commissioners.*

WESTERN STATE TEACHERS COLLEGE

Western State Teachers College **Opinion 2466-53**
March 27, 1953

Western State College may lease college lands to fraternities for the purpose of erecting fraternity houses thereon. Such leases may be for terms of not more than fifty years, and at the end of such lease the improvements erected thereon by the fraternities will become the property of the college.

LAND BOARD

State Board of Land Commissioners **Opinion 2467-53**
March 27, 1953

The State owns the mineral underlying a dispute area discovered in a 1917 resurvey of an area. The title of the State preceded the title of the disputing land owners and no adverse possession may run against the State.

**STATE BOARD OF AGRICULTURE
CIVIL SERVICE**

James R. Miller, Secretary

Opinion 2468-53

March 27, 1953

A policy of compulsory retirement at age 65 can only be applied to those who are not within the classified civil service of the state of Colorado.

LAND BOARD—FEDERAL

Board of Land Commissioners

Opinion 2469-53

March 30, 1953

Board of Land Commissioners may not voluntarily sell school lands to the Federal government other than by public sale as provided in the statutes.

SCHOOLS—LEGISLATURE

Burtis E. Taylor

Opinion 2470-53

Acting Commissioner of Education

(Teachers' Emeritus Retirement)

March 30, 1953

Neither Ch. 274, S.L. 1951, nor Sec. 6, Ch. 2, S.L. 1941, prohibits a person who is receiving retirement benefits from being employed by the state legislature .

BASIC SCIENCES

State Board of Examiners
in the Basic Sciences

Opinion 2471-53

March 31, 1953

The Basic Sciences Board may, under Chap. 109, 1935 C.S.A., adopt the following procedure—if an applicant fails one subject he repeats only that subject in the following examination; if he fails that one subject on re-examination he is required to take the entire examination in his next attempt.

HEALTH—COUNTIES

R. L. Cleere, Executive Director

Opinion 2472-53

March 31, 1953

Unexpended balances from funds appropriated by board of county commissioners to district health departments should be credited on budgets for appropriation by the member counties of a district health department and they should not be returned to the counties for reappropriation.

COMMISSIONER OF MINES

Walter E. Scott, Jr.

Opinion 2473-53**April 1, 1953**

The C. F. & I. Minnequa Plant should be inspected by the commissioner of mines insofar as it is a smelter or a metallurgical plant. Smelting is easily definable, the dividing line between metallurgy and manufacturing is a question of fact. (See Opinion No. 2400-52.)

**COUNTIES—COUNTY JUDGES—CLERKS
FEES AND SALARIES**

J. T. Martinez

Opinion 2474-53

County Judge, Archuleta County

April 6, 1953

1. In counties of the 4th, fifth and sixth classes, the county judge can appoint a clerk and fix his salary, with the approval of the board of county commissioners.
2. A county judge, irrespective of the class of the county, can also act as the clerk of the county court if he elects to do so.
3. The clerk of the county court in counties of the 1st to fifth classes, inclusive, are to be paid their compensation from the county ordinary county revenue.
4. The clerk of the county court in counties of the sixth class are to be paid from the fees of the office only.

LAND BOARD—LEGISLATION

State Board of Land Commissioners

Opinion 2475-53**April 9, 1953**

Chap. 177, S.L. 1953, pertaining to the readjustment of land rentals calls for a mandatory resetting of rents annually during the term of a grazing lease. Rent should be modified at the end of the lease year rather than at the end of the calendar year.

DEPARTMENT OF AGRICULTURE

John A. Miller, Chief

Opinion 2476-53**April 9, 1953**

Any person who sells, offers or exposes for sale, or distributes in Colorado any commercial feeding stuffs not bearing the certified statement required by Sec. 214, Chap. 160, 1935 C.S.A. is guilty of a misdemeanor. Jobbers are specifically subject to prosecution, and truckers who make distribution, as distinguished from mere delivery, may also be prosecuted. Brokers, acting as such, are not regarded as subject to the law, regulating commercial feeding stuffs.

CITIES AND TOWNS

Charles H. Allen, Attorney
Alamosa, Colorado

Opinion 2477-53

April 13, 1953

1. The council may not reduce the number of councilmen and leave the wards as they are at present.

2. The council may reduce the number of wards not oftener than once in six years.

3. The council may provide for an additional ward if the present wards do not exceed five, provided such addition does not involve a change of boundaries of existing wards within a six year period.

4. The number of councilmen in a ward may not be changed.

**SCHOOL OF MINES—LEGISLATION
FEDERAL**

Gurnett Steinhauer
Business Manager

Opinion 2478-53

April 13, 1953

(Project No. Colo. 5-CH-1 Dormitory Building)

1. (a) House Bill 234 became effective March 12, 1953.

1. (b) The dining hall is not such a building as is referred to in Sec. 2 of H.B. 234 as being built from appropriated funds.

2. (a) The School of Mines is made a body corporate by statute. Its Board of Trustees have authority to covenant to and prescribe rules to assure maximum occupancy of the proposed project.

2. (b) Any rules for occupancy of this project would have no effect upon any covenant in connection with the Mines Park Housing Facility Bond Issue as such facility is not used for housing of students.

2. (c) The School of Mines as a body corporate, or its Board of Trustees, could not covenant against the adoption by any future Board of Trustees of any parietal rules with respect to said existing dormitory or future dormitories that would favor the use of such dormitories over this project.

GAME AND FISH—WATER

Thomas L. Kimball, Director

Opinion 2479-53

April 15, 1953

1. The waters of Two Buttes Creek, although tributary to the Arkansas River downstream from John Martin Reservoir, are

subject to the provisions of the Arkansas River Compact and to the Arkansas River Compact Administration. Development of any such waters not previously adjudicated should be undertaken only after consultation with the administration.

2. Where the owner of a reservoir fails over a period of years to maintain the dam in such condition as to accommodate the decreed capacity, and therefore fails to divert the decreed amount even when there is sufficient water available, junior appropriators may be justified in protesting future attempts to store to the decreed capacity of the reservoir on the grounds of abandonment of the difference between decreed capacity and past physical capacity.

3. and 4. Where water is diverted into a reservoir under a decree for agricultural use, and is retained in the reservoir for fish culture and recreational purposes, the retention amounts to a chance of use to which the appropriator is entitled only if the vested rights of others are not injuriously affected. The purchase of agricultural lands for the purpose of obtaining water decreed for irrigation, and then using such water principally for fish culture, is such a change of use.

LAND BOARD—CONTRACTS

Opinion 2480-53

State Board of Land Commissioners

April 15, 1953

The board may as a matter of policy cancel Mr. Toll's contract or it may bring an action for specific performance of the contract.

MOTOR VEHICLES

John C. Banks, City Attorney

Opinion 2481-53

Denver

April 15, 1953

Motor vehicles operated by dealers for their own private use must be registered the same as any other private automobile, and such motor vehicles are not entitled to be privately operated with the single number plate authorized by Sec. 144, Chap. 16, 1935 C.S.A.

BANK COMMISSIONER

Frank E. Goldy

Opinion 2482-53

April 15, 1953

The establishment of a consumer credit department across the alley from the main banking quarters of a bank which is connected by an underground tunnel does not constitute a branch bank within the prohibition of Chap. 89, 1951 S.L.

LEGISLATURE—GAME AND FISH

Hon. G. E. Kimble **Opinion 2483-53**
State Representative
April 16, 1953

1. Since the office of game commissioner is an appointive civil office under the state, no state senator or representative can be appointed to that office "during the term for which he was elected" to the legislature.

2. The bar of Sec. 8, Art. V, Colo. Const. runs against the appointment to any civil office, and not the election to a civil office.

FORT LEWIS SCHOOL—LEGISLATURE

James R. Miller, Secretary **Opinion 2484-53**
State Board of Agriculture
April 17, 1953

The Fort Lewis School, as well as its purposes, was established by the Colorado legislature. It will take the same legislative action to move the school or change its purposes.

LIQUORS

Hon. Homer M. Bruce **Opinion 2485-53**
Secretary of State
April 17, 1953

Where a general partnership is licensed under the provisions of the Liquor Code of 1935, as amended, the Secretary of State would be justified in requiring a new license in the event of any subsequent change in the composition of the membership of such partnership. Where the licensee is a limited partnership, a new license would be required upon any change in the composition of the general partners, but would not be required merely because of the death, withdrawal or assignment of interest of a limited partner nor because of the addition of new limited partners.

LEGISLATION—ESTATES

Allen and Allen, Attorneys **Opinion 2486-53**
Akron, Colorado
April 17, 1953

Sec. 2, H.B. 345, S.L. 1953, amending Sec. 211, Ch. 176, 1935 C.S.A. must be deemed prospective in operation, and cannot be effective in estates of persons who died prior to the effective date of the act, to-wit, March 31, 1953. (Chap. 252, S.L. 1953.)

**COUNTY JUDGE—FEES AND SALARIES
LEGISLATION**

Howell W. Cobb **Opinion 2487-53**
County Attorney
April 20, 1953

After March 31, 1953, a county judge is entitled to the increased salary fixed by H. B. 324, S.L. 1953.

JUNIOR COLLEGES—SCHOOLS

Burtis E. Taylor **Opinion 2488-53**
Acting Commissioner of Education
April 22, 1953

(Junior College Committee—election of members of)

The election of members and the filling of vacancies of a junior college committee formed prior to the passage of Ch. 215, S.L. 1951 (April 2, 1951), may be accomplished by the method outlined in Sec. 9, Ch. 237, S.L. 1937, as amended by Sec. 1, Ch. 227, S.L. 1947, as amended by Sec. 1, Ch. 215, S.L. 1951, if the committee so elects, or by the procedure outlined in the other sections of said chapter and applicable to junior college committees formed either prior to or subsequent to the enactment of said Ch. 215.

TAXATION—COUNTIES

Edward H. Stinemeyer **Opinion 2489-53**
County Attorney, Fremont County
(Summer Geological camps—taxation of)
March 27, 1953

Property of above camps established in Fremont County would be exempt from taxation under the provisions of Sec. 22, Ch. 142, 1935 C.S.A.

COURTS—HIGHWAY DEPARTMENT—FEES

Mark U. Watrous **Opinion 2490-53**
Department of Highway
(Jury and mileage fees—Peo. ex rel. Watrous v. Crowley, et al.)
April 21, 1953

Where neither of the parties called for a jury but the court of its own volition empaneled a jury to assist it in the trial of the cause, the highway department, as the losing party, is not liable for the per diem and mileage fee of this jury panel.

LEGISLATION—WATER CONSERVATION BOARD**Opinion 2491-53**

Ivan C. Crawford, Director

Colorado Water Conservation Board

(Well drillers bond, Chap. 246, S.L. 1953).

April 24, 1953

The qualifications of the sureties and the form of the bond required of well drillers under the provisions of Section 5 of Senate Bill 120 of the 39th General Assembly should be approved by the Colorado Water Conservation Board.

Any person operating in Colorado as a Well Driller within the meaning of said Senate Bill 120 must be licensed in accordance with the provisions of Section 4 (a) of said act irrespective of whether such operations are performed within or without the boundaries of a district established by the Colorado Water Conservation Board. Those operating outside the boundaries of such a district are not, however, subject to any rules or regulations of the board promulgated pursuant to Section 14.

**COUNTY COMMISSIONERS—
NEWSPAPERS**

William S. Rush

Opinion 2492-53

County Attorney

April 28, 1953

(Publication of proceedings)

Sections 45-48, Chap. 45, 1935 C.S.A. relate to the publication of the proceedings of the board of county commissioners and it is the clear intent of these sections of the law that such publication shall be made in such detail as will fully advise the people of that county of those expenditures.

**STATE ENGINEER—LEGISLATION—
WATER CONSERVATION BOARD**

M. C. Hinderlider

Opinion 2493-53

State Engineer

April 29, 1953

Chap. 246, S.L. 1953, is applicable to all water wells having a capacity in excess of 3 gallons per minute, and is not limited to artesian wells.

There is no authorization in law for the filing of maps and statements for the appropriation of water from wells of any type with the Colorado Water Conservation Board.

LEGISLATION—RACING COMMISSION**Opinion 2494-53**

B. T. Poxson, Vice Chairman

Racing Commission

May 1, 1953

The Racing Commission is vested with policing power under Chap. 187, S.L. 1953.

**SCHOOLS—FEDERAL—LEGISLATION
COUNTY COMMISSIONERS****Opinion 2495-53**

W. Jarrard Jones, County Attorney

(Apportioning the Moneys, etc. pursuant to Sec. 35, Federal Oil Leasing Act of February 25, 1920 etc.)

May 1, 1953

1. The county public school fund is made up of the proceeds of the county levies and other monies allocated by the legislature to such fund, including such percentage (not less than 25% of the Federal Oil Leasing Act funds, as may be allocated by the county commissioners to said "county public school fund" under H.B. 442, S.L. 1953 (Sec. 7, Ch. 59, S.L. 1952)).

2. The "County school fund" is to be distributed to "each eligible district in a county" by the state Board of Education, pursuant to Sec. 12, Ch. 59, S.L. 1952.

3. The matter of determining which are "eligible districts" is a matter of discretion vested in the State Board, under the statute, and is not for this office to determine as a matter of law (sec. 12, ch. 59, S.L. 1952).

4. The formula for the distribution of the County Public School Fund is set up by Ch. 59, S.L. 1952, as amended, and the State Board of Education must be guided by this law in making their distribution of this fund.

LAND BOARD—CONTRACTS**Opinion 2496-53**

Board of Land Commissioners

May 4, 1953

A written receipt subscribed by the board of land commissioners' agent, which receipt refers to an application for sale of certain land, constitutes an enforceable contract for the sale of land, outside of the statute of frauds.

HEALTH—COUNTIES**Opinion 2497-53**

Raymond Gordon
Welfare Council, Inc.

May 4, 1953

A county or district health department may accept donations for local health purposes, but it may not make mandatory charges for such services. (Public health nursing services involved.)

HEALTH—FEDERAL**Opinion 2498-53**

R. L. Cleere, Executive Director
Department of Health

May 4, 1953

Privately owned land which lies within the outer boundaries of a national park, but which was expressly excluded from the park in its creative statutes, is subject to state restaurant law jurisdiction.

COUNTIES—TAXATION**Opinion 2499-53**

Levi Martinez
Attorney at Law
Alamosa, Colorado

May 4, 1953

Sec. 249, Ch. 142, 1935 C.S.A. as amended, is only applicable to situations where the county has held tax sale certificates for less than eight years.

In situations where the county has held the tax sale certificates for eight years or more, and "in the opinion of the board of county commissioners such real estate is not used, operated or maintained wholly or in part in the interest or for the benefit of the public, said board shall apply for and receive tax deed or tax deeds therefor", and shall thereafter proceed under Secs. 211 and 211(1) Ch. 142, 1935 C.S.A., as amended, if such premises are to be sold.

PUBLIC INSTITUTIONS—SCHOOLS—CHILDREN**Opinion 2500-53**

Burtis E. Taylor
Acting Com. of Education

May 4, 1953

Inmates of state institutions, over six years and under twenty-one years of age, who were bona fide residents of the county

from which committed at the time of commitment and over whom the courts of that county still retain jurisdiction, are required to be included in said school census.

Bona fide residence of the committed inmate was and is the county, and that school district within the county, in which the inmate was a bona fide resident at the time of his court commitment to the state institution. (See also Opinion Nos. 9-1931 and 999-1947.)

LAND BOARD

Opinion 2501-53

State Board of Land Commissioners

May 6, 1953

Peat is a "mineral" within the meaning of a mineral reservation in the patents, and the State of Colorado owns the peat in Patent Nos. 3620 and 4447. (See Opinion 2743-54.)

TAX COMMISSION

Colorado Tax Commission

Opinion 2502-53

May 6, 1953

The provisions of Sec. 166, Ch. 142, 1935 C.S.A. are mandatory in character and must be respected by courts, attorneys and laymen alike; that all documents supplied the Commission under the statute are private documents, furnished by the corporations to the Commission for the sole use of the commission "for assessment purposes", and none other; that the commission cannot open its files or furnish information therefrom to the State Board of Equalization, or its agents or examiners, without express waiver from the corporations concerned. Sec. 1, H. B. 474, S.L. 1953, in no way amends or repeals said Sec. 166.

LEGISLATURE—DISTRICT ATTORNEY

W. C. Kettelkamp, Jr.

Opinion 2503-53

District Attorney

May 6, 1953

(Creation of 16th Judicial District, Chap. 81, S.L. 1953.)

The district attorney and his deputies occupy civil offices under the state and as such exercise the duties of their offices until their successor or successors are qualified.

The district attorney and his deputies are entitled to such salaries as they were drawing at the time the said 16th Judicial District was created; until such time as their successors are appointed and qualified; payment thereof should be in the same manner as prior to the creation of said 16th Judicial District.

HEALTH

Department of Public Health

Opinion 2504-53**May 8, 1953**

The tuberculosis control program personnel are not subject to civil liability when operating within their statutory authority.

GAME AND FISH

Game and Fish Department

Opinion 2505-53**May 11, 1953**

In holding a drawing for certain types of licenses in which the applications will far exceed the licenses actually issued, it is a matter of administration and covered by the Controller's Fiscal Rule No. 12, issued by the Controller pursuant to authority granted to him under Sec. 3 (1), Ch. 118, S.L. 1947, whether the department can accept a certified check or money order, and if the particular applicant is not successful in the drawing of a license endorse the certified check back to the applicant.

**TAX COMMISSION
LEGISLATION**

Colorado Tax Commission

Opinion 2506-53**May 11, 1953**

(State's reappraisal program, Chap. 191, S.L. 1953.)

1. S.B. 292 does not directly repeal any prior act, but it and the prior related acts must be read and construed together, and effect given to all parts thereof insofar as possible; where the acts are in direct conflict, S.B. 292 must prevail during its lifetime; S.B. 292 is a temporary statute, limited to "taxes and assessments for the year 1952", and when the emergency for which it was created ceases to exist, the act itself ceases and the other related acts operate fully and without further impediment by said S.B. 292.

2. Sec. 1 (b) of S. B. 292 plainly states the procedure to be followed before the county assessor, as well as before the board of county commissioners, and does not need to be enlarged upon.

3. Insofar as abatement proceedings are filed under S.B. 292 and within the time there prescribed by this act, the State Tax Commission has no function to perform, and does not approve or disapprove the same.

4. Since Sec. 1(f) of said S.B. 292 does not make mention of the Colorado Tax Commission, the words "*and pays such taxes within ten days after board determination thereof*" limits the period to the action of the board of county commissioners

5. Sec. 1(d) sets up the valuation upon which the county treasurer collects the tax. If he accepts the tax as so abated, he and his sureties "are released from all liability for accepting less than the full amount due for interest and penalties." (Sec. 1(e) S.B. 292, S.L. 1953).

6. Sec. 1(f) clearly shows it is only where the petitioning "taxpayer has a bona fide and just claim, and pays such taxes within ten days after board determination thereof" that he is exonerated from paying interest and penalties.

7. The statute plainly shows the filing of a general petition does not exonerate the petitioner from paying his taxes or accrued penalties. The statute is to aid those taxpayers who have a "bona fide and just claim", and not those whose claims are unfounded or fanciful in character.

**COURTS—LIQUORS—DISTRICT ATTORNEY
CHILDREN—LEGISLATION**

Robert C. Duthie

Opinion 2507-53

Deputy District Attorney

May 14, 1953

(Chap. 147, S.L. 1953.)

Children under the age of 18 who violate Chap. 147, S.L. 1953, must be taken, by petition, into juvenile court under Sec. 53, Ch. 33, 1935 C.S.A., rather than into district, county or justice courts under Secs. 2 and 3 of said Chap. 147. (Sec. 55; Kahm v. Peo. 83 Colo. 300). See Opinion 2649-54.

**REVENUE—TAX COMMISSION—SOLDIERS AND SAILORS
FEDERAL**

Clyde P. Fugate, Director

Opinion 2508-53

Department of Revenue

May 18, 1953

1. The specific ownership tax required by Ch. 16, 1935 C.S.A. is a privilege or excise tax and comes within Sec. 574(2), Title 50 App'x, U.S.C.A.

2. Military personnel are required to pay this privilege tax as a condition precedent to obtaining Colorado auto registration and license plates.

3. The making of application and obtaining of Colorado license plates by military personnel does not fix their residence as Colorado.

4. Other qualifications being met, the State of Colorado cannot refuse to issue Colorado registration license plates to military personnel because of non-residence.

**FEDERAL—CITIES AND TOWNS
TAXATION****Opinion 2509-53**

Arthur E. March
City Attorney
May 20, 1953

The definition of a landowner, as set forth in Sec. 293(8), Ch. 163, 1935 C.S.A. cannot include the federal government, as it has not and cannot become liable for the payment of general property taxes, as defined in the statute.

ARCHITECTS—LEGISLATION**Opinion 2510-53**

Earl C. Morris, Secretary
May 21, 1953

(New Architects' Law, Chap. 38, S.L. 1953.)

Chap. 38, S.L. 1953, transferred all moneys, except the ten per cent or any part thereof, as may be due the general fund from the fund designated the "Fund of State Board of Examiners of Architects" to the fund created by said bill and said money is available to the board for the fiscal year 1953-54.

**STATE CONTROLLER—
EMPLOYEES RETIREMENT
RACING COMMISSION****Opinion 2511-53**

James E. Noonan
State Controller

(Harry W. Hughes—retirement status of)

May 21, 1953

Payments made to Mr. Hughes by the Racing Commission during the years 1949 and 1950 can not be added to those made by A. & M. College for the same periods in order to fix the base upon which to calculate state retirement contributions and retirement benefits.

Payments made to Mr. Hughes by the Racing Commission during the summers of 1951 and 1952 can be added to those made by A. & M. College for the same periods in order to fix the base upon which to calculate state retirement contributions and retirement benefits.

**EMPLOYMENT SECURITY—
JUSTICES OF THE PEACE**

Opinion 2512-53

A. K. Carruth
Deputy County Clerk
Fort Morgan, Colo.
May 25, 1953

Justices of the peace and constables are proper recipients of the benefits under the old age and survivors' insurance law and are subject to contributions pursuant to said law.

**CITIES AND TOWNS—ELECTIONS
LIQUORS**

Opinion 2513-53

John C. Banks
City Attorney
Denver, Colo.
June 1, 1953

Liquor-selling establishments are not required to close during polling hours on the special election to be held in Denver on June 16, 1953.

MEDICAL BOARD

Opinion 2514-53

State Board of Medical Examiners
June 2, 1953

Under Sec. 4, Ch. 237, S.L. 1947, amending Sec. 7, Ch. 138, S.L. 1943, the board can license an applicant to practice chiropraxy in Colorado without taking examination required by Sec. 3 upon submission to it of certain factual matters. All these matters are matters of fact and not of law, and call for the exercise of a sound discretion by the board.

**UNIVERSITY OF COLORADO—
PUBLIC FUNDS**

Opinion 2515-53

University of Colorado
June 3, 1953

Board of Regents cannot pay a reward out of state funds. (See Opinion 1746-50). Reward can be paid from a private fund, if such there be, under control of Regents.

SECRETARY OF STATE—CITIES AND TOWNS**Opinion 2516-53**

Edward O. Geer

Manager of Safety and Excise

June 4, 1953

The mere holding of a state detective license does not imply permission for the licensee or employees or agents of such licensee to carry a concealed weapon. Authorization for the carrying of a concealed weapon must be obtained from the authorities designated in Sec. 245, Chap. 48, 1935 C.S.A. Sec. 5, Chap. 54, 1935 C.S.A. specifies that only the person, firm, or corporation to whom a license shall have been issued shall be registered with the Secretary of State.

COUNTY COMMISSIONERS—VETERANS**Opinion 2517-53**

William N. Rice, Director

Department of Veterans Affairs

June 8, 1953

(County Veterans' Service Officer)

Boards of county commissioners have the sole control over the activities of county veterans service officers and the only conditions the department of veterans affairs may require precedent to reimbursing a county general fund for the salary and expenses incurred by such officer, within the statutory limitations as to amount, are that such officer has been appointed, is serving in such capacity and that moneys have been previously disbursed out of the county general fund for his salary and expenses and expenses of his office.

**FEDERAL—CITIES AND TOWNS—
WATER****Opinion 2518-53**

O. F. Adams, District Attorney

Trinidad, Colorado

June 9, 1953

(Pinon Canyon Proposed Flood Control Project)

The City of Trinidad as a municipality can comply with Sub-sec. (b), Sec. 3 of the Flood Control Act of June 22, 1936 (Title 33, Sec. 701(e), U.S.C.A.) and can enter into a contract to "hold and save the United States free from damages due to the construction work" in connection with The Pinon Canyon Proposed Flood Control Project at Trinidad, Colo.

**CONTROLLER—LEGISLATION—STATE OFFICERS
FEES AND SALARIES**

James A. Noonan **Opinion 2519-53**
 State Controller
June 9, 1953
 (Chap. 104, S.L. 1953)

Where the legislature, by statute, fixes the salary to be received by a public officer, it operates as a continuous appropriation therefor, and no further legislation is necessary to authorize the controller or the other state officers to pay the same.

LIQUORS

Hon. Homer M. Bruce **Opinion 2520-53**
 Secretary of State
June 12, 1953

The fact that liquor licensed drug stores own stock in and control an independent general cooperative association for the purchase of merchandise other than alcoholic liquors and fermented malt beverages, does not make such association "interested financially" in the drug stores nor the owner of a member drug store "interested financially" in the other drug stores within the meaning of Sections 7 and 28, Chap. 89, 1935 C.S.A. as amended.

HIGHWAY DEPARTMENT—TAXATION

Mark U. Watrous, Chief Engineer **Opinion 2521-53**
 Colo. Department of Highways
June 15, 1953

When the department acquired the lands on November 16, 1949, the lands were not only subject to the lien of the 1948 general taxes, but the lien for the 1949 taxes had attached as of March 1, 1949.

While the property passed to the department, subject to the lien, there is no way to enforce the lien by sale so long as the property is owned and used by the department.

INSURANCE

Luke J. Kavanaugh **Opinion 2522-53**
 Commissioner of Insurance
June 15, 1953
 (Health Service, Inc., an Illinois corporation)

Health Service, Inc. is eligible for admission to transact its business in Colorado if it otherwise meets the requirements of Chap. 87, 1935 C.S.A.

LIQUORS

John H. Marsalis
City Attorney
Pueblo, Colorado
June 15, 1953

Opinion 2523-53

The words "so convicted" in subsection (f), Section 25, Chapter 89, 1935 C.S.A., as amended, refer to the immediate antecedent qualification of the word "convicted" in subsection (d), and Section 25 does not prohibit persons convicted of felonies, other than those involving liquor law violations, from being employed by or from assisting or financing a person licensed under the liquor code of 1935, as amended.

LIQUORS

Edward O. Geer
Manager of Safety
Denver, Colorado
June 15, 1953

Opinion 2524-53

The refusal of a licensing authority to grant a license to sell alcoholic liquors or fermented malt beverages is subject to judicial review in the nature of mandamus or certiorari and there is no fixed specific limitation upon the time within which such review may be sought. If review is not commenced until after the expiration of the year for which the license was requested, the matter might under some circumstances be regarded as moot.

LIQUORS—ALIENS

Bernard F. Maloy
Asst. Manager of Safety
Denver, Colorado
June 15, 1953

Opinion 2525-53

The statutory definition of "person" controls the construction to be placed upon that word as used in Sec. 25(f), Chap. 89, 1935 C.S.A., and liquor licensed corporations may not employ aliens or be assisted or financed by aliens. (See also Opinion No 2523-53)

SECURITIES

Curtis White
Securities Commissioner
June 15, 1953

Opinion 2526-53

The selling membership contracts by electric appliance dealer does not constitute a security as defined in Articles I and II, Chap. 148, 1935 C.S.A.

ENGINEERS BOARD

M. E. Langsteiner
Asst. Sec.

Opinion 2527-53

State Board of Registration, etc.

June 19, 1953

Under Sec. 17, 1953 Registration Act, notice need be sent only to Colorado registrants.

The procedure prescribed by Chap. 294, S.L. 1947 must be followed in refunding application fees to applicants who applied for registration under the 1951 law.

Under the 1953 act an applicant must pay a new fee each time he is re-examined.

Examinations for engineer-in-training may be held at points other than Denver, provided an examination is given in Denver at least once in every calendar year.

**ENGINEERS BOARD—
LEGISLATION**

M. E. Langsteiner
Asst. Sec.

Opinion 2528-53

State Board of Registration

June 19, 1953

Interpretation of the provisions of Chap. 100, S.L. 1953 and defining powers and duties thereunder. (1951 Act declared unconstitutional by District Court, Denver County, March 1953)

COAL MINES

Thomas Allen
Chief Inspector of Coal Mines

Opinion 2529-53**June 19, 1953**

Where independent surface operations are undertaken to mine coal from the same stratum previously mined by underground workings, the surface mine must be licensed pursuant to Sec. 131, Chap. 228, S.L. 1951, even though the underground mine was licensed prior to the discontinuance of its operations.

SOIL CONSERVATION

Pres. Board of Supervisors
Northeast Prowers Soil Conservation District
Holly, Colorado

Opinion 2530-53**June 22, 1953**

A soil conservation district acting by its board of supervisors has power to enforce collection of past due accounts by suit instituted in the courts of the state, subject to the by-laws and direction of the voters.

COURTS—TAXATION—LEGISLATION**Opinion 2531-53**

H. Horwitz
 Acting Clerk of District Court
 Denver, Colorado
June 22, 1953

A motion filed under Rule 120 is listed under "special proceedings" and the \$1.00 tax should not be levied under H.B. 468, 39th General Assembly.

LIQUORS—CITIES AND TOWNS**Opinion 2532-53**

Mrs. Helen Foote
 Town Clerk
 Frisco, Colorado
June 24, 1953

The sole local power to grant licenses for the sale of alcoholic liquors in incorporated towns is vested in the board of trustees, and such authority cannot be delegated to the mayor or to any other person.

**CONTRACTS—FEES AND SALARIES
PUBLIC INSTITUTIONS****Opinion 2533-53**

J. Price Briscoe, Director
 Department of Public Institutions
June 25, 1953

A contract for the payment of costs and fees can be made with the regents of the University of Colorado and the Department of Public Institutions, whereby the University agrees to perform professional services at State Hospital or cause the same to be done subject to reimbursement of its costs, as well as the per diem charge or charges.

CONTROLLER—CIVIL SERVICE—LEGISLATION**Opinion 2534-53**

James A. Noonan
 State Controller
June 25, 1953

(Chap. 103, S.L. 1953, Civil Service Employees Appropriation)

The total appropriation made under S.B. 297 is limited by the act itself "to pay for increases in salaries and wages of certain officers and employees of the State of Colorado in the classified

civil service of the state'', covering the adjustments that become effective on July 1, 1953, and cannot be used to pay increases that arise from seniority and merit. The latter named increases must have been anticipated when making up the budget and included by the legislature in the appropriations to the several departments, agencies, etc. If the regular appropriation to such department, agency, etc., is not sufficient to take care of such seniority and merit increases, then the activities of such department, agency, etc., will have to be curtailed pursuant to Ch. 2, S.L. 1941, and the Rules and Regulations of the Civil Service Commission.

REVENUE DEPARTMENT

C. P. Fugate

Opinion 2535-53

Director of Revenue

June 29, 1953

(Unfair Practices Act—refund under)

Under Sec. 4, Chap. 159, 1935 C.S.A. the repeal of Sec. 9(e) of the Unfair Practices Act does not release the liability incurred under the statute. The liability was fixed as of February 28, 1953, or prior to that time, and prior to the repeal of subsection (e). The taxpayers are not legally entitled to a refund of the money collected by the Department of Revenue under the Unfair Practices Act for 1953.

WATER CONSERVATION BOARD LEGISLATION

Ivan C. Crawford, Director

Opinion 2536-53

Water Conservation Board

July 1, 1953

A well driller's license is required of one who employs another as his agent to drill water wells on the lands of third persons, but is not required where the person employed is an independent contractor.

LIQUORS

Hon. Homer M. Bruce

Opinion 2537-53

Secretary of State

July 2, 1953

The State Licensing Authority is not required to grant a request for transfer of location of a liquor license to premises upon which there is now no building, to become effective after completion of a building upon the new site. There is no justification under the law for the approval of an application for change of location until the applicant is ready to do business at the new location.

COUNTY TREASURER—TAXATION

Marie A. McMillen **Opinion 2538-53**
 Cheyenne County Treasurer
July 2, 1953

A county treasurer may issue a treasurer's deed more than fifteen years after the issuance of a tax sale certificate if request for issuance of the treasurer's deed was filed within the fifteen year period.

PARDONS & PAROLES

Wayne K. Patterson, Director **Opinion 2539-53**
 State Department of Parole
July 2, 1953

Under decision in *In re Austjford*, 109 Colo. 47, 121 P. 2(d) 891, when in hot pursuit, the compacting state may take the fugitive under the procedure outlined in the compact and not under the extradition laws; when there has been a time lag in the pursuit or arrest, or where the fugitive has been arrested or detained for the requesting state, then and in that event the fugitive must be taken under the extradition laws, not under compact procedure.

CIVIL SERVICE—AGRICULTURE DEPARTMENT

John A. Miller, Chief **Opinion 2540-53**
 Animal Industry Division
July 2, 1953

The duties of the Veterinary Section are within the scope of those for which the Division of Animal Industry was created by statute, and no authority can be found by which the Agricultural Commission or any other administrative body or official is empowered to transfer those functions to any other division.

HIGHWAY PATROL

G. R. Carrel, Chief **Opinion 2541-53**
 Colorado State Patrol
July 3, 1953

Appropriations from the Highway Users Tax Fund are not continuing in character but contemplate appropriation from time to time by the several legislatures.

FAIR COMMISSION—CONTRACTS

W. H. Kittle, Manager **Opinion 2542-53**
 Colorado State Fair
July 7, 1953

The State Fair Commission does have legal authority to enter into an agreement to rent or lease parts or portions of the State Fair facilities during the month of October 1953.

COURTS—TAXATION**Opinion 2543-53**

Jonathan Seaman
Clerk of the District Court

July 8, 1953

Third party complainant should pay a docket fee of \$10.00 in addition to the \$5.00 fee paid as defendant. The \$1.00 tax required by law is paid but once in a civil action and when plaintiff files suit and pays said tax, no further assessment is required.

SECURITIES**Opinion 2544-53**

Curtis White
Securities Commissioner

July 10, 1953

(Thrift Plan-Phillips Petroleum Company)

The proposed Thrift Plan would not come within the definition of a security and would be exempt from the provisions of Chap. 148, 1935 C.S.A.

CORPORATIONS**Opinion 2545-53**

George V. Kempf
Montrose, Colorado

July 14, 1953

(San Miguel Power Association, Inc.,
an R.E.A. cooperative)

The San Miguel Power Association, Inc., under its present articles of incorporation, may not legally do business outside the State of Colorado without first amending its articles of incorporation to so provide.

**EMPLOYMENT SECURITY—
EMPLOYEES RETIREMENT
COUNTY JUDGE**

Opinion 2546-53

Raymond J. Heath
Public Employees Retirement Association

July 14, 1953

The county judge of Elbert County being covered under the Old Age and Survivors' Insurance Program prior to his application for coverage under the Judges' Retirement Act, is precluded from the latter by virtue of the statutory language therein excepting those already covered under another program.

Inasmuch as the county and a county judge have paid to the Public Employees Retirement Association certain sums of money under the mistaken idea that coverage was available, it is not only legally sound, but also ethically and morally wise to refund said sums of money to the proper organization and person.

PLANNING COMMISSION

W. M. Williams, Director
State Planning Commission
July 16, 1953

Opinion 2547-53

No single sentence of the statutes provides as to whose responsibility it is to develop a long-range building and development program for a state institution in Colorado; that without equivocation Ch. 157, 1935 C.S.A. imposes upon the commission the duty of preparing and perfecting from time to time a master plan for the development of the state; that Ch. 281 S.L. 1951 provides that the commission "shall at all times *promote* the development of long-range plans for the state's institutions", but that the word "promote" as used in the statute, limits the action of the commission to the *promotion* of "long-range plans" in the manner provided by Sec. 5, Ch. 157, 1935 C.S.A.

TAXATION

J. R. Seaman, Chairman
Colorado Tax Commission
July 17, 1953

Opinion 2548-53

(Broadmoor Hotel Water and Power Company)

The value of dams and reservoirs are elements to be considered by the Colorado Tax Commission in arriving at the assessed valuation of Broadmoor Hotel Water and Power Company.

TAXATION—COUNTY ASSESSOR LEGISLATION

M. E. H. Smith
District Attorney
Greeley, Colorado
July 17, 1953

Opinion 2549-53

To avoid payment of interest and penalty, following adjustment of taxes by the assessor and where no appeal is taken to the board, the board must find that such taxpayer has a bona fide and just claim and the taxpayer must pay the taxes within ten days following such determination. (S.B. 292, 39th General Assembly)

**STATE BOARD OF AGRICULTURE
FT. LEWIS A & M COLLEGE**

James R. Miller, Secretary
State Board of Agriculture

Opinion 2550-53

July 17, 1953

The State of Colorado owns the conditional title to the Fort Lewis lands, with the control and management over the same placed by statute in the State Board of Agriculture; that, since an easement, as distinguished from a license, conveys an interest in land, the legislature alone can grant an easement; but that the board can grant a license to the telephone company to construct such a building, so long as the structure is for the furtherance of the interests of the school and aids the board in the management and control thereof.

COURTS—CITIES AND TOWNS

Emil Loffarerlli
Police Magistrate

Opinion 2551-53

July 20, 1953

Summons currently in use by the City of Trinidad does not conform to the requirements of law, and service thereof is insufficient to confer jurisdiction over the person of the defendant.

EMPLOYEES RETIREMENT

Raymond J. Heath, Secretary
Public Employes Retirement Association

Opinion 2552-53

July 23, 1953

(H. B. 75, 39th General Assembly)

Inasmuch as the date of the death of decedent was prior to July 1, 1953, the decedent's widow is not entitled to the benefits of House Bill No. 75.

**INITIATIVE & REFERENDUM
ELECTIONS
CITIES AND TOWNS**

C. H. Allen
City Attorney
Alamosa, Colorado

Opinion 2553-53

July 24, 1953

The initiative and referendum provisions of Art. V, Sec. 1 of the Constitution are self-executing, and these powers are available to the citizens of a municipality under the council-city manager

form of government, even though the legislature had not provided an applicable standard for determining the necessary number of petitioners in the city's particular situation. The affidavit of a qualified elector, as provided by Sec. 6(5), Chap. 86, 1935 C.S.A. as amended, is required on a petition for initiation of an ordinance to give the signatures bona fide validity when filed.

FEDERAL—NURSE EXAMINERS

Miss Joy Erwin, Director **Opinion 2554-53**
 State Board of Nurse Examiners
July 24, 1953

Under Chap. 114, 1935 C.S.A., the State Board of Nurse Examiners would not have authority to administer federal grants for nursing education under H.R. 3850 should the same become available.

LAND BOARD—FEDERAL

State Board of Land Commissioner **Opinion 2555-53**
July 24, 1953

(Mining Ventures Inc.—Owner's Consent to Lien)

The State Board of Land Commissioners would not have the authority to sign the Owner's Consent to Lien as requested by lessee in view of Article 2 of the form MF-203 which grants to the federal government a lien upon the land itself to secure the payment of royalties, and the signing of such lien may result in the enforcement of such a lien against the interests of the State.

RACING COMMISSION

Colorado Racing Commission **Opinion 2556-53**
July 27, 1953

Sec. 12, Chap. 207, S.L. 1949, as amended, provides that the commission "shall have the power to exclude" any person deemed detrimental to the best interest of racing and does not say "shall exclude" There is nothing mandatory on the part of the commission to exclude anyone. If the power is exercised the reason for the exclusion must be found in the language of the law.

LIVESTOCK

Opinion 2557-53
 State Board of Stock Inspection Commissioners
July 29, 1953

The Board is authorized by Chap. 240, S.L. 1949, to make or have an investigation made of sales and transactions of any live stock sales ring and the procedure to be followed in holding a hearing is set forth in Sec. 8 of said chapter.

GOVERNOR—PENITENTIARY**Opinion 2558-53**

Hon. Dan Thornton
 Governor of Colorado
July 30, 1953

When a convict escapes, he forfeits all good time he has earned from his admission date until the date of his escape; upon his return to the C.S.P. on June 11, 1951, he forfeited his minimum sentence and started to serve on the "maximum time of his sentence." A prisoner may make application for *commutation* of his sentence at any time after sentence has been imposed but because of the original life sentence he cannot make application for parole or be paroled from the state penitentiary until he has served at least ten calendar years within the penitentiary.

NOTARIES**Opinion 2559-53**

Hon. Homer M. Bruce
 Secretary of State
August 3, 1953

A notary is required to obtain a new notarial commission in and for the county in which he has established his new residence.

NURSE EXAMINERS**Opinion 2560-53**

Miss Joy Erwin
 Director of Nursing Education and Licenses
August 5, 1953

It is for the board alone to decide whether the applicant comes within the provisions of Sec. 4(e) of Chap. 114, 1935 C.S.A. authorizing waiver of the examination, and her previous failure of the Colorado examinations may be taken into consideration by the board in making such determination only to the extent, if any, that such fact has a bearing upon her present qualifications.

COUNTY COMMISSIONERS**Opinion 2561-53**

Leon H. Snyder
 County Attorney
 Colorado Springs, Colo.
August 6, 1953

No statutory authority exists which would permit the county commissioners to agree to pay the cost of furnishing electricity to the inhabitants of a particular area within the county.

**HIGHWAY PATROL—JUSTICES OF THE PEACE
CRIMINAL LAW**

Opinion 2562-53

Gilbert R. Carrel, Chief
Colorado State Patrol

August 3, 1953

(1) Cases of misdemeanor may be tried before justices of the peace upon sworn complaint by a private person, without the necessity of an indictment by a grand jury or a formal information by the district attorney.

(2) Complaints forming the basis for trial before justices of the peace on misdemeanor charges, may lawfully be made and received on Sundays and legal holidays.

(3) Only the original sworn complaint need be filed with the justice of the peace in a misdemeanor proceedings, but the accused is entitled to a copy thereof upon his request in person or by counsel.

INSURANCE

Opinion 2563-53

Luke J. Kavanaugh
Commissioner of Insurance

August 5, 1953

(Fraternal Benefit Society Certificates issued to Minors)

There is no provision for personal liability to the holders of benefit certificates who are minors in Woodmen of the World, and the consequence for nonpayment is forfeiture of the benefit certificate except as stayed by any nonforfeiture cash value, or reinstatement.

**HEALTH—CITIES AND TOWNS
CRIMINAL LAW**

Opinion 2564-53

Dr. R. L. Cleere, Executive Director
State Department of Public Health

August 7, 1953

1. A municipality may be prosecuted under Secs. 257 and 258, Chap. 48, 1935 C.S.A., for discharging raw sewage into a stream.

2. Said Sec. 257 may under certain circumstances be used to abate such a condition but an individual whose property is connected to a municipal sewer is not a proper party to such an action. The district attorney is the proper person to prosecute such an action.

3. The department of public health may institute such a proceeding or may institute proceedings under Sec. 5 (6), Chap. 208, S.L. 1947, or establish and maintain minimum sanitary standards as to the quality of effluent of sewerage systems under Sec. 5 (7), Chap. 208.

4. The above mentioned criminal statutes may not however be used by the department of public health as minimum standards for sewerage effluent. It is the duty of the board of health to take such steps as are opened to it to clear up a pollution situation which exists.

STATE HOSPITAL—COUNTY JUDGES

Dr. F. H. Zimmerman, Supt.

Opinion 2565-53

August 10, 1953

The 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, or others, if allowed to go at large. The word "hospital" includes the Colorado State Hospital. This opinion confirms former opinion No. 2338-52.

CITIES AND TOWNS

Robert M. Gilbert

Opinion 2566-53

City Attorney

August 11, 1953

(Local Government Budget Law)

Subject to the local government budget law funds budgeted to the "New Equipment and Fire Dept. Building Fund" are subject to be re-budgeted by the city council, as the said city council may direct.

OLD AGE PENSION—NEWSPAPERS

Robert Delaney

Opinion 2567-53

District Attorney

August 12, 1953

Under existing statutes, Colorado may not publish lists of names, addresses and awards made to Class A pensioners without jeopardizing federal contributions to the old age assistance program.

Pursuant to Sec. 21, Chap. 201, S.L. 1937, as amended by Chap. 175, S.L. 1941, "county boards shall publish every six months, in a newspaper of the county where the petitioners reside (Class B), a list of the names, addresses and awards made to all persons receiving pensions in the county under the terms of this act.

LIQUORS—MORTGAGES

Hon. Homer M. Bruce
Secretary of State

Opinion 2568-53

August 12, 1953

Under Sec. 28, Chap. 89, 1935 C.S.A. a single person, not licensed under the liquor code of 1935, may be the mortgagee of chattels used in one licensed establishment and at the same time be a lessor of real estate and improvements used for another such establishment, where the note securing the chattel mortgage and the rental under the lease are both payable in fixed monthly installments independent of the earnings of the establishments.

LIQUORS

Hon. Homer M. Bruce
Secretary of State

Opinion 2569-53

August 12, 1953

1. A license for the sale of alcoholic liquors by the drink is evidence of a personal privilege only, and automatically terminates upon the death of the licensee.

2. There is no absolute right to carry on the business of selling alcoholic liquors by the drink pending administration of the estate of a deceased liquor licensee, but if during such administration some person or persons should be duly authorized to continue the business under Sec. 148, Ch. 176, 1935 C.S.A. as amended, a new license may be issued to such person if the requirements and precedent conditions of the liquor code of 1935, as amended, are met.

ACCOUNTANTS

Paul L. Schmitz, Treas.
State Board of Accountancy

Opinion 2570-53

August 13, 1953

Partnerships and corporations as such cannot be certified as public accountants. The board cannot limit the use of the assumed names by accountants so as to permit registration of only those names used in conjunction with the phrases "and Company" and "and Associates."

CITIES AND TOWNS

David W. Sarvis
City Attorney

Opinion 2571-53

August 13, 1953

A municipality may not invest monies such as those in the cemetery perpetual care fund and other funds held in trust for specific purposes, in bonds of internal improvement districts of the municipality.

CHILDREN**Opinion 2572-53**

John C. Stoddard, Director
Board of Standards of Child Care

August 13, 1953

Since Sec. 6 of Chap. 196 makes any violation of the act a misdemeanor, exclusively cognizable by the Juvenile Court, it lies within the province of the District Attorney, within whose district the offense is committed, to prosecute the violation.

NOTE: Opinion No. 2573-53 replaced by Opinion No. 2660-54.

WORKMEN'S COMPENSATION**Opinion 2574-53**

Feay B. Smith, Secretary

August 18, 1953

Public employers are required to insure in the state compensation fund under workmen's compensation and occupational disease disability acts and are prohibited from insuring as limited self-insurers.

**PUBLIC UTILITIES—TAXATION
MOTOR VEHICLE****Opinion 2575-53**

John H. Winchell, Chairman

August 21, 1953

Motor vehicle operators when transporting only such vending machines over the highways of the State of Colorado do not come within the provisions of Sec. 327, par. (g), Chap. 16, 1935 C.S.A. but when such operators transport commodities, either alone or in company with such machines, they are liable as commercial carriers, by motor vehicle for such ton-mile tax and must obtain commercial carriers permits, file reports with the Public Utilities Commission and pay the ton-mile tax for the use of the highways of the state.

Where vehicles are used to transport over the state's highways, machines that are used solely for amusement, and do not sell or send merchandise or commodities, or are not themselves sold or leased, the owners of such vehicles are not subject to Sec. 327, par. (g), Chap. 16; neither are they required to have a commercial carrier's permit, nor are they required to file reports with the P.U.C., or pay the ton-mile tax for the use of the highways of the state.

PHARMACY

Colorado State Board of Pharmacy

Opinion 2576-53**August 24, 1953**

United States citizenship does not appear to be a factor in the definition of a registered pharmacist under Class 5 of the statute.

**CHILDREN—INDUSTRIAL SCHOOL
COURTS**

Irvin L. Mason

Opinion 2577-53

District Attorney

August 25, 1953

Irrespective of the institution to which the juvenile delinquent is sent after conviction, the district attorney is required to present the matter to the juvenile court or the county court, sitting as a juvenile court, *upon petition* and not by information, complaint or indictment. (Secs. 53 and 55, Ch. 33, 1935 C.S.A.)

SECURITIES—INSURANCE

Curtis White

Opinion 2578-53

Securities Commissioner

August 24, 1953

A licensed domestic insurance company need not comply with the provisions of the Securities Law of Colorado prior to offering additional shares of its capital stock for sale to the public if it has complied with the provisions of Sec. 30 Chap. 87, 1935 C.S.A.

A registered Colorado securities dealer should obtain a license for himself and salesmen from the Insurance Commissioner prior to offering new shares for sale of a foreign insurance company, pursuant to the provisions of Sec. 32, Chap. 87, 1935 C.S.A.

Sec. 32 does not make it unlawful for registered Colorado securities dealers to deal in issued and outstanding shares of foreign insurance companies, whether in over the counter market or stock exchange transactions without license by said insurance commissioner.

WATER CONSERVATION BOARD

Ivan C. Crawford, Director

Opinion 2579-53

Water Conservation Board

August 31, 1953

Funds appropriated to the Colorado Water Conservation Board by Chap. 245, S.L. 1953, may be expended for travelling and other necessary expenses of the members of a committee appointed by the board for the principal purpose of making the studies and investigations required by said chapter 245.

HIGHWAYS—MOTOR VEHICLE**Opinion 2580-53**

Carroll G. Bryan, Assistant Chief
Division of Motor Vehicles

September 1, 1953

The provisions of the Uniform Motor Vehicle Safety Responsibility Act as enacted in Colorado do not apply to accidents occurring on property not within the statutory definition of "highway". That Uniform Act, however, is not to be confused with another law relating to financial responsibility and found as Chap. 124, S.L. 1947. The provisions of Secs. 2, 3, 4 and 5, Chap. 124, relating to the reporting of accidents, the deposit of security for the satisfactions of judgments resulting from accidents, and the suspension of licenses and registrations of those who fail to comply with the deposit requirements, are applicable in the case of motor vehicle accidents occurring anywhere within the state, irrespective of the fact they may have occurred on private lands, ranches, parking lots, or other property not open to the public generally.

Some of the acts prohibited by Chap. 16, 1935 C.S.A. as amended, may be punished criminally wherever they may occur, but some are made crimes only when committed on a "highway". An act which is committed on property other than a highway, but which is punishable only when committed on a highway, may still be grounds for suspension if indicative of incompetence or of habitual recklessness or negligence, or responsibility for death, personal injury or property damage.

LIQUORS**Opinion 2581-53**

Hon. Homer M. Bruce
Secretary of State

September 2, 1953

A state or local licensing authority may consider an application for a license to sell alcoholic liquors, made on behalf of a prospective corporation to be formed only if the application were favorably considered but which is not in existence at the time of the application.

TAXATION—COUNTY ASSESSOR**Opinion 2582-53**

John R. Seaman, Chairman
Colorado Tax Commission

September 4, 1953

A board of county commissioners, sitting as such, has no power to require the county assessor to revalue or reassess property for tax purposes.

A county board of equalization may, as such, increase or decrease valuation of individual items of property, or of whole classes of property, if necessary to equalize the assessments among the several taxpayers of the county and to assure that all taxable property is assessed at its full cash value. If necessary for proper assessment and to equalize assessments between property owned by public utilities and that owned by other taxpayers, a county board of equalization may increase or decrease the valuations of non-utility property as a whole, subject to revision, change and amendment by the state board of equalization.

PHARMACY

Colorado State Board of Pharmacy

Opinion 2583-53

September 9, 1953

Where prescription balances are commercially used in determining the weight, measurement or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure, or in determining weight or measurement when a charge is made for such determination, such balances come within the purview of Chap. 249, 1953 S.L.

COSMETOLOGY

Colorado Board of Cosmetology

Opinion 2584-53

September 9, 1953

The board of cosmetology may not grant licenses through reciprocity to persons working continuously in the state as demonstrators on the presentation of active license in states that do not have the same requirements as Colorado. Such applicants must comply with the provisions of Sec. 17, Chap. 42, 1935 C.S.A.

LIVESTOCK

State Board of Stock Inspection Commissioners

Opinion 2585-53

September 15, 1953

A hearing regarding transactions of a licensed sales-ring organization may be held pursuant to the provisions of Sec. 8, Chap. 240, S.L. 1949.

GAME AND FISH—WATER

Thomas L. Kimball, Director

Opinion 2586-53

Game and Fish Commission

September 15, 1953

Where water is impounded for storage under a decree for agricultural, domestic or industrial use, and is retained in the

impoundment for fish culture and recreational purposes, the retention amounts to a change of use to which the appropriator is entitled only if the vested rights of others are not injuriously affected.

CIVIL DEFENSE

Lt. Gen. Henry L. Larsen, Director **Opinion 2587-53**
 Civil Defense Agency
September 16, 1953

Sec. 9, Chap. 4, Ex. Session Laws 1950, as amended, does not require any administrative procedure on the part of any city or town in order to render said city or town immune from liability as a result of civil defense activity.

SCHOOLS—WATER—CITIES AND TOWNS

Alvin C. Ferraro, Sec. **Opinion 2588-53**
 School District No. 18
 Cokedale, Colorado
September 17, 1953

No statutory authority exists permitting a school board to advance a portion of the funds to improve the city water supply in return for free water. The board of directors might become legally liable for damages resulting from providing unsafe drinking water to the students.

PUBLIC FUNDS MENTAL DEFECTIVES

W. M. Williams, Director **Opinion 2589-53**
 State Planning Commission
September 21, 1953

The funds created by Chaps. 303 and 304, S.L. 1947, for the construction of buildings at the State Home and Training School at Ridge and Grand Junction may not be expended to defray the expenses of a committee to be appointed by the Governor for the purpose of visiting similar institutions in other states, to aid in the development of a long-range improvement plan for such school.

LIQUORS

Hon. Homer M. Bruce **Opinion 2590-53**
 Secretary of State
September 22, 1953

A corporation may be licensed under the Liquor Code of 1935, as amended, where a person owning more than 10% of its capital stock acquired part of the money for the purchase of such stock by personal loan from an alien.

VETERANS—COURTS
COLORADO STATE HOSPITAL

Opinion 2591-53

Dee H. Beer

Veterans Administration

September 24, 1953

A county court committing a person to the Colorado State Hospital may thereafter transfer such person to the Veterans Administration for care and treatment pursuant to Sec. 19, Chap. 235, S.L. 1945. It must be presumed the committing court had proper jurisdiction until it has been judicially determined otherwise.

INHERITANCE AND GIFT TAX

Opinion 2592-53

Neil Tasher

Inheritance Tax Commissioner

October 5, 1953

The applicability of Rule 11 (f) of the Attorney General's Rules and Regulations for the government of the division of Inheritance Tax, is not affected by the decision of the U.S. Tax Court, in the Estate of Willis L. King, Jr.

UNIVERSITY OF COLORADO

Opinion 2593-53

Edward C. King, Treasurer

University of Colorado

October 7, 1953

The University has full power and authority to construct and operate faculty housing project pursuant to provisions of Chap. 210, S.L. 1953.

MEDICAL BOARD

Opinion 2594-53

State Board of Medical Examiners

October 8, 1953

Under Sec. 17 (m), Chap. 227, S.L. 1951, any physician employed by a corporation which is owned by himself or others not licensed to practice medicine, which offers no individual any gain except for services performed and which was organized by the physician for the purpose of rendering better medical service to the public, is guilty of unprofessional conduct.

PROBATE LAW—ESTATES—COURTS**Opinion 2595-53**

Hon. Joseph A. Davis
 County Judge
 Sterling, Colorado.

Under Sec. 77, Chap. 176, 1935 C.S.A., as amended, it would not be repugnant to the probate laws generally to apply this section upon the filing of a report and a duly verified petition and to pay over to the natural guardian or other proper person, the balance remaining in said estate.

LAND COMMISSION**Opinion 2596-53**

State Board of Land Commissioners
 October 19, 1953

Under Chap. 177, 1953 S.L., grazing leases, the land board has the authority under Sec. 6 thereof to adjust the rental.

STATE AUDITOR**Opinion 2597-53**

Hon. Earl E. Ewing
 State Auditor
 October 20, 1953

Reports required to be filed under Sec. 32, Chap. 202, S.L. 1953 by counties and incorporated cities and towns of all moneys applied to road and street systems should be rendered on or before May 1, 1954 for the calendar year 1953.

PENITENTIARY**Opinion 2598-53**

Harry C. Tinsley, Acting Warden
 October 20, 1953

The said convicts should be presented by the warden with such physical bonds or restraints upon them as is deemed necessary to get them into the courtroom; upon presentment of these convicts at the bar of the court your duty ends and it then becomes the duty of the court, in its sound discretion, to ascertain if it is necessary to retain the prisoner in shackles in order to prevent escape or self-destruction, or to prevent them from injuring bystanders or officers of the court, or if necessary to maintain a quiet and peaceable trial. At the time, the court can, by its order, authorize the removal of the shackles or other retention in whole or in part.

HEALTH**Opinion 2599-53**

Dr. R. L. Cleere, Executive Director

Department of Public Health

October 21, 1953

Sterilized canned whole milk produced and marketed for use as equivalent of fresh milk and comparing in taste and composition with fresh milk is "milk or a milk product for fluid consumption" under Chap. 170, S.L. 1949, and regulation thereof is within the jurisdiction of the health department. Such products are subject to the Colorado Fluid Milk Regulations of the department of public health made pursuant to the above statute.

ARCHITECTS**Opinion 2600-53**

State Board of Examiners of Architects

October 21, 1953

Disposition of the records of the architect's board as constituted prior to the passage of the Act of March 31, 1953, must be made in accordance with the provisions of Chap. 280, S.L. 1951.

UNIVERSITY OF COLORADO—PUBLIC FUNDS**Opinion 2601-53**

University of Colorado

October 22, 1953

Guthrie and Chase bequests can be used in the payment of reward if the board of regents, by resolution, finds that such expenditure is for the use and benefit of the University and within the terms of the bequests.

Tuition and fees collected from students are public funds and stand in the same category as funds received from mill levies or appropriations from the general fund and cannot be used in the payment of the reward.

LAND BOARD—LEGISLATION**Opinion 2602-53**

State Board of Land Commissioners

October 22, 1953

Under the fence law, Chap. 225, S.L. 1953, a lessee of state land for grazing purposes is not required to fence the leased section, although the lessee may be subjected to civil liability and damages caused by stock straying off of the leased section, if it can be shown that the leased section was overstocked with reference to available feed and water.

SOLDIERS' HOME**Opinion 2603-53**

Colo. State Soldiers' and Sailors' Home

October 23, 1953

Funds constituting the Membership Fund of the State Soldiers and Sailors Home cannot be used for the purpose of leveling certain farm land belonging to the Home.

**BUILDING AND LOAN—PUBLIC FUNDS
STATE TREASURER**

Homer F. Bedford

Opinion 2604-53

State Treasurer

October 19, 1953

Under Chap. 279, 1951 S.L., a savings and loan association does not qualify as a depository for public funds of the state of Colorado.

ALIENS—GAME AND FISH

Thomas L. Kimball, Director

Opinion 2605-53

Game and Fish Department

October 22, 1953

Any person (alien) who has resided and domiciled regularly and maintained a fixed and permanent abode in the state for a period of not less than 90 days immediately preceding the date of application for resident hunting license is entitled to purchase same.

SCHOOLS—CITIES AND TOWNS—WATER

O. F. Adams

Opinion 2606-53

Trinidad, Colorado

October 26, 1953

A school district is empowered by law to contract with a municipality for the delivery over a period of years of a safe supply of drinking water for the use of its pupils and teachers and to pay for such water in advance.

NATIONAL GUARD

Col. Howard W. Gamble

Opinion 2607-53

Acting Adjutant General

October 26, 1953

1. Prosecution for violation of Sec. 61, Chap. 111, 1935 C.S.A. should be by the military.
2. The procedure for prosecution should be as provided by the war department.
3. The military may request the assistance of state officers in conducting its prosecution and enforcing its punishment.

HIGHWAYS—TAXATION**Opinion 2608-53**

Hon. Homer F. Bedford
State Treasurer

October 23, 1953

Taxes collected under Chap. 16, Sec. 287, Subsec. (a), 1935 C.S.A., as amended; Chap. 287, Subsec. (b), 1935 C.S.A., as amended and Chap. 16, Sec. 373, 1935 C.S.A., as amended, are properly paid into the State Highway Fund and taxes collected under Chap. 187, S.L. 1941, Sec. 9; Chap. 157, S.L. 1943, Secs. 3 (6) and 4 (c) are properly paid into and credited to the Highway Users Tax Fund as provided by Sec. 3 (a) of Chap. 200, S.L. 1953, which act becomes effective January 1, 1954.

CRIMINAL LAW—REFORMATORY**Opinion 2609-53**

Hon. Frank E. Hickey
Judge of District Court, Denver

October 23, 1953

1. Male persons between the ages set forth in Sec. 512, Chap. 48, 1935 C.S.A., are to be sentenced as first offenders to the state reformatory. Second and subsequent offenders should be sentenced to the state penitentiary.

2. The period of ninety days mentioned in Sec. 512 must be a statutory period of ninety days and not one fixed by the court in view of Secs. 513-514, Chap. 48, 1935, C.S.A. See opinion for other related questions.

HEALTH**Opinion 2610-53**

Dr. R. L. Cleere
Department of Public Health

October 28, 1953

(Spears Sanitarium and Hospital-autopsies)

State Department of Public Health has the authority to regulate any public health aspect of the disposal of the dead.

CHILDREN—PUBLIC FUNDS**Opinion 2611-53**

Fritz A. Nagel, President
State Home for Dependent Children

October 29, 1953

The Governor should approve expenditure of funds earmarked for the State Home, but under the provisions of Chap. 70, S.L. 1951, there is no necessity or requirement for the Director of Public Institutions to give his approval.

HEALTH—CONTROLLER**Opinion 2612-53**

Dr. R. L. Cleere

State Department of Public Health

November 3, 1953

The use of facsimile signatures of the Director of the State Department of Public Health and of the President of the State Board of Health, together with the written signature of the properly designated and approved official of the Department upon vouchers for the expenditure of funds of the Department complies with Sec. 9 (2) of Chap. 208, S.L. 1947, for purposes of permitting the State Controller to approve such expenditures, upon the basis that the request by the Director of the Department and the President of the Board to the Controller for authorization of signature of voucher amounts to notice to the Controller that vouchers so executed will be for expenditures actually approved by said officers and the facsimile signatures thereon will have been adopted by them as their own.

**COUNTY CLERK AND RECORDER
FEES****Opinion 2613-53**

Annie M. Dunston

Clerk and Recorder

Grand Junction, Colorado

November 5, 1953

Fees chargeable by county clerks: An additional 15c for additional entries in chattel mortgage index record; additional 15c when figuring fees for joint tenancy deed with two grantees. (Sec. 26, Chap. 66, 1935 C.S.A., as amended) Recording of notarial bond and notarial commission \$1.25 each; where bond is filed, \$1.00. No charge for showing reception number and date of filing on copy of chattel mortgage.

TAXATION—COUNTY COMMISSIONERS**Opinion 2614-53**

Porter & Carroll

County Attorneys

Gunnison, Colorado

November 5, 1953

Where a refund of taxes on property erroneously or excessively assessed has been authorized by resolution of the board of county commissioners, acting pursuant to Chap. 191, S.L. 1953, the refund may be paid solely upon a warrant signed by the chairman and clerk of the board.

EMPLOYMENT SECURITY

Bernard E. Teets, Director **Opinion 2615-53**
Department of Employment Security
November 5, 1953

The department of employment security is not required to pay to the lessor the tax increase resulting from the revaluation of the property.

HIGHWAYS—MOTOR VEHICLES

Mark U. Watrous **Opinion 2616-53**
Department of Highways
November 6, 1953

(Silver reflector tape on front of motor vehicles)

1. Highway Department does not have authority to require submission to it for approval of lamps, reflectors or parts of lamps or reflectors which are *not* required under the first portion of Subdiv. 15, Chap. 16, 1935 C.S.A., relating to equipment.

2. Highway Department does not have authority to require submission to it for approval of automobile bright light head lamp dimming devices.

3. No statutory authority exists for the use of silver reflective tape on the front bumper of vehicles.

SOIL CONSERVATION

Kenneth W. Chalmers, Secretary **Opinion 2617-53**
Soil Conservation Board
November 12, 1953

Where a member of the board of supervisors of a soil conservation district contracts for the sale of his land after his election to the board, but still holds record title in his name subject to the right of the buyer to conveyance upon fulfilling the terms of the contract, such member is eligible to remain on the board.

CITIES AND TOWNS—ELECTIONS

James F. Quine, Jr. **Opinion 2618-53**
District Attorney
November 17, 1953

Sec. 246, Chap. 59, 1935 C.S.A. provides what procedure should be followed in order to determine which of the two candidates that tied for the office of alderman should have the office and how it may be determined. *Peo. v. Mosco*, 114 Colo. 464, 167 P. (2d) 949.

CITIES AND TOWNS—FAIR COMMISSION**Opinion 2619-53**

John M. Marsalis, City Attorney

Pueblo, Colorado

November 18, 1953

(City of Pueblo has no jurisdiction over state fair grounds)

A municipal corporation has no jurisdiction over state owned property without specific authorization from the state legislature.

LIQUORS**Opinion 2620-53**

Homer M. Bruce

Secretary of State

November 18, 1953

The mere fact of employment of a person by a wholesale liquor dealer with nothing more, will not disqualify such person from obtaining a license for a retail liquor store, if the provisions of Sec. 14, Liquor Code 1935, as amended by Chap. 151, S.L. 1953, have not been violated.

**PUBLIC WELFARE—FEDERAL
COUNTIES****Opinion 2621-53**

Earl M. Kouns, Director

Department of Public Welfare

November 23, 1953

(Fort Logan Housing Project-status of persons residing therein)

Persons residing in the Fort Logan Housing Project must be considered as residing in Arapahoe County for public assistance purposes, and applications are required to be made "to the county department of the county in which the applicant resides."

HIGHWAYS—CONTRACTS**Opinion 2622-53**

Mark U. Watrous, Chief Engineer

Department of Highways

November 25, 1953

(See Opinion 2633-53)

The Department of Highways, as an agency of the state, would be required to pledge its credit and become responsible for the liability of another person and said department may not lawfully enter into or execute a lease containing such an indemnity clause.

CITIES AND TOWNS—FEDERAL—WATER**Opinion 2623-53**

Franklin W. Azar
 Trinidad, Colorado
 November 27, 1953

There is no express statutory authority and none given by necessary or fair implication for a city which is not a home rule city to condemn private property for flood control purposes which is already outside its territorial limits.

A city in a home rule city would have the power to condemn private property within the boundaries of the city for flood control purposes in the erection of a retention dam.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS**Opinion 2624-53**

Colorado State Board of Registration
 for Professional Engineers
 November 30, 1953

The present board members may succeed themselves for the next appointment pursuant to Sec. 3, Chap. 100, S.L. 1953.

The Board may not appropriate a lump sum for the library with a listing of the books purchased to be presented to the board after the expenditure.

Under Sec. 11, Chap. 100, S.L. 1953, the board may include on its roster the names of the registered land surveyors and pay for the roster out of the professional engineer's fund.

LEGISLATURE—PUBLIC FUNDS**Opinion 2625-53**

Legislative Committee on the Needy Aged
 December 4, 1953
 (H.B. 257, S. L. 1953)

(a) The provisions of H.B. 257 introduced at the regular session of the general assembly providing for the guaranty by the state of payment of anticipation warrants issued for the construction and maintenance of state homes for the aged creates a debt of the state in violation of Secs. 3 and 4, Art. XI, State Constitution.

(b) Pledging of revenues from the general fund for future years by a continuing appropriation statute would violate said Secs. 3 and 4, Art. XI.

(c) The creation of any debt against the state authorized by the provisions of Sec. 3, Art. XI, State Constitution, must be done by strict compliance by the legislature with the provisions of Sec. 4, Art. XI.

ENGINEER

Opinion 2626-53

C. C. Hezmalhalch
Deputy State Engineer
December 4, 1953

Where a map and statement is filed with the State engineer, showing claims for several water rights from the same stream, a fee should be charged for each claim shown even though the total fees are in excess of \$100.

PAROLE BOARD—CRIMINAL LAW

Opinion 2627-53

Wayne K. Patterson, Director
State Department of Parole
December 8, 1953

Legal procedure for handling persons convicted of sex crimes under Chap. 89, S.L. 1953.

CITIES AND TOWNS—EMPLOYEES RETIREMENT

Opinion 2628-53

Donald F. McClary
Fort Morgan, Colorado
December 9, 1953

The City of Fort Morgan, a home rule city acting under its charter, is bound by the provisions of the Public Employees Retirement Act in regard to requirements for inclusion or exclusion, and under the state and federal laws, as they now stand, no withdrawal from the state system or transfer to the Social Security program under the federal law is legally permissible.

OIL INSPECTOR—REVENUE DEPARTMENT

Opinion 2629-53

John E. Cronin, Director
Oil Inspection Department
December 11, 1953

So long as tractor fuels do not come within the definition of Class A fuel products as contained in Sec. 2, Chap. 118, 1935 C.S.A., as amended, the dyeing of tractor fuels is not a violation of Sec. 4 (d), Chap. 118, 1935 C.S.A.

SCHOOLS—PUBLIC FUNDS**Opinion 2630-53**

H. Grant Vest
 Commissioner of Education
December 16, 1953

Social Security Act benefits payable from a fund supported in part by a county must be deducted from benefits payable under the Teacher's Emeritus Act.

WATER—FEDERAL**Opinion 2631-53**

Ivan C. Crawford, Director
 Colo. Water Conservation Board
December 4, 1953

(Summer period releases of water from John Martin reservoir)

The Arkansas River Compact does not permit the Administration to so regulate John Martin dam so that during the summer storage periods there will be passed through the reservoir all of the flow of the Arkansas River up to and including 2,000 c.f.s. with the remainder of the flow captured and stored in the reservoir.

The John Martin dam and reservoir must be so operated during the summer storage season, at times when water users in Water District No. 67 in Colorado are operating under priority administration, that there shall be passed through the reservoir sufficient water, and no more, to satisfy downstream users in said District No. 67, and the remainder of the flow entering said reservoir must be captured for storage therein.

AGRICULTURE DEPARTMENT**Opinion 2632-53**

Paul W. Swisher, Commissioner
 Department of Agriculture
December 18, 1953

(Re Marketing Order regulating Pears Grown in Mesa County)

Under Sec. 53, Chap. 106, 1935 C.S.A., as amended, it is for the commissioner to say whether the order or any amendment thereto, has been approved as required by statute. That determination must be based upon a reasonable interpretation of the words "who have produced for market . . . in commercial quantities." Such a determination based upon whether the person in question produces pears for a living, as opposed to producing as a side line, is not a reasonable interpretation of the meaning of "commercial quantities."

Inasmuch as it has been determined that the ownership of production of 100 or more pear trees is not a reasonable basis for the determination of who may vote at a referendum concerning the amendment or repeal of such order, when the commissioner in the exercise of his reasonable discretion determines that the marketing order is approved by at least two thirds of the producers as required by the statute, said order is by Sec. 56 binding upon all persons, and the legislation intended that if the marketing order is validly adopted, it is enforceable against all persons.

HIGHWAYS—CONTRACTS

Mark U. Watrous, Chief Engineer **Opinion 2633-53**

Department of Highways

December 18, 1953

(See Opinion No. 2622-53)

The Department of Highways could not lawfully enter into a contract containing an indemnity clause in violation of Sec. 1, Art. XI, State Constitution, even if the words "to the extent that the lessee lawfully may . . ." or similar limiting words are used.

AGRICULTURE—LIVESTOCK

V. D. Stauffer, D. V. M., Secretary **Opinion 2634-53**

State Board of Veterinary Medicine

December 21, 1953

(Practice of Veterinary Medicine—Chap. 244, S.L. 1953)

The board has the power to determine whether the practice of artificial insemination of domestic animals is included as a part of the practice of veterinary medicine and may, in the exercise of its reasonable discretion, adopt regulations defining what activities and factual situations come within the provisions of the statute defining veterinary medicine and may require the licensing of persons so practicing veterinary medicine so long as such rules and regulations do not attempt to enlarge the statutory powers of the board.

The treatment of poultry and domesticated birds, including pets, comes within the practice of veterinary medicine if compensation is received therefor.

SCHOOLS—TAXATION

H. Grant Vest **Opinion 2635-53**

Commissioner of Education

December 22, 1953

(1) A county or union high school district may vote for an increase in mill levy not to exceed two mills.

(2) If it appears that such increased levy shall exceed the 5% limitation established by Sec. 39, Chap. 142, 1935 C.S.A., then approval for such increase must be obtained from the Colorado Tax Commission and, if disapproved, may be submitted to the tax-paying electors for approval.

COSMETOLOGY

Department of Cosmetology

Opinion 2636-53

December 23, 1953

A manager's license is not required of a licensed operator only in operating her own beauty shop where there is no other operator employed. Sec. 2(e), Chap. 42, 1935 C.S.A., as amended, provides for a manager's license in a "hairdressing or beauty shop having one or more operators employed therein." A manager's license is required in all instances where a shop has one or more employees in addition to the owner.

CHIROPODY BOARD

State Board of Medical Examiners

Opinion 2637-53

December 28, 1953

Sec. 5, Chap. 237, S.L. 1947 does not authorize the Chiroprody Board to conduct the complete examination of candidates for licensure in the sense that the Chiroprody Board can make the final determination of who is entitled to licensure by reason of having passed the examination, but it does provide that the Medical Board "shall consult with" and "delegate to the Colorado Chiroprody Board the power and privileges of assisting in the conduct of the examination for those who seek licenses to practice chiroprody in Colorado." This provision of the statute is mandatory, and the Medical Board must delegate this privilege to the Chiroprody Board.

There appears to be no legal objection to the replacement of licenses containing the restrictive clause with licenses in the form as presently issued.

Replacement of licenses to holders of unrevoked and unsuspended licenses, whose present licenses contain a restricted clause, if such licentiates surrendered their original licenses, is not within the purpose of Sec. 21, Chap. 227, S.L. 1951, and payment of \$15 would not be necessary for the type of replacement contemplated.

HEALTH—HOSPITALS

R. L. Cleere, M.D., M.P.H.

Opinion 2638-53

State Department of Public Health

December 23, 1953

(Re Spears Chiropractic Sanitarium and Hospital)

The word "general," as presently used in the hospital standards of the State Department of Public Health, to qualify the

words "medical and surgical hospital" does not impose any duty upon the Department of Public Health to use the same word in connection with the classification of chiropractic hospitals, by reason of the question of eligibility for insurance plan payments.

ENGINEERS

(Registration for Professional Engineers)

Opinion 2639-53

M. E. Langsteiner, Asst. Sec.

State Board of Registration
for Professional Engineers

December 29, 1953

The Board may refund examination fees only where it determines that the fee constitutes money not owed or belonging to the State of Colorado, collected or received by the State through mistake of law or fact, under the provisions of Chap. 294, S.L. 1947.

CITIES AND TOWNS

LAND COMMISSION

Opinion 2640-53

State Board of Land Commissioners

December 29, 1953

When a city defaults in the payment of municipal bonds and interest coupons held by the State Land Board, the Board does not have power to fix a penalty interest rate on the delinquency if the instrument itself does not fix the penalty. Sections 2 or 4, or both, Chap. 88, 1935 C.S.A., as amended, provide the rate of interest which may be collected after the maturity of the obligations.

COLLECTION AGENCY

Opinion 2641-53

Collection Agency Board

December 29, 1953

A collection agency license is required of a person or firm licensed under the laws relating to detectives, who in the course of locating property owned by clients or in which clients have an interest, collects money due to such clients on account of such property, if the collection of such money is a primary or secondary object of the person or firm engaged in locating the property. Whether the collection of such money is a primary or secondary object is a question of fact and of evidence, to be determined by the circumstances of the individual case.

CIVIL SERVICE

State Civil Service Commission

Opinion 2642-53**December 31, 1953**

(Probationary plan for newly appointed employees)

In view of the Supreme Court's decision in *Civil Service Com. v. Corfman*, 108 Colo. 571, the commission cannot formulate a valid rule regarding a probationary plan, unless all of the persons competing for the position are given an equal chance at such testing period. Any other provision would give one of the applicants one type of examination for the position and exclude all other candidates. The case of *Civil Service Com. v. Corfman* is controlling.

CIVIL SERVICE

State Civil Service Commission

Opinion 2643-53**December 31, 1953**

(Amendment to Art. IX, Par. 3, Rules and Regulations of Civil Service Commission re Promotions)

The proposed change in said rule would violate Sec. 13, Art. XII, Colo. Const., by permitting "appointments and employment in and promotions to offices and places of trust and employment in the classified civil service of the state" without the merit and fitness of the said officer or employee being first ascertained "by competitive tests of competence."

BLIND COMMISSION

Colorado Industries for the Blind

Opinion 2644-54**January 11, 1954**

The Board under its rule making powers is limited by Sec. 11(4), Chap. 22, 1935 C.S.A., as amended, to one director for the entire corporation. It can subdivide the activities of the corporation into as many subdivisions as it deems necessary and convenient for operation. However, when created these subdivisions are subordinate to and under the direction of the statutory "director." The supervisors and employees of these divisions must find their place in the statute under the phrase ". . . and shall employ such other technical, clerical or other assistance as may be necessary." (*Bratton v. Dice*, 93 Colo. 593, 603)

ATHLETIC COMMISSION

Fritz Brennecke, Chairman

Opinion 2645-54**January 27, 1954**

The commission has jurisdiction over amateur bouts or shows except those specifically exempt by statute (Secs. 4, 13, Chap.

141, S.L. 1947), irrespective of whether they are televised, commercially sponsored or simply a public service on the part of the station.

The individual, partnership, club, association or corporation actually conducting the amateur or boxing contests is subject to the licensing provisions of the statute.

DEAF AND BLIND

Opinion 2646-54

A. L. Brown, Superintendent

January 27, 1954

Students resident in Colorado cannot be charged for the education to which they are entitled. Sec. 33, Chap. 22, 1935 C.S.A., as amended.

LIQUORS

Opinion 2647-54

Guy B. Dyer, Jr.

County Attorney, Dolores County

February 1, 1954

If an application for a liquor license were denied on the grounds specified in Sec. 1, Chap. 143, S.L. 1953, a second application may be made and acted upon within a two year period for a license at the same location, if it is not made by or on behalf of the same person or persons.

SCHOOLS—FEDERAL

Opinion 2648-54

Dr. H. Grant Vest

Commissioner of Education

February 2, 1954

Receipts from Federal Flood Control Leases should be distributed to school districts and not deducted from amounts payable under Public Law 874.

COURTS—CHILDREN—LIQUORS

Opinion 2649-54

Irvin L. Mason

District Attorney, Durango

February 4, 1954

Where a person of the age of eighteen years or under has violated the provisions of Chap. 145 or 147, S.L. 1953, he or she may be criminally prosecuted in justice, county or district court.

If over the age of sixteen and under eighteen, he or she may either be proceeded against by petition to the county court, sitting as a juvenile court, for adjudication as a delinquent child, or may be criminally prosecuted in justice, county or district court.

If fourteen years of age, but not more than sixteen years of age, he or she may either be proceeded against by petition to the county court, sitting as a juvenile court, for adjudication as a delinquent, or may be criminally prosecuted in county or district court. He may not be criminally prosecuted in justice court. (See Opinion No. 2507-53)

ENGINEER—WATER

M. C. Hinderlider, State Engineer

Opinion 2650-54

February 9, 1954

The State Engineer of Colorado can not authorize the State Engineer of Wyoming or his official representative to regulate diversions of water by an undecreed ditch, the headgate of which is located in Colorado a short distance south of the Colorado-Wyoming state line, and which is used to irrigate lands in Wyoming; neither can he enter into an arrangement by which a Colorado water commissioner, acting individually, would make observations and obtain records of diversions of water in Colorado, and a Wyoming water commissioner, acting individually, would make similar observations on alternate days.

LIQUORS

John C. Banks, City Attorney

Opinion 2651-54

February 9, 1954

Sec. 25 (i) Chap. 89, 1935 C.S.A. prohibits the issuance of a license to premises which are within 300 feet of the Emily Griffith Opportunity School in Denver, Colorado.

LIQUORS

Edward O. Geer, Manager of Safety

Opinion 2652-54

February 10, 1954

An applicant for a hotel and restaurant liquor license who has no police record as a civilian under Sec. 25, Chap. 89, 1935 C.S.A., as amended, but was tried and found guilty by a general court-martial on several counts, such conviction would not be a bar to issuance of a license under Secs. 25 (a-g), Chap. 89, 1935 C.S.A., as amended.

The licensing authority may consider such court martial conviction and the nature of the charges therein, and exercise its discretion concerning the evidence as to the issuance or non-issuance of a license.

ADVERTISING—PURCHASING AGENT**Opinion 2653-54**

Leon E. Lavington
State Purchasing Agent

February 10, 1954

It is not necessary to advertise for legal advertising under Sec. 10, Chap. 130, 1935 C.S.A. Sec. 10 has been superseded by the succeeding statutes and particularly Secs. 1, 2, 4, 6, 9, 68, 69 and 72, Chap. 130, 1935 C.S.A., as amended, and Sec. 20, Chap. 3, 1935 C.S.A., as amended. From the foregoing, it is apparent that the Secretary of State has been superseded by the State Purchasing Agent and as such agent, must advertise and let to contract as required by Sec. 20, Chap. 3, 1935 C.S.A., as amended.

COUNTY COMMISSIONERS—COURTS**Opinion 2654-54**

Hon. C. C. McWilliams
County Judge, Gunnison County

February 10, 1954

The judge of the county court of Gunnison County (4th County) does not fix the salary of his clerk without the approval of the board of county commissioners.

SCHOOLS**Opinion 2655-54**

Dr. H. Grant Vest
Commissioner of Education

February 11, 1954

It is not permissible for a school board to buy real estate from a member of the school board. There are no legal requirements as to number of appraisals required on purchase of real estate.

SCHOOLS—FEDERAL—COUNTY TREASURER**Opinion 2656-54**

W. Jarrard Jones, County Attorney
Meeker, Colorado

February 16, 1954

The county treasurer may charge one per cent for receiving and disbursing funds received under the Agricultural Apportionment Act and Federal Oil Leasing Act.

GAME AND FISH**Opinion 2657-54**

Thomas L. Kimball, Executive Director

February 24, 1954

A Class A lake license must be obtained where a person desires to keep and retain fish in a private lake.

AGRICULTURE DEPARTMENT**Opinion 2658-54**

Paul W. Swisher

Commissioner of Agriculture

February 26, 1954

Persons signing a petition under a pear marketing order and agreement may withdraw their names therefrom after the filing thereof at any time up until final action is taken thereon. Where no action has been taken upon the original and supplemental petition at the date of the filing of the counter petition, if the counter petition contains language manifesting the intent of the signers thereof to withdraw from the original or supplemental petition, such withdrawal is effective and must be considered by the commissioner.

LAND COMMISSION**Opinion 2659-54**

State Board of Land Commissioners

February 26, 1954

The full administration of the Colorado State Forest, as established, is vested in the State Board of Land Commissioners.

The appointment of a person to perform the functions of the office of State Forester, as set forth in Chap. 211, S.L. 1937, is to be made by the State Board of Land Commissioners subject to Secs. 13 and 14 of Art. XII, Colo. Const., as the State Board of Forestry, and is discretionary in view of Sec. 131(5), Chap. 134, 1935 C.S.A., as amended, which specifically states that the Board *may* employ such person.

**COLORADO STATE HOSPITAL
PUBLIC WELFARE****Opinion 2660-54**

Dr. F. H. Zimmerman, Superintendent

Earl M. Kouns, Director

February 26, 1954

When a person is returned to this State and detained at the Colorado State Hospital pursuant to the provisions of Sec. 21.

Chap. 105, 1935 C.S.A., the state hospital is authorized to charge for the support, care and maintenance of such patient prior to his or her final commitment.

In such cases the state hospital must primarily look to the estate of the individual; secondly, to the kinfolk of the patient and thirdly to the county of residence.

**COLORADO STATE HOSPITAL
PUBLIC WELFARE**

Opinion 2661-54

Dr. F. H. Zimmerman, Superintendent

Earl M. Kouns, Director

March 1, 1954

Subsec. (b), (c) and (d) of Chap. 171, 1953 S.L. do not oust or attempt to oust the county court of the jurisdiction conferred upon it by Sec. 23, Art. VI, Colo. Const. (*Higgins, et al. v. Jean Sinnock*, No. 17336, Sup. Ct.)

SCHOOLS

Dr. H. Grant Vest

Opinion 2662-54

Commissioner of Education

March 5, 1954

1. A county committee ceases to function after July 1, 1954. Chap. 146, Sec. 66(6), 1935 C.S.A.

2. The chairman of the county committee, prior to July 1, 1954, shall call a special election for the selection of a board of education if such election is to occur subsequent to July 1, 1954. (Secs. 66(25), 66(28), Chap. 146, 1935 C.S.A.)

SCHOOLS

Dr. H. Grant Vest

Opinion 2663-54

March 9, 1954

School funds may not be used for the purchase of insurance to indemnify the school district against claims of students.

PENITENTIARY—PAROLE DEPARTMENT

Colorado State Penitentiary

Opinion 2664-54

March 9, 1954

The penitentiary cannot legally turn over moneys in the personal accounts of inmates at the time they are released on parole to the State Department of Parole or any similar agency. The State Department of Parole gets its power from Chap. 88, S.L. 1953, none of which permits the department to become the banker, conservator or guardian of a parolee.

PENITENTIARY**Opinion 2665-54**

Colorado State Penitentiary

March 9, 1954

The warden or acting warden can accept the service of garnishment summons, when the garnishment is against the salary or wages of an employee of the institution. Ordinarily the service must be upon the controller and state treasurer, but since you issue your own payroll checks at your institution, the service of summons would also be valid if made upon the warden or acting warden. Rule 103(c), Rules of Civil Procedure.

The warden can accept warrants for arrest, etc., but at best such warrant can only operate as a so-called "hold order," for the reason that the prisoner is being held in the state institution pursuant to a mittimus and not such warrant.

LIQUORS**Opinion 2666-54**

Hon. Homer M. Bruce

Secretary of State

March 10, 1954

The fact that minor children of a wholesaler own stock, the control of which is in a trustee who is a stranger to the wholesaler and children does not prevent issuance of a retail hotel and restaurant liquor license or a retail package store license to the respective corporations in which the minor children of the wholesaler own shares of stock.

SECURITIES**Opinion 2667-54**

Curtis White

March 10, 1954

1. No par capital stock may be assessed under provisions of Sec. 12-C, Chap. 41, 1935 C.S.A.
2. A corporation cannot unconditionally agree to pay dividends.

COUNTY ASSESSOR—TAXATION**Opinion 2668-54**

Clement A. Bowle

Treasurer of Delta County

March 15, 1954

Chap. 191, S.L. 1953, does not impose a time limit beyond which settlements under its provisions would be illegal. The

statute requires the protesting taxpayer to file his petition "with the county assessor in the county where the real property is located not later than May 1, 1953." If this has been done, the rights of the protesting taxpayer have been fixed and the subsequent action or inaction of the assessors or county commissioners cannot legally bar the protestant's claim.

LEGISLATURE—GOVERNOR

Hon. Dan Thornton

Opinion 2669-54

March 17, 1954

1. The Governor may by amended or supplemental Proclamation submit other subjects than those specified in the prior Proclamation calling the General Assembly into Special Session; he may fix the same time therein as was fixed in the prior Proclamation.

2. The Governor may submit such amended or supplemental Proclamation either before or after the Legislature has convened.

COURTS—COLORADO STATE HOSPITAL

Colorado State Hospital

Opinion 2670-54

March 18, 1954

A person who has been sentenced to the State Hospital or a similar state institution for an indeterminate term under said Chap. 89, 1953 S.L. can be required to pay for his care and maintenance, as provided in Sec. 1, Chap. 224, S.L. 1951.

GAME AND FISH

J. D. Hart, Asst. Director

Opinion 2671-54

March 18, 1954

The proposed rules and regulations in connection with guides and guiding are within the regulatory power of the commission pursuant to specific statutory authority appearing in Secs. 186, 188, Chap. 73, 1935 C.S.A.

SCHOOLS

Theodore L. Brooks

Opinion 2672-54

District Attorney

March 19, 1954

Par. 7 of the proposed reorganization program is in conflict with Sec. 185, Chap. 146, 1935 C.S.A. which provides the procedure for establishing a four member board, and would be illegal.

LEGISLATURE**Opinion 2673-54**

House of Representatives 39th General Assembly

March 22, 1954

The words "together with the nominated and elected officers of the respective parties at the last general election" mean those officers of the respective committees, eligible to serve as members of such committees, who had been elected and were holding their respective offices at the time of the last general election.

HIGHWAYS—PUBLIC FUNDS**Opinion 2674-54**

Mark U. Watrous

Chief Engineer

March 25, 1954

Investment of Colorado State Highway Department Office Building Authority Bonds.

COLORADO A & M COLLEGE**Opinion 2675-54**

Colorado A & M College

March 25, 1954

Secs. 126 (1), (2) and (3), Chap. 176, 1935 C.S.A. as amended, provide for the type and character of *investment* for "funds on hand which are not then needed in the conduct of" your affairs; Sec. 126 (3) (c), Chap. 176, provides that "it shall be lawful also to *deposit* such funds so eligible for investment in any state bank, national bank, or in any state or federal savings and loan association in Colorado which is, at the time the deposit is made, a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation;"

Said funds cannot be invested in the shares or other evidence of ownership in the banking corporation, but can be deposited in the manner provided in said Sec. 126 (3).

ELECTIONS**Opinion 2676-54**

J. T. Dinan, Secretary

Election Commission, Denver

March 31, 1954

Tabulation of absentee ballot votes by mechanical means as proposed by Denver Election Commission are not permitted under the provisions of Chap. 59, 1935 C.S.A.

LIQUORS

Hon. Homer M. Bruce
Secretary of State

Opinion 2677-54**March 31, 1954**

The words "so convicted" in Sec. 25 (f), Chap. 89, 1935 C.S.A. refer to all convictions indicated in Sec. 25, which include a felony or "any violation of any liquor law."

COLORADO A & M COLLEGE

State Board of Agriculture

Opinion 2678-54**April 1, 1954**

State funds cannot be used for the purpose of offering an annual cash award to a faculty member for outstanding attainments as a teacher and scholar from state tax sources without legislative authority, and no such authority exists at the present time.

GAME AND FISH

Game and Fish Commission

Opinion 2679-54**April 2, 1954**

Without compliance with Sec. 175, Chap. 160, 1935 C.S.A. the Game and Fish Department cannot pay a bounty on mountain lion hides under Sees. 174-176 of said Chap. 160.

INSURANCE

Luke J. Kavanaugh
Commissioner of Insurance

Opinion 2680-54**April 6, 1954**

Upon a review of the applicable law, including Sec. 14, Chap. 87, 1935 C.S.A., a mutual life insurance company, which was formerly a fraternal benefit society, may not legally avoid the payment of premium taxes on its present renewal premiums, even though such policies of insurance were originated while the company was operating as a fraternal benefit society.

MEDICAL BOARD

Colorado State Board of Medical Examiners

Opinion 2681-54**April 12, 1954**

The interpretation of electrocardiograms, where the same requires the expression of the professional opinion of the interpreter, is such a closely related part and parcel of the suggesting, recommending and prescribing of treatment of a patient as to constitute the practice of medicine, as defined in Sec. 6, Chap. 227, S.L. 1951.

MEDICAL BOARD**Opinion 2682-54**

Colorado State Board of Medical Examiners

April 12, 1954

If the reading of x-ray films by the doctor is carried on as a private practice outside of the scope of his duties as an officer of the Veteran's Administration, and if such reading consists of the rendering of a professional interpretation of such films by the physician, or the suggesting, recommending or prescribing of any form of treatment for the patient, the unlicensed physician would be practicing medicine in violation of the Medical Practice Act of Colorado. (Chap. 227, Sec. 6, S.L. 1951)

**CITIES AND TOWNS
ELECTIONS**

G. S. Cosand

Opinion 2683-54

City Attorney

April 15, 1954

Sec. 115 (20), Chap. 163, 1935 C.S.A., as amended, requires the city council to designate by ordinance, actual sites or addresses of polling places within precinct boundaries, but does not authorize that body to disregard precincts in establishing polling places. The term "place" as used in other election statutes is treated as synonymous with the terms "house" or "building." Chap. 59, Sec. 191.

**CITIES AND TOWNS
POLICE & FIREMEN'S PENSION**

Conrad L. Ball, City Attorney

Opinion 2684-54**April 19, 1954**

The Loveland Fire Department comes under Sec. 476, and not 485, Chap. 163; the widow of said paid employee is entitled to the sum of \$50.00 per month so long as she remains the unmarried widow of the said deceased fireman.

**CITIES AND TOWNS
JUSTICES OF THE PEACE**

Marvin W. Foote

Opinion 2685-54

Deputy District Attorney

April 19, 1954

There is no authority in the Justice of the Peace to suspend any portion of a fine imposed under Sec. 152, Chap. 16, 1935 C.S.A. as amended.

**UNIVERSITY OF COLORADO
GAME AND FISH**

Opinion 2686-54

R. I. Hislop, Deputy Treasurer
University of Colorado

April 19, 1954

If the University of Colorado wishes to collect specimens of game animals and fish protected by law, it must follow the provisions of Sec. 193, Chap. 73, 1935 C.S.A. and obtain a certificate therefor through the request of the Governor and the posting of a \$1,000 bond by acceptable sureties. The University, as a domestic scientific society, must pay the Game and Fish Department a one dollar fee for the issuance of such "scientific permit."

COURTS

Opinion 2687-54

Guy B. Dyer, Jr.
County Attorney

April 20, 1954

The court may enter an order directing the clerk of the district court to pay the funds held in the registry of the Dolores County District Court to the general fund of said county, if it shall appear to the court that no claim against said funds has been presented to the clerk of the district court for more than two years next preceding the entry of the order; providing, the court, in its discretion, may withhold the entry of such order.

COUNTIES—HIGHWAYS

Opinion 2688-54

Frank L. Jones
County Attorney
Idaho Springs, Colorado
(Mount Evans road cannot be used as a toll road)

April 26, 1954

The County of Clear Creek cannot operate a portion of its road system as a toll road.

The County of Clear Creek could abandon and vacate a portion of its road system pursuant to Sec. 13, Chap. 202, S.L. 1953 and Sec. 69 (2), Chap. 143, 1935 C.S.A., and operate same by admission charges in connection with a recreational area, assuming proper arrangements can be made with the owner of the land abutting and adjacent to said road. Authority, Chap. 251 and/or Chap. 252, S.L. 1947.

**SCHOOL OF MINES
EMPLOYEES' RETIREMENT****Opinion 2689-54**

Raymond J. Health, Secretary
Public Employees' Retirement
(School of Mines Faculty Contract)

April 26, 1954

Under provision of sec. 2 of contract, the additional compensation is not "regular salary" within the intendment of the statute and is not subject to a deduction for the benefit of the State Retirement Fund.

JUSTICE OF THE PEACE—COURTS**Opinion 2690-54**

Clerk of the District Court
Fort Morgan, Colorado

April 28, 1954

A justice of peace judgment which became dormant six years after its rendition, i.e., October 22, 1938, and prior to the enactment of Chap. 128, S.L. 1943, is not a good judgment and could not thereafter be revived and no valid execution could thereafter issue thereon.

BARBERS**Opinion 2691-54**

Colorado State Board of Barber Examiners

April 29, 1954

Sec. 9, Chap. 19, 1935 C.S.A., when read in its full context applies only to applicants for licenses to practice as apprentice barbers. Board of Barber Examiners does not have authority by resolution, or otherwise, to make the same applicable to applicants for a regular barber's license.

COUNTY ASSESSOR—TAXATION—FEDERAL**Opinion 2692-54**

Colorado Tax Commission
Re Atomic Energy Act of 1946

April 30, 1954

1. If the mine is a producing mine, as defined by the state statute, the owner or possessor thereof is liable to the state and local government for a tax pursuant to the formula laid down in Sec. 84, Chap. 142, 1935 C.S.A., as amended.

2. After the fissionable material is severed and the Atomic Energy Commission has acquired "property" therein, neither

the said Commission nor its contractor are subject to a state or local government tax upon the property "on and in which the commission has acquired property," but the Commission is authorized under said Sec. 1809 (b) to reimburse the state and local governments by payments "in lieu of property taxes," as provided in said Sec. 1809 (b).

SCHOOLS

Department of Education
c/o Deputy State Librarian
May 3, 1954

Opinion 2693-54

Re constitutionality of Sec. 13, Chap. 234 S.L. 1947 (State Library Law). Until such time as the courts pronounce otherwise said statute should be deemed constitutional and obeyed.

CHILDREN—COURTS

Robert C. Duthie
Deputy District Attorney
Durango, Colorado
May 3, 1954

Opinion 2694-54

A juvenile delinquent must have passed the age of sixteen years before he can be sentenced to the state reformatory upon the original information and must be charged by petition with being a chronic and repeated delinquent with subsequent commitment to the state reformatory under Sec. 53, Chap. 33, 1935 C.S.A. (See *Kahm v. People*, 83 Colo. 300)

In *Carmean v. People*, 110 Colo. 399, p. 402, the court held that the delinquent child should be granted probation on a first offense.

MOTOR VEHICLE

Carroll G. Bryant, Asst. Chief
Division of Motor Vehicles
May 10, 1954

Opinion 2695-54

If a motor vehicle bears a valid inspection sticker upon sale by a dealer or by the individual owner, the individual purchaser need not procure another inspection prior to the expiration of the sticker then on the vehicle.

A licensed motor vehicle dealer shall not operate a car on the highway under his dealer's plates unless such vehicle shall bear a valid inspection certificate.

There is no authority to issue an inspection certificate to a non-resident owner having a vehicle temporarily in Colorado, bearing out of state license plates.

LEGISLATURE—ELECTIONS—CONSTITUTIONAL LAW**Opinion 2696-54**

Albert J. Tomsic
State Representative
Walsenburg, Colorado
May 10, 1954

A person holding an appointive position of county attorney may also be a member of the legislature as a county attorney is not a civil office and is exempted by Sec. 8, Art. V, Colo. Const., and is therefore not in conflict with said Sec. 8, Art. V.

The status of eligibility in the case of a person who is 29 years of age and runs for the elective office of district judge is to be determined as of the time of qualification providing he qualifies at the time required. The date he would normally take office is controlling and not any subsequent date and must therefore be 30 years old when the time arrives for taking the office.

LEGISLATURE—CONSTITUTIONAL LAW—HEALTH**Opinion 2697-54**

Hon. Ralph M. Stuck, Chairman
Committee on Health and Welfare
May 17, 1954

Insofar as communications in the course of duty in legislative proceedings are concerned, Sec. 16, Art. V, Colo. Const., protects the individual members, rather than the house or houses in the freedom of deliberation, speech and debate.

There may be occasions in which a member of the General Assembly is privileged under said Sec. 16, Art. V, when off the floor of his house; however, in the main, the privilege is confined to the walls of the legislative chambers, and any enlarged construction must be made by the courts upon the factual situation which surrounds each individual case.

GAME AND FISH—STATE OFFICERS**Opinion 2698-54**

Thomas L. Kimball, Director
Department of Game and Fish
May 18, 1954

Under Sec. 1 (b), Chap. 184, S.L. 1951, a game and fish commissioner appointed to fill a vacancy cannot be reappointed to succeed himself. *Peo. ex rel. Rosenberg v. Keating*, 112 Colo. 26.

MEDICAL BOARD—HOSPITALS**Opinion 2699-54**

State Board of Medical Examiners

May 19, 1954

1. A hospital corporation which employs licensed doctors specializing in pathology and radiology to perform medical services as services of the hospital is engaged in the practice of medicine; such practice by a corporation is illegal since a corporation may not be licensed so to practice.

2. Such employment by the licentiate is expressly made an act of unprofessional conduct, in violation of Sec. 17 (m) of the Medical Practice Act.

3. Non-profit corporations stand on the same footing as for-profit corporations, so far as their ability to be licensed to practice medicine is concerned and are subject to the same penalties as are provided for illegal practice by any other unlicensed person or corporation.

4. No licentiate of this board can be employed by any unlicensed person, association or corporation, which owns and operates a hospital, to render medical services in such hospital to indigent persons who pay nothing for such services or hospitalization.

SCHOOLS**Opinion 2700-54**

H. Grant Vest

Commissioner of Education

May 21, 1954

A school district does not have legal authority to purchase property in another district to be used for public school purposes by the first district.

GAME AND FISH**Opinion 2701-54**

J. D. Hart, Asst. Director

Game and Fish Department

May 25, 1954

The commission by rule and regulation could determine when it is practicable to tag animal carcasses; could determine that it is practicable to detach the coupon immediately upon kill; could promulgate rules to supplement, clarify and make uniform the procedure for tagging animal carcasses.

MOTOR VEHICLE**Opinion 2702-54**

C. R. Fugate, Revenue Director

May 27, 1954

The present dealer's and salesman's licensing act of 1945, as amended, requires out-of-state dealers selling three or more vehicles per year within Colorado to Colorado individual residents to be licensed Colorado dealers, to establish a principal place of business within Colorado and to otherwise comply with Chap. 16, Art. 11, 1935 C.S.A., as amended.

Said statute requires such out-of-state dealers selling three or more cars per year within Colorado to Colorado licensed dealers to become Colorado licensed dealers, and to have an established place of business within this state.

When a Colorado auction is operating strictly as an auction without a dealer's license, such out-of-state dealers delivering three or more cars yearly to the auction to be sold within Colorado to any person, resident or non-resident, are required to obtain Colorado dealer's licenses, post bond, maintain a principal place of business in Colorado and otherwise comply with said Chap. 16, Art. 11, as amended.

MEDICAL BOARD**Opinion 2703-54**

State Board of Medical Examiners

May 28, 1954

(Form of "Outline for HOSPITAL-DOCTOR CONTRACT")

The document is objectionable as a complete statement of terms for the reason that it does not expressly define the relationship between the pathologist or radiologist and the hospital. Such a contract must expressly embody the principles:

1. That professional services must be those of the doctor alone furnished to the patient, not to the hospital.
2. The fees charged for professional services must be those of the doctor.

AGRICULTURE**Opinion 2704-54**

Colorado State Board of Veterinary Medicine

June 1, 1954

The administering of drugs to animals owned by other individuals by unlicensed persons acting as salesmen of companies distributing and selling such drugs is the unlawful practice of

veterinary medicine when such administration of the drugs is part and parcel of the entire transaction and is not a disconnected act offered and performed as a gratuity after the sale of drugs is completed.

INSURANCE—POLICE & FIREMEN'S PENSIONS

Luke J. Kavanaugh

Opinion 2705-54

Commissioner of Insurance

June 17, 1954

(Re Foreign multiple line insurance companies' annual premium tax and the firemen's pension fund)

The firemen's pension fund is entitled to the benefit of the two per cent tax on premiums collected from foreign fire insurance companies only as provided in said Sec. 473, Chap. 163, 1935 C.S.A. and that the firemen's pension fund is not entitled to the benefit of the premium tax upon multiple line insurance companies' gross premiums.

DEAF AND BLIND COUNTIES—CITIES AND TOWNS—HIGHWAYS

Colorado School for Deaf and Blind

Opinion 2706-54

June 17, 1954

The Board of Trustees cannot make a conveyance for streets or roads, but it can grant an easement or right of way for the powerline or lines.

AGRICULTURE DEPARTMENT

Paul W. Swisher, Commissioner

Opinion 2707-54

Department of Agriculture

June 18, 1954

(Pear Marketing Order)

Chap. 35, S.L. 1953, amending Chap. 66, S.L. 1939, does not enlarge the scope of the original act to authorize the regulation of the processing, distribution and other handling of agricultural commodities in intrastate commerce.

MARRIAGE LAWS

Major Lamar F. Graves

Opinion 2708-54

Legal Assistance Officer

June 23, 1954

Marriages or contemplated marriage of members of the Armed Forces, who are citizens of the State of Colorado, with Japanese

citizens, would be valid in Colorado if such marriages were legally created elsewhere. Sec. 4, Chap. 107, 1935 C.S.A.

The prohibition against marriage between whites and persons of color is defined in Sec. 2, Chap. 107, 1935 C.S.A.

BUILDING SUPERINTENDENT

Opinion 2709-54

James Merrick, Superintendent

Division of Public Buildings

March 15, 1954

If it is deemed in the public interest to install such out-door public telephone service, the Public Buildings Department as a department of the state, (Sec. 1, Chap. 217, S.L. 1953) is empowered to grant an easement or right of way to this "public corporation" upon the terms and conditions set forth in said Secs. 2 and 3 of Chap. 217.

BLIND COMMISSION

Opinion 2710-54

Colorado Industries for the Blind

July 6, 1954

(1) Each chief executive officer or any subordinate officer who may be required to handle state funds shall give surety bond in such sum as shall be fixed by the Governor.

(2) The statute does not require any of the said employees of the corporation to be bonded in any amount; however, the board, in its discretion, may require such employees as handle money or personal property to give a bond, running to the corporation, in such amount as it deems sufficient in the premises.

ELECTIONS

Opinion 2711-54

Charles A. Haskell, Chairman

Republican State Central Committee

July 8, 1954

1. Each delegate to a county assembly casts one vote for each office to be filled and cumulative voting may not be permitted.

2. The statutory provision to the effect that each candidate must receive 20% of the total number of delegates duly accredited by the assembly is interpreted as 20% of the delegates whose credentials are approved by the convention.

3. The number of votes allotted each precinct is determined by the number of votes acquired and the number of offices to be filled; that is, each delegate has one vote for each office.

HEALTH

Dr. R. L. Cleere, Director

Opinion 2712-54

State Department of Public Health

July 19, 1954

1. Employees of your department doing plumbing inspection work under Chap. 126, 1935 C.S.A. must hold the position of chief plumbing inspector or deputy plumbing inspector and must possess the statutory requirements therefor, including qualification by reason of practical experience as a plumber. Whether such persons must also possess the qualifications required of a sanitarian or sanitary engineer is a matter within the job classification and standardization duties of the civil service commission.

2. The provisions of Sec. 2, Chap. 126, 1935 C.S.A. providing for appointment and removal of plumbing inspectors are effective only insofar as they are not superseded by the civil service laws. The positions of chief plumbing inspector and deputy plumbing inspectors are now civil service positions to be filled by appointment of the governor from the civil service lists. Removal from such positions and tenure would also be governed by civil service laws.

DEAF AND BLIND

Dr. A. L. Brown, Superintendent

Opinion 2713-54**July 20, 1954**

Since the officers and teachers of the School for Deaf and Blind are not within the classified civil service, the superintendent, with the consent of the trustees, may discharge a teacher if in their opinion the interests of the school would be thereby promoted.

The advisability of employing another teacher to take the place of one discharged is not a question of law but lies within the field of discretion imposed upon the board by statutes and it is for them to exercise that discretion and not this office.

**MOTOR VEHICLE
COUNTY CLERKS**

C. P. Fugate, Director of Revenue

Opinion 2714-54**July 22, 1954**

The county clerk may allow one of his employees to accept applications for certificates of title during a week-end at the office of the county clerk and no other place. He may not deputize an employee of an automobile sales company to act in his behalf to enable the auction company to execute title applications during a week-end.

LAND COMMISSION

Board of Land Commissioners

Opinion 2715-54**July 23, 1954**

Subject to the provisions of Art. IX, Sec. 10, Colo. Const., the land board can properly enter into an oil and gas lease for a thirty-year period.

Subject to above provisions the land board can accept in advance the full rental payments.

The right of the board to demand drilling in an attempt to bring oil into production under an oil lease upon state land is a matter of contract and depends entirely upon the terms of the lease and would not be jeopardized by acceptance of full payments of ground rentals in advance if the contract so provides.

SOLDIERS' HOME

Norton C. Conklin, Commander

Opinion 2716-54**July 26, 1954**

The statute vests in the board the discretion to admit or not admit persons who qualify under Sec. 3, Chap. 215, S.L. 1953.

ELECTIONS

Art Bradbury

Opinion 2717-54

County Clerk, Kiowa County

July 27, 1954

A person designated by a political party as a candidate for county commissioner who was not registered at the time the certificate of designation was filed is not eligible for designation as a candidate for office. The county clerk should accept the designation as he is performing a ministerial duty imposed by statute and is not in a position to challenge the certificate. Objection would have to be made in accordance with Chap. 59, Sec. 80, 1935 C.S.A. as amended.

DEAF AND BLIND

Hon. William O. Lennox

Opinion 2718-54

State Representative

July 29, 1954

As the law now exists, neither the corporation known as the "Colorado School for the Deaf and Blind", nor its board of trustees, can alienate, sell or convey any of the real estate held and owned by the said school. It will take affirmative action by the General Assembly to bring about such sale. Chaps. 199, 200, and 202, S.L. 1949.

COURTS—FEES**Opinion 2719-54**

Homer F. Bedford

State Treasurer

July 29, 1954

Transcripts from the justice courts, filed in the district court pursuant to Rule 11, Appendix B of R.C.P. are not to be assessed the \$1.00 fee levied by Sec. 12, Chap. 259, S.L. 1951, to reimburse the general fund for monies appropriated for revision of the Colorado statutes.

RACING COMMISSION**Opinion 2720-54**

Colo. Racing Commission

July 30, 1954

The track licensees that have paid over the breakage to the commission must initiate the refunding procedure by making demand upon the commission for such refund.

Since the Supreme Court in Centennial Turf Club, Inc., et al. v. Colo. Racing Commission, et al, decided June 21, 1954, held that "breakage" is not a tax, all refunds of "breakage" must be made under Sec. 32 (1), Ch. 153, 1935 C.S.A., as amended and only claims made "within one year after such money was collected or received by the State of Colorado" can be refunded to such claimants.

GOVERNOR—COLORADO A & M COLLEGE**Opinion 2721-54**

Hon. Dan Thornton, Governor

July 30, 1954

A member, filling an unexpired term by election, on the State Board of Agriculture, may be appointed by the governor to succeed himself for one additional full term.

SECURITIES**Opinion 2722-54**

Curtis White, Securities Commissioner

July 30, 1954

1. Local banks, trust companies, insurance companies, institutional investors, or agencies of the State, such as the board of land commissioners and workmen's compensation fund, are a portion of the "public" as that term is used in Sec. 19 (d), Chap. 148, 1935 C.S.A.

2 (a) Any person, agency, company or institutional investor may without restriction under Chap. 148, 1935 C.S.A. contract for the purchase of bonds from Colo. cities, counties, towns, school districts, or other political subdivisions when the same are for his or its own separate account and not for the purpose of resale to the public, and a dealer's license is not required.

(b) As the manager of a syndicate which purchases the bonds for resale to the public and receives a certain percentage of the profit, such a "manager" is a dealer within the meaning of Sec. 19 (d), Chap. 148, 1935 C.S.A.

TAXATION—COUNTY ASSESSOR

Howard A. Latting
Tax Commissioner

Opinion 2723-54

August 4, 1954

1. Agricultural products in a raw or unprocessed state and temporarily stored for hire, not to exceed one year, do not have a situs for assessment within the county.

2. The running of the beans through a cleaner or winnowing machine leaves the beans in a "raw or unprocessed" state insofar as Sec. 1, Ch. 252, 1951 S.L. is concerned.

3. The fact that the beans are stored by a grower or some other person is immaterial.

LEGISLATURE—VOCATIONAL EDUCATION SCHOOLS

Legislative Council
August 4, 1954

Opinion 2724-54

The State Board for Vocational Education is a component part of the State Department of Education and continues as it existed on May 18, 1949, as an educational institution, and the agency designated to administer the Smith-Hughes Act (P.L. 347) and the George-Broden Act (P.L. 586) (Sec. 3, Ch. 153 and Sec. 1, Ch. 248, S.L. 1949), but otherwise it is under the direction and control of the State Department of Education (Sec. 3 (a) (5), Chap. 153).

SOLDIERS' HOME

Norton C. Conklin, Commander
August 9, 1954

Opinion 2725-54

The financing of shuffleboards and motion picture and sound equipment may be made from the Members' Benefit Fund of the Soldiers and Sailors Home, Account No. 2195.

HEALTH—HOSPITALS**Opinion 2726-54**

Dr. R. L. Cleere, Director
 State Department of Public Health
August 9, 1954

Whether a chiropractic hospital can qualify for participation in the Hill-Burton program under the technical language of the law and the regulations issued thereunder by the Office of the Surgeon General of the U. S. Public Health Service is one of fact for decision by the State Board of Health alone as to whether any proposed facility comes within the definition of the word "hospital".

PUBLIC UTILITIES—WATER**Opinion 2727-54**

Joseph W. Hawley, Vice-Chairman
 Public Utilities Commission
August 13, 1954

1. A junior appropriator has the right to challenge the contemplated change of use, if injury can be shown.

2. The public utility here involved, because of the nature of the service and use of its facilities, would have the right to protect the domestic use it serves as well as would a municipality.

PENITENTIARY**Opinion 2728-54**

Warden Harry Tinsley
August 16, 1954

Status of an inmate who has escaped or attempted to escape, etc.

ELECTIONS**Opinion 2729-54**

Homer M. Bruce
 Secretary of State
August 19, 1954

Where the City and County of Denver annexes a portion of Arapahoe County within 90 days prior to a primary and general election, all persons registered to vote at the time the annexation is complete are entitled to vote in both the primary and general elections, and such persons are entitled to cast Arapahoe County ballots.

STATE TREASURER**Opinion 2730-54**

Homer F. Bedford
State Treasurer

August 23, 1954

The State Treasurer is not required to print a biennial report but he is required to "Report to the Governor at least twenty days preceding each regular session of the General Assembly a detailed statement of the condition of the Treasury and its operations for the two preceding fiscal years." The Governor may require the State Purchasing Agent to print and publish at the expense of the state such portions of such report.

SOIL CONSERVATION BOARD**Opinion 2731-54**

Kenneth W. Chalmers, Secretary

August 25, 1954

A local soil conservation district has the authority, under the provisions of said Section 8, Chapter 241, S.L. 1937, as amended, to enter into contracts in which they would be trustees handling Federal money in addition to disbursing their own funds, as contemplated by H. R. 6788, 83rd Congress, 2nd Session, approved August 4, 1954, being Public Law 566.

LIQUORS**Opinion 2732-54**

Hon. Homer M. Bruce
Secretary of State

August 30, 1954

Chap. 143, S.L. 1953, does not prohibit consideration by the licensing authority of the July 7, 1954 application, for the reason that second application (July 7, 1954) was made within a two year period from the date a previous application for the same location and by the same person had been denied.

ATHLETIC COMMISSION**Opinion 2733-54**

State Athletic Commission

September 1, 1954

Lessons of instruction in boxing are not such contests, matches or exhibitions contemplated by Chap. 141, S.L. 1947 and are not under the jurisdiction, control, direction and management of the State Athletic Commission.

LIQUORS**Opinion 2734-54**

Hon. Charles J. Simon

County Judge, El Paso County

September 8, 1954

(1) If a licensee were convicted of a misdemeanor in a court of record, being other than a liquor law violation, such conviction would have to be of an offense akin to or having the character of a felony to prohibit the issuance of a license under Sec. 4(b), Chap. 89, 1935 C.S.A.

(2) (a) If a licensee is charged under Sec. 14, Chap. 89, 1935 C.S.A., as amended, convicted thereunder and his license revoked under that section, the licensee could not thereafter be granted or issued a license.

(b) If a licensee is charged and convicted under Sec. 14, Chap. 89, 1935 C.S.A., as amended, and his license not revoked, such conviction would not prevent the issuance of a license under Sec. 4(b), Chap. 89, 1935 C.S.A.

FORT LEWIS A. & M. COLLEGE**Opinion 2735-54**

Hon. Charles Dale Rea, President

Fort Lewis A & M College

September 10, 1954

Fort Lewis A & M is specifically granted power to construct dormitories and a connecting dining hall on the Durango campus site by Chap. 194, S.L. 1947, as amended. The College may increase and secure indebtedness to pay for the same as authorized by Chap. 210, S. L. 1953. Fort Lewis A & M is duly organized and existing under the laws of the State of Colorado.

PUBLIC INSTITUTIONS—COLO. STATE HOSPITAL**Opinion 2736-54**

Governor of State of Colorado

c/o J. Price Briscoe, Director

September 14, 1954

The words "improvement of existing buildings and utilities of the said State Hospital at Pueblo" as used in Sec. 4, Chap. 155, S. L. 1947, are broad enough to include the re-roofing of 23 buildings at said State Hospital.

BASIC SCIENCE

Mrs. Esther B. Starks, Secretary

Opinion 2737-54**September 27, 1954**

Under Sec. 7, Chap. 106, S.L. 1937, the Basic Science Law, it is within the sound and reasonable discretion of the board in such case to determine the extent of additional study sufficient to justify re-examination. A requirement based upon lapse of time alone would be unreasonable, since the statute contemplates only that the applicant present proof of accomplishment of additional study. The element of elapsed time can only be considered by you as a means of assuring the passage of time sufficient to accomplish preparation for re-examination.

PENITENTIARY—PAROLE BOARD

Harry C. Tinsley, Warden

Opinion 2738-54**September 27, 1954**

Where the statute imposes a straight life sentence, there must be a minimum and maximum sentence imposed by the court; where there is such a minimum and maximum sentence, although the maximum sentence is life the prisoner may apply for parole as soon as the minimum sentence imposed upon him by the court has been served, provided "he has served at least ten calendar years." (Sec. 558 (c), Chap. 48, 1935 C.S.A.)

PENITENTIARY—PAROLE

Honorable Dan Thornton, Governor

Opinion 2739-54**September 27, 1954**

(Re David Dale Stiverson, CSP No. 24244)

In view of the decisions of our Supreme Court in *People v. Dist. Ct.*, 119 Colo. 451; *Best v. People*, 121 Colo. 100, and *Kirk v. Best*, 123 Colo. 27, Stiverson was permitted to escape on May 10, 1949 on an illegal or void order of the district court, and he has been properly retaken by the Warden of the Colorado State Penitentiary and is to be held under the original mittimus, subject to any action which the Governor, in his discretion, may take in the matter.

PENITENTIARY—PAROLE

Harry C. Tinsley, Warden

Opinion 2740-54**September 29, 1954**(Re Robert Bailey, CSP No. 22203
David Ross Yages No. 24520)

In view of Sec. 77, Chap. 131, 1935 C.S.A., Yages is entitled to credit on No. 24520 for the time he actually served within

the institution from his admission under No. 24520 on May 2, 1947 until his parole under the said number on July 24, 1951; plus any good or parole time and trusty time that he may have earned during the same period. After his successive paroles were revoked, the computation of his time must be against his maximum term, pursuant to Sections 549 and 550, Chap. 48, 1935 C.S.A.

**PLANNING COMMISSION
WESTERN STATE COLLEGE**

W. M. Williams, Director **Opinion 2741-54**
State Planning Commission
October 13, 1954

Western State College can expend building mill levy funds (1) for the construction, equipping and furnishing of a building or buildings included within the plan of public works as prepared and published by the State Planning Commission and (2) for the remodeling of, addition to and improvement of buildings and utilities that existed at the college on April 30, 1947.

GAME AND FISH

Thomas L. Kimball, Director **Opinion 2742-54**
October 15, 1954

The Colorado Game and Fish Commission has the "power to declare an open season for hunting and killing of game animals and game birds on any part or the whole of any state game refuge area of the State of Colorado" by virtue of Chap. 153, Sec. 5, sub-section 3, S. L. 1937.

LAND COMMISSION

State Board of Land Commissioners **Opinion 2743-54**
October 26, 1954

Under Opinion No. 2501-53, considered in the light of the case of Farrell v. Sayre, 270 P. (2d) 190 (Colo.), the State of Colorado would be unable to establish ownership of the peat deposits as a mineral reserved under the terms of Patents 3620 and 4447.

DEAF AND BLIND

Colo. School for Deaf and Blind **Opinion 2744-54**
November 9, 1954

The School for the Deaf and Blind, under Chap. 217, S.L. 1953 may grant a ten year lease or determinable easement to radio

station KVOR; however, such lease or easement must be limited to use as a public utility or public service with reverter to the institution upon abandonment or change of use.

LIQUORS

Opinion 2745-54

Myron R. Donald, Director
Liquor License Division Department

November 10, 1954

1. The measurement between the club premises and the school must be measured in a direct line.

2. The licensed premises must be determined as a matter of fact from the facts before the licensing authority. From the facts stated above, the portion of the building occupied by the club organization would be the licensed premises.

3. In the absence of express Colorado authority on the subject, and if the philosophy of the majority of the above cases were to be followed, it may well be that the fact situation stated above would be sufficient to place the church building and the entire grounds within the meaning of the term "school", as used in Sec. 11 (R) Ch. 142, S. L. 1935 (Ch. 89, Sec. 25, 1935 C.S.A.) as amended.

UNIVERSITY OF COLORADO

Opinion 2746-54

Dr. Ward Darley, President
University of Colorado

November 16, 1954

The proposed purchase and installation of ten Butler huts of pre-fabricated type is clearly within the meaning of the construction and equipping of housing facilities, as provided in Chap. 210, S.L. 1953; money could be borrowed for such purpose and the indebtedness repaid from revenue produced from such housing facilities in accordance with the provisions of said Chap. 210.

PUBLIC WELFARE

Opinion 2747-54

Guy R. Justis, Director
Department of Public Welfare

November 18, 1954

Public assistance payments should not be made to persons appointed as custodians pursuant to Chap. 255, S.L. 1953, for otherwise eligible mentally incompetent persons.

**BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

Opinion 2748-54

Colorado State Board of Registration
for Professional Engineers
November 19, 1954

Neither of the proposed regulations by your board would authorize it to issue a license to an engineer-in-training on the basis of an examination given by the examining board of another state, even though later adopted by your board, under the provisions of Chap. 100, S.L. 1953.

**ELECTIONS—PAROLE DEPARTMENT
CRIMINAL LAW**

Opinion 2749-54

Carl Jacobson
Chief Probation Officer
November 24, 1954

In view of Sec. 534, Ch. 48, 1935 C.S.A., any person convicted of the crime of rape, kidnaping, wilful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy or the crime against nature, incest, larceny, forgery, counterfeiting or bigamy, is ineligible to vote at any election unless pardoned or discharged of the crime.

AGRICULTURE DEPARTMENT

Opinion 2750-54

Paul W. Swisher
Commissioner of Agriculture
November 24, 1954

(Re Temporary Hail Insurance Representatives)

1. The State Department of Agriculture does not have legal authority to hire temporary hail insurance representatives when the function of such representatives is to act as selling agents for state hail insurance and such representatives are compensated from the State Hail Insurance Fund on the basis of a percentage of the premiums of insurance sold by them.

2. The State Department of Agriculture does not have the legal authority to pay these representatives remuneration for their services according to amounts specified and approved by the Governor in the "Labor Contract".

ACCOUNTANTS

C. B. Neville, C.P.A. **Opinion 2751-54**
State Board of Accountancy
November 28, 1954

A partnership of certified public accountants in existence prior to July 1, 1937 (the firm of Arthur Young founded in 1894) may be registered with the board and be permitted to do business in the State of Colorado as a public accounting firm provided it otherwise complies with the requirements of state law.

COLLECTION AGENCY

Collection Agency Board **Opinion 2752-54**
December 2, 1954

The Ace Acceptance Company can well be determined to be "engaged directly or indirectly, and as a primary or secondary object, business or pursuit, in soliciting claims owed or due, or asserted to be owed or due to another", and irrespective of whether it is primarily or secondarily pursuing such object, business etc., it is engaged in the collection business and must obtain a license, pursuant to the terms of Chap. 37, 1935 C.S.A., as amended.

ELECTIONS**LIEUTENANT-GOVERNOR**

Hon. Gordon Allott **Opinion 2753-54**
Lieutenant-Governor
December 8, 1954

A lieutenant-governor may resign at any time prior to the expiration of his elected term by filing such resignation with the Secretary of State and delivering copies thereof to the Governor of the State of Colorado, the president of the senate, pro tempore, and the speaker of the house. There is no direct provision in the constitution for the resignation of the governor or lieutenant-governor.

CONTRACTS

E. C. Comstock **Opinion 2754-54**
Executive Director
State Board for Vocational Education
December 9, 1954

The contract form adopted by the Board for Vocational Education in 1947 to be signed by non-civil service professional person-

nel are continuous employment contracts and the same can only be changed or modified upon the anniversary date of each contract by your performance of Sec. 5 of the 1947 form of contract, and a hearing with the employee as provided in the last paragraph of Sec. 9 thereof. This opinion is limited to those teachers and officers who are excluded from the operation of Sec. 13, Art. XII, Colo. Const.

HEALTH—FEDERAL

Dr. R. L. Cleere
Executive Director

Opinion 2755-54

Department of Public Health

December 13, 1954

The State Department of Public Health under 66-18-1, '53 CRS, is given power to comply with Public Law 482, Laws of 1954 of the 83rd Congress, entitled "Hospital Survey and Construction Act."

PUBLIC FUNDS—STATE TREASURER

Homer F. Bedford
State Treasurer

Opinion 2756-54

December 13, 1954

120-13-31, '53 CRS (formerly Sec. 31, Chap. 202, S.L. 1953) only authorizes the temporary withholding of 10% of the said fund allocated to the respective municipalities for their delinquency in filing the required report; the State Treasurer should keep these withheld funds in an earmarked fund so that he can follow the requirements of the statute, to-wit: pay over the withheld payments to the cities, cities and counties or towns upon receipt of the delinquent reports.

SECURITIES

Curtis White
Commissioner of Securities

Opinion 2757-54

December 14, 1954

1. The term "note" as used in said 125-1-15(4) does include notes executed by a company in connection with commercial or private loans.
2. The applicable exemption under an executor's or administrator's sale (pursuant to provisions of 125-1-15(10), '53 CRS), is thereafter lost when a securities broker purchases securities at such sale as principal for resale.

COSMETOLOGY

Beryl W. Maus

Opinion 2758-54

Department of Cosmetology

December 14, 1954

A separate license is not required of a beauty school teaching basic and advanced training.

A separate instructor's license is not required.

It is not within the power of the Board to give an examination for a teacher to teach basic or advanced training.

**CONTROLLER—INSURANCE
STATE COLLEGES**

James Noonan, Controller

Opinion 2759-54**December 14, 1954**

(Re Group Health Insurance)

Except as to the University of Colorado at Boulder and its Medical Department at Denver, any portion of the contribution to a Group Health Insurance Plan made by the State would be additional compensation to the employee and unless authorized by a statute would be a violation of Sec. 2, Chap. 103, S.L. 1953, insofar as it affects state employees, other than the officers and teachers in educational institutions not reformatory or charitable in character. There is no subsequent statute that modifies Sec. 2, Ch. 103, S.L. 1953.

LEGISLATURE—ELECTIONS

Lawrence M. Henry

Opinion 2760-54

Democratic County Chairman

December 15, 1954

An elected state representative may not be appointed to state senate vacancy during the time for which he was elected.

STATE COLLEGES—EMPLOYEES RETIREMENT**Opinion 2761-54**

Raymond J. Health, Secretary

Public Employees Retirement Association

December 21, 1954

The retirement benefits can only be computed as if each annual salary were paid in twelve monthly payments, using the five consecutive years of highest pay within the ten years of service immediately preceding retirement. In this case, the professor's

service terminates for retirement purposes on August 31, 1955. For annuity purposes, the average salary should be based on the period from September 1, 1950 to August 31, 1955, provided those were the five consecutive years of highest income during the last ten years.

PUBLIC FUNDS—PUBLIC UTILITIES

Opinion 2762-54

Joseph W. Hawley, Chairman
Public Utilities Commission
December 22, 1954

The Public Utilities Commission Special Fund is not affected by Sec. 7, Ch. 31, 1954 S.L.

**REVENUE DEPARTMENT
COUNTY CLERKS AND RECORDERS**

Opinion 2763-54

Clyde P. Fugate
Director of Revenue
December 22, 1954

The County Clerk and Recorder as authorized agent of the Director of Revenue in accepting applications for Certificates of Titles and License Plates, and in conducting examinations for Operators and Chauffeurs' Licenses, may conduct such activities in places other than the county seat, providing such action is consistent with the rules and regulations of the Director of Revenue.

SCHOOLS (Miscellaneous)

Opinion 2764-54

Charles W. Kreager
Sterling, Colo.
December 28, 1954

A High School County Committee may convey, on a proper and reasonable basis, the high school buildings to a school district.

LIQUORS

Opinion 2765-54

Hon. Homer M. Bruce
Secretary of State
December 30, 1954

A club license cannot be issued to the Potenza Lodge as it comes within the prohibition contained in 75-2-12(9), '53 CRS.

PART II
CASES PENDING AND DISPOSED OF IN ALL
COURTS

1953-1954

**IN THE SUPREME COURT OF THE
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- 340 *R. L. Freeman and Charles W. Garton v. People of the State of Colorado.* No. 186 Misc. Kidnapping.

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- 49 *Bernard M. Shotkin v. William A. Black, et al.* No. 23. Misc. Damages. Case closed.
- 398 *State of Colorado v. William Lee Knous, Chief Judge of the U. S. District Court for the District of Colorado.* Prohibition—or Mandamus. Case closed.
- 426 *State of Arizona v. State of California, et al.* No. 10 Original. Water. Case pending.

**IN THE UNITED STATES DISTRICT COURT
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- 306 *Diana V. Rice Hickman v. Otto H. Dreyer, et al.* No. 4259. Water priorities to Shell Creek and Dry Creek.
- 307 *Bentley M. McMullin v. Mark U. Watrous, State Highway Engineer, et al.* No. 4273. Action for wrongful taking of property.
- 311 *Bernard M. Shotkin v. William A. Black, et al.* No. 4274. Suit for damages.
- 375 *Baillie, et al. v. Mark U. Watrous, State Highway Engineer.* No. 4349. Injunction—damages.

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- 108 *United States of America v. Cecil James Herbertson, et al.* No. 4490. Foreclose tax liens under the Internal Revenue Laws.
- 189 *Irving T. Ludlow, et al. v. M. C. Hinderlider, State Engineer, et al.* No. 4527. Water priorities—Shell Creek.
- 194 *In the matter of the petition of R. L. Freeman and Charles W. Garton v. Harry S. Tinsley, Acting Warden Colorado State Penitentiary.* No. 4596. Kidnapping.

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195	<i>In the matter of the petition of R. L. Freeman and Charles W. Garton v. Harry S. Tinsley, Acting Warden Colorado State Penitentiary.</i> No. 4596. Kidnaping.
252	<i>The People of the State of Colorado v. Thomas Carson Maxwell.</i> No. 2415. Murder.
254	<i>The Century Indemnity Company v. Guy Heilman, et al.</i> No. 4676. Delinquent Sales Tax.
349	<i>Richard W. Dawson v. Harry S. Tinsley, Warden, Colorado State Penitentiary.</i> Habeas Corpus—Penitentiary.
317	<i>Jesse Chase, et al. v. Clyde P. Fugate, Director of Revenue, et al.</i> No. 4764. Testing constitutionality of Motor Vehicle Dealer's Administration Act.

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396	<i>People of the State of Colorado, et al. v. District Court of the United States for the District of Colorado.</i> 10th Circuit. Application and Petition for Writ in the Nature of Prohibition.
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266	<i>Joe Northcutt, et al. v. H. T. Burton, et al.</i> No. 17009. Writ of Prohibition. Case closed.
268	<i>Owen Bryan Glass v. People of the State of Colorado.</i> No. 17013. Habitual Criminal. Case closed.
300	<i>Lemuel Travis Haynes v. People of the State of Colorado.</i> No. 17032. Murder. Case closed.
301	<i>Interrogatories from the House of Representatives concerning Senate Bill No. 24, Thirty-ninth General Assembly.</i> No. 17035. Interrogatories. Case closed.

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303	<i>Wayne Leo Fagerstone v. People of the State of Colorado.</i> No. 17037. Conspiracy to commit aggravated robbery. Case closed.
318	<i>R. A. Herzig v. Cleland L. Feast, Director, Game and Fish Department.</i> No. 17038. Suit for damages—violation of Game and Fish laws. Case closed.
329	<i>People of the State of Colorado v. N. Mark Hanna.</i> No. 17055. Contempt. Case closed.
340	<i>R. L. Freeman and Charles W. Garton v. People of the State of Colorado.</i> No. 17062. Kidnapping.
356	<i>H. M. Dumont, et al. v. Bernard E. Teets, Director, Department of Employment Security.</i> No. 17098. Employment Security Matter.
357	<i>David Lee Davis v. Carroll G. Bryan, et al.</i> No. 17104. Revocation of chauffeur's license. Case closed.
361	<i>The City and County of Denver v. People ex rel. Public Utilities Commission, et al.</i> No. 17113. Denver telephone rates and P.U.C. jurisdiction.

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369	<i>Jack Kukuljan v. People of the State of Colorado.</i> No. 17158. Murder. Case closed.
376	<i>Edith L. McDonald, et al. v. City of Glenwood Springs, et al.</i> No. 17116. Declaratory Judgment.
377	<i>State Highway Department v. Eleanor Swift, et al.</i> No. 17122. Trespass and Injunction.
384	<i>George W. K. Posvar v. Geer, Assistant City Attorney.</i> Writ of Habeas Corpus.
392	<i>People of the State of Colorado v. Conner Holmes.</i> No. 17073. Burglary. Case closed.

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2	<i>Richard Lincoln Keel v. People of the State of Colorado.</i> No. 17195. Fictitious check charge.
6	<i>People ex rel. The Attorney General v. W. Lucas Woodall.</i> No. 17198. Contempt. Case closed.
17	<i>People ex rel, Duke W. Dunbar, Attorney General v. County Court of the City and County of Denver, et al.</i> No. 17205. Writ of Prohibition. Case closed.

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- 29 *Glenn West and Maxine Fleming v. People of the State of Colorado.* No. 17211. Assault and Battery. Case closed.
- 38 *George J. Stobie, Jr., v. Ray M. Barger.* No. 17226. Habeas Corpus—non-support. Case closed.
- 39 *William E. Russell Coal Company v. Board of Boulder County Commissioners, et al.* No. 17114. Condemnation.
- 40 *People of the State of Colorado v. Phillip Urso.* No. 17074. Robbery. Case closed.
- 41 *People of the State of Colorado v. Ralph Hubert Vigil.* No. 17075. Robbery.
- 46 *Centennial Turf Club, Inc., et al. v. Colorado Racing Commission, et al.* No. 17232. Declaratory Judgment. Case closed.

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- 51 *Union Pacific Railroad Company, et al. v. Oil and Gas Conservation Commission, et al.* No. 17241. Oil and Gas matter.
- 52 *The Colorado State Board of Examiners of Architects, et al. v. Louis E. Rico.* No. 17529. Declaratory Judgment. Case pending.
- 67 *Harry Crump, Jr., v. People of the State of Colorado.* No. 17256. Rape. Case closed.
- 71 *Robert Atlas Rivera v. People of the State of Colorado.* No. 17131. Burglary. Case closed.
- 73 *Marie A. Barber v. People of the State of Colorado.* No. 17248. Insane person. Case pending.
- 77 *Department of Employment Security, et al. v. General Cleaners and Dyers, Inc.* No. 17015. Employment Security matter. Case pending.
- 79 *Henry Joe Gonzales v. People of the State of Colorado.* No. 17260. Possession of narcotics. Case closed.
- 86 *People of the State of Colorado v. William Taylor Moyers.* No. 17266. Disbarment proceedings. Case closed.
- 88 *People ex rel. H. Lawrence Hinkley, Attorney General, et al. v. L. B. Maytag.* No. 17079. Inheritance Tax matter.

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89	<i>Industrial Commission of Colorado v. Henry E. Brady.</i> No. 17199. Unemployment benefits.
93	<i>Jessie Theodore Cook v. People of the State of Colorado.</i> No. 17277. Possession of Narcotics. Case closed.
102	<i>People of the State of Colorado ex rel. Attorney General v. W. Lucas Woodall.</i> No. 17289. Contempt. Case closed.
107	<i>Gilbert Joseph Martinez and Ernest Felix Martinez v. People of the State of Colorado.</i> No. 17298. Burglary—conspiracy to commit burglary with force. Case closed.
118	<i>Ralph Rickey v. People of the State of Colorado.</i> No. 17310. In the interest of mental incompetent. Case closed.
132	<i>A. A. Archer v. People of the State of Colorado.</i> No. 17314. Grand Larceny. Case closed.

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137	<i>People ex rel. Duke W. Dunbar, Attorney General v. The District Court, City and County of Denver, et al.</i> No. 17320. Blind case. Case closed.
140	<i>Max Gordon McKnight v. Herbert F. Forsyth, Chief of Police, et al.</i> No. 17318. Extradition. Case closed.
141	<i>Howard Potter v. Josephine Potter.</i> No. 17317. Non-support. Case closed.
148	<i>Chester Teter v. People of the State of Colorado.</i> No. 17326. Extradition. Case closed.
152	<i>William H. Martin v. District Court of the County of Pueblo, et al.</i> No. 17321. Forgery. Case closed.
153	<i>People of the State of Colorado v. Albert B. Logan.</i> No. 17331. Disbarment. Case pending.
158	<i>Eddie Kenneth Jones v. People of the State of Colorado.</i> No. 17334. Causing death while under influence of liquor. Case closed.
162	<i>Robert Higgins, et al. v. Jean Sinnock, et al.</i> No. 17336. Constitutional Law. Case closed.
165	<i>People of the State of Colorado v. Joe Gallegos.</i> No. 17337. Robbery.

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- 170 *Roy Bauman v. People of the State of Colorado*. No. 17344. Rape. Case closed.
- 175 *Cloverleaf Kennel Club v. The Racing Commission of the State of Colorado*. No. 17405. Issuance of Racing License. Case closed.
- 183 *State of Colorado for Department of Welfare v. Estate of Alice May Griffith, et al.* No. 17342. Claim of Welfare Department. Case closed.
- 185 *People ex rel. Duke W. Dunbar, Attorney General et al. v. May C. Hogan, et al.* No. 17247. Inheritance Tax Matter. Case pending.
- 188 *Arvey Corporation v. C. P. Fugate, Director of Revenue*. No. 17345. Injunction—income tax matter—deficiency assessment. Case closed.
- 193 *City and County of Denver, et al. v. William H. McNichols, et al.* No. 17358. Constitutional Law. Case pending.

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- 202 *Stanley Petrow v. Colorado State Board of Examiners for Architects*. No. 17375. Issuance of license. Case closed.
- 205 *Marion Harden Brown, Jr., v. People of the State of Colorado*. No. 17379. Murder. Case closed.
- 206 *James Edward Glover v. Charles Foster, et al.* No. 17381. Extradition. Case closed.
- 208 *Leland Solt v. People of the State of Colorado*. No. 17385. Driving under influence of intoxicating liquor. Case closed.
- 219 *(Jack) Ira Charles Iwerks v. People of the State of Colorado*. No. 17382. Insane Person. Case closed.
- 222 *Ray W. Weidenhaft and Joy C. Weidenhaft v. Board of County Commissioners of El Paso County*. No. 17399. Tax assessment. Case pending.
- 224 *George A. Glenn v. Colorado State Board of Medical Examiners, et al.* No. 17402. Issuance of license. Case pending.
- 225 *People of the State of Colorado v. John B. Griffith*. No. 17400. Driving while under influence of intoxicating liquor. Case closed.

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231	<i>Roy Roll v. People of the State of Colorado.</i> No. 17407. Confidence Game. Case pending.
233	<i>Glen Joseph Miller, Samuel James Miller, Jr., and Paul Edward Swanson, v. People of the State of Colorado.</i> No. 17410. Rape. Case closed.
236	<i>Associated Master Barbers of America, et al, v. Journeymen Barbers, Hairdressers, Cosmetologists' and Proprietors International Union of America, et al.</i> No. 17500. Constitutional Law. Case pending.
237	<i>People ex rel. Thomas L. Kimball, Director of the and Fish Department v. The Crystal River Corporation, et al.</i> Game and Fish matter. Case pending.
258	<i>John D. Hart, Assistant Director, Game and Fish Department, et al. v. R. A. Herzig.</i> Game and Fish license.
264	<i>John Herbert Baney v. People of the State of Colorado.</i> No. 17442. Murder and Rape. Case closed.
265	<i>In the matter of the retirement of J. T. Martinez, County Judge.</i> Judges retirement. Case closed.

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274	<i>Merle McRae v. People of the State of Colorado.</i> No. 17453. Driving while under influence of liquor. Case pending.
279	<i>Pete Joe Naranjo v. People of the State of Colorado.</i> No. 17462. Violation of Game Law. Case closed.
288	<i>Eveready Freight Service, Inc., v. Public Utilities Commission of Colorado, et al.</i> No. 17465. P.U.C. matter. Case pending.
290	<i>Leonard McRae v. People of the State of Colorado.</i> No. 17467. Robbery. Case pending.
295	<i>William Milton Hood v. People of the State of Colorado.</i> No. 17470. Indecent Liberties. Case closed.
305	<i>John C. Holden v. People of the State of Colorado.</i> No. 17483. Forcible Rape. Case closed.
310	<i>People ex rel. Duke W. Dunbar, Attorney General v. George Fischer.</i> No. 17484. Disbarment Proceedings. Case pending.

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- 311 *Norman Earl Miles v. People of the State of Colorado.* No. 17489. Aggravated robbery and conspiracy to commit robbery. Case pending.
- 312 *Ray Langosh, John J. Padilla and Charles E. Baker v. People of the State of Colorado.* No. 17491. Burglary. Case closed.
- 330 *Leroy Adolph Leick v. People of the State of Colorado.* No. 17506. Murder. Case pending.
- 343 *Lloyd Louis Will v. People of the State of Colorado.* No. 17518. Driving under influence of intoxicating liquor. Case closed.
- 394 *William Leslie Wellington v. The District Court of the County of Eagle, et al.* No. 17547. Writ of Prohibition—murder.
- 399 *Roy Hawkins v. People of the State of Colorado.* No. 17566. Crime Against Nature. Case pending.
- 406 *J. R. Allison, et al, v. People of the State of Colorado v. James Adamson.* No. 17572. Forfeiture of Bond. Case pending.

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- 419 *Florence Pettington Wright v. Matter of the People in the interest of Martha Victoria Rowe, Dependent, et al.* No. 17564. Dependent Children. Case closed.
- 425 *Leslie M. Jones v. France C. Blocketer.* No. 17522. Mechanic's Lien. Case pending.

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STATE OF COLORADO**

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- 260 *C. J. Herbertson, et al. v. George J. Baker, Secretary of State.* City and County of Denver. Corporation matter. Case closed.

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- 267 *Water Adjudication, Moffat County, District No. 44, Petition of Harold E. Leftwich.* Moffat County No. 1278. Case pending.
- 270 *Minneapolis-Moline Company v. Clyde P. Fugate, Director of Revenue.* City and County of Denver No. A-86960. Income tax matter. Case pending.
- 274 *Conrad J. Penk v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-87057. Architects' Exams and licenses. Case closed.
- 275 *Alexander Gustaf Jan Ruhtenberg v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-86919. Licensing matter. Case closed.
- 276 *Cyrus G. DeLano v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-86953. Licensing matter. Case closed.
- 277 *Robert F. Hightower v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-86907. Licensing matter. Case closed.
- 278 *Richard L. Crowther v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-86952. Licensing matter. Case closed.
- 279 *Joe Lort, Jr., v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-86959. Licensing matter. Case closed.
- 280 *Dean Marshall v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver No. A-86910. Licensing matter. Case closed.
- 291 *Kenneth A. Heron v. Quigg Newton, Mayor of the City of Denver, et al.* City and County of Denver No. A-87397. Testing constitutionality of an ordinance. Case pending.

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- 292 *Board of County Commissioners of Weld County and Colorado Highway Commission v. James H. Kalker, et al.* Weld County. Condemnation suit.
- 294 *Pat De Bell v. Denver Discount Company, et al.* City and County of Denver No. A-83639. Damage suit. Case closed.

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304	<i>Board of Control of the State Industrial School for Girls v. Board of County Commissioners of the County of Chaffee.</i> Chaffee County. Action to force payment for care and maintenance.
305	<i>In the Matter of the Petition of Kenneth Charles Heller for a Writ of Habeas Corpus.</i> Jefferson County No. 8345. Petition for Writ of Habeas Corpus. Case closed.
308	<i>Board of County Commissioners of the County of Gunnison, et al. v. Virgil Spann, et al.</i> Gunnison County. Petition in condemnation. Case closed.
312	<i>Board of County Commissioners of Garfield County, et al. v. F. Kent Wilson.</i> Garfield County. Condemnation.
319	<i>Leonard Meyer, et al. v. Willard T. Lewis, et al.</i> City and County of Denver No. A-88036. Foreclosure.
320	<i>City of Glenwood Springs, et al. v. Shay Hotel Company, et al.</i> Garfield County. Condemnation.
326	<i>K. B. Chamley v. City and County of Denver, et al.</i> City and County of Denver No. A-87547. Testing constitutionality of city ordinance.
335	<i>Clement M. Wright, et al. v. The Housing Authority of the City and County of Denver.</i> City and County of Denver No. A-88294. Declaratory Judgment.
350	<i>State of Colorado v. Charles J. Harrah.</i> City and County of Denver No. A-89125. Forcible entry and Detainer.
351	<i>Adams County Commissioners, et al. v. Rene Fischer, et al.</i> County of Adams. Condemnation.
360	<i>Ray W. Weidenhaft, et al. v. Board of County Commissioners of the County of El Paso.</i> El Paso County No. 31519. Declaratory Judgment and Tax Refund.
365	<i>The Board of County Commissioners of Pueblo County, et al. v. R. W. Beattie, et al.</i> Pueblo County. Condemnation.
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366	<i>City of Wray, et al. v. Viva P. Harmon, et al.</i> Yuma County. Condemnation.

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371	<i>Samuel W Johnson, et al. v. Board of County Commissioners of Jefferson County, et al.</i> Jefferson County. Declaratory Judgment.
385	<i>Board of County Commissioners of Kit Carson County, et al. v. V. F. Elliston. et al.</i> Kit Carson County. Condemnation.
393	<i>Kenneth A. Heron v. The City of Denver, et al.</i> City and County of Denver No. A-90032. Declaratory Judgment. Case closed.
395	<i>Robert Higgins, et al. v. Jean Sinnock, et al.</i> City and County of Denver No. A-89855. Declaratory Judgment.
398	<i>The State of Colorado v. H. W Moore Equipment Company, et al.</i> City and County of Denver No. A-90476. Condemnation. Case closed.

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1	<i>Board of County Commissioners of Adams County, et al. v. Clarence Foster, et al.</i> Adams County. Condemnation.
5	<i>St. Thomas Episcopal Church v. Duke W. Dunbar, Attorney General.</i> City and County of Denver No. A-90250. Declaratory Judgment.
7	<i>Thomas J. Coleman v. Warden of the Colorado State Penitentiary.</i> Fremont County No. 7051. Habeas Corpus. Case closed.
12	<i>In the matter of the Supplemental Adjudication of Priority of Rights to the use of Water in Water District No. 62, Irrigation Division No. 4.</i> Hinsdale County No. 6981. Case pending.
21	<i>La Plata County Commissioners, et al. v. Marie Schaefer, et al.</i> La Plata County. Condemnation.
24	<i>Edith I. Hollingsworth v. Perry L. McClellan.</i> City and County of Denver No. A-86757. Constitutional Law. Case pending.
27	<i>The B & B Mines, Inc., v. Ed. T. Stuard, et al.</i> Summit County No. 1885. Tax Refund. Case closed.

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37	<i>Edward J. Reagan v. Warden of the Colorado State Penitentiary.</i> Fremont County No. 7100. Habeas Corpus. Case closed.
42	<i>United Workers for the Blind of Colorado, Inc., et al. v. Ruth M. DaVolt.</i> City and County of Denver No. A-91161. Injunction Damages.
44	<i>Whipple Van Ness Jones v. C. P. Fugate, Director of Revenue.</i> Garfield County No. 4436. Application for certificate of non-residence. Case closed.
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52	<i>Louis E. Rico v. Colorado State Board of Examiners of Architects, et al.</i> City and County of Denver No. A-91409. Declaratory Judgment.
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64	<i>Board of County Commissioners of Adams County et al. v. Walter A. Alkire, et al.</i> Adams County. Condemnation.
65	<i>Board of County Commissioners of Arapahoe County. et al. v. C. M. Dickinson Company, et al.</i> Arapahoe County. Condemnation.
66	<i>Arvey Corporation v. C. P. Fugate, Director of Revenue.</i> City and County of Denver No. A-91687. Income Tax matter—deficiency assessment.
68	<i>Kenneth Parkin v. Thomas L. Williams, et al.</i> City and County of Denver. Damages.
69	<i>Doris Pearson v. City and County of Denver, et al.</i> City and County of Denver No. A-91592. Constitutional Law. Case closed.
74	<i>City and County of Denver, et al. v. Robert W. Farrar, et al. v. Duke W. Dunbar, Attorney General.</i> City and County of Denver No. A-87463. Constitutional Law. Case pending.
76	<i>State Highway Commission, et al. v. Baillie, et al.</i> Garfield County No. 4464. Declaratory Judgment.

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- 78 *City and County of Denver v. George A. Cavender, et al.* City and County of Denver No. A-91098. Condemnation. Case pending.

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- 84 *Stanley Petrow v. Colorado State Board of Examiners for Architects, et al.* City and County of Denver No. A-92013. Issuance of Architects License.
- 85 *Charlene Bolton v. Betty Portner, Superintendent, State Industrial School for Girls.* City and County of Denver No. 41400. Juvenile Delinquency.
- 88 *L. B. Maytag v. People of the State of Colorado, ex rel. John W. Metzger, Attorney General.* El Paso County No. 29188. Inheritance Tax Matter.
- 91 *State of Colorado v. Arvid L. Wahlstrom.* City and County of Denver No. A-92148. Collection matter.
- 92 *Board of County Commissioners of the County of Larimer, et el. v. Homer F. Bedford, State Treasurer, et al.* Larimer County No. 11459. Sales Tax Matter. Case pending.
- 94 *William G. Woodman, et al. v. Milton U. Utt.* Huerfano County No. 3140. Action against State Highway employee for damages.
- 95 *Jack Horning v. Clarence Ford, et al.* Adams County. Foreclose Mechanic's Lien.
- 96 *In the matter of the Application of William J. Guillar for a Writ of Habeas Corpus.* City and County of Denver No. 41432. Habeas Corpus. Case closed.
- 103 *The State Board of Agriculture v. Jack Freeman, et al.* La Plata County No. 6062. Damages (Tort). Case closed.
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- 122 *People ex rel. Curtis White, Securities Commissioner, v. F. W. Dressler, et al.* City and County of Denver No. A-93011. Complaint for investigation and injunction. Case closed.
- 124 *Cloverleaf Kennel Club v. The Racing Commission of the State of Colorado, et al.* City and County of Denver No. A-93059. Issuance of License.
- 125 *People ex rel. Inter-Church Temperance Movement of Colorado v. Homer M. Bruce, Secretary of State, et al.* City and County of Denver. Liquor Licensing authority.
- 134 *City of Brighton, et al. v. Cartwright, et al.* Adams County. Condemnation.
- 136 *Helen D. Rosener v. Rev. Canon Harry Watts, et al.* Jefferson County. Issuance of license to foster homes. Case closed.
- 139 *Arvid T. Temple v. Stanley Patrick.* Park County. Damages. Case closed.
- 146 *Board of County Commissioners of El Paso County, et al. v. Frederick M. Smith, et al.* El Paso County. Condemnation.
- 149 *City and County of Denver v. William H. McNichols, City Auditor, et al.* City and County of Denver No. A-92328. Constitutional Law.
- 150 *Hertz Drivurself System v. Ralph Brooks v. A. S. Brodhead, Manager of Revenue, City and County of Denver.* City and County of Denver No. A-77902. Sales Tax Matter. Case pending.

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- 173 *Board of Trustees of the Colorado School of Mines v. Nils Christianson, et al.* Jefferson County. Condemnation.
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- 184 *Board of County Commissioners of Yuma County, et al. v. Leo G. Devlin, et al.* Yuma County. Condemnation.
- 186 *Edward Clifford Heald v. A. M. Ramsey, et al.* City and County of Denver No. A-93956. Sale of land.
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- 229 *Don Griffith v. Colorado State Board of Examiners for Architects.* City and County of Denver. Licensing matter.
- 230 *People ex rel. Curtis White, Securities Commissioner v. Gold Range, Inc., et al.* City and County of Denver No. A-95194. Securities matter.
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- 235 *Board of County Commissioners of El Paso County, et al. v. Levi J. Stark, et al.* El Paso County. Condemnation.
- 236 *Associated Master Barbers of America, et al. v. Journeymen Barbers, et al.* City and County of Denver No. A-76730. Constitutional Law.

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- 250 *People ex rel. Luke J. Kavanaugh, Insurance Commissioner v. The Pioneer Mutual Compensation Company.* City and County of Denver. Insurance Investigation.
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- 282 *A. J. Kaveny, Sr., v. George W. Rigel, et al.* Weld County No. 12671. Sales tax lien.
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- 293 *Walter R. Smythe v. Colorado State Board of Examiners of Architects, et al.* City and County of Denver. Licensing matter.
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321	<i>People ex rel. Curtis White, Securities Commissioner, v. Scott Uranium, Inc., et al.</i> Denver County No. A-97605. Violation under fraudulent practice act. Case closed.
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- 357 *Craig Colony v. State of Colorado, et al.* Jefferson County No. 9330. Trust Funds. Case pending.
- 358 *Fred G. Koencke, et al. v. The Regents of the University of Colorado.* City and County of Denver. School matter. Case pending.
- 360 *Alexander G. Jan Ruhtenberg v. Thomas E. Moore, et al.* City and County of Denver. Architect matter. Case pending.
- 361 *City of Glenwood Springs, et al. v. Baillie, et al.* Garfield County. Condemnation.
- 364 *Quigg Newton, et al. v. Luke J. Kavanaugh, Insurance Commissioner.* City and County of Denver. Insurance—Firemen's Pension Fund. Case pending.
- 373 *Edgar P. Gregory, et al. v. State of Colorado, et al.* El Paso County. Income Tax appeal. Case pending.
- 377 *Walter Lee Stites v. Clyde P. Fugate, Director of Revenue.* Jefferson County No. 11894. Revocation of Driver's License.
- 378 *Clarence G. Cozad, et al. v. Lester B. Thompson.* Huerfano County No. 3206. Action against State Highway employee for alleged defective road maintenance.
- 379 *M. E. Hyde v. Town of La Jara, Colorado.* Pueblo County No. 22048. Action requiring Land Board to accept payment of bonds and accrued interest prior to due date.
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- 402 *People ex rel. Jack Layton, et al. v. Clyde C. Fugate, Director of Revenue, et al.* City and County of Denver. Mandamus. Case pending.
- 414 *Board of County Commissioners of Otero County, et al. v. R. P. Lewis, et al.* Otero County. Condemnation.
- 415 *Board of County Commissioners of Logan County, et al. v. Pioneer Drainage District.* Logan County. Condemnation.
- 416 *Board of County Commissioners of Weld County, et al. v. Mancini, et al.* Weld County. Condemnation.
- 417 *People ex rel. State Board of Agriculture v. The City of Durango.* La Plata County No. 6205. Declaratory Judgment. Case pending.
- 418 *Alonzo Petteys v. Zimith Drilling Company, et al.* Weld County No. 12174. Revenue—Sales Tax matter.
- 421 *Mildred Lyman Day, et al. v. The Trustees of the State Normal School.* Alamosa County No. 2711. Declaratory Judgment. Case pending.
- 423 *People of the State of Colorado v. Charles Apodaca.* Pueblo County No. 37014. Indecent liberties. Case pending.

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322	<i>City and County of Denver v. John E. Torres.</i> City and County of Denver No. S-320. Violation of certain traffic ordinances.
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19	<i>Ed. Paul, Brand Commissioner v. Robert Parker.</i> No. 235. Action for removal from service. Case closed.
22	<i>People ex rel. The Agricultural Commission, et al. v. John A. Miller.</i> Case No. 233. Action for removal from service. Case closed.
23	<i>John A. Miller v. Paul W. Swisher.</i> No. 234. Action for removal from service. Case closed.
80	<i>Louis A. Neapolitan v. A. C. Sudan, M.D.</i> For re-employment. Case closed.

**BEFORE THE INSURANCE DEPARTMENT OF THE
STATE OF COLORADO**

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304	<i>Capitol Co-operative Life Insurance Company.</i> Re: The Insurance Department has allowed the old company (Capitol Co-operative Life Association) to be reorganized into a stock company, over the objections of Attorney General's Office. Insurance matter. Case closed.
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**BEFORE THE PUBLIC UTILITIES COMMISSION
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263	<i>State Highway Commission, Pueblo County. Application No. 12160. Grade Crossing, State Highway No. 96.</i> Case closed.
264	<i>State Highway Commission, Larimer County. Application No. 12156. Grade Crossing, State Highway No. 1.</i> Case closed.
310	<i>Railroad grade crossing over Union Pacific tracks into game reserve at Ovid, Sedgwick County. Application No. 12312.</i> Case closed.
313	<i>State Highway Commission, Garfield County. Application No. 12244. Grade Crossing, State Highway No. 82.</i> Case closed.

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- 341 *State Highway Commission, Weld County. Application No. 12172. Grade Crossing, State Highway No. 14. Case closed.*
- 342 *State Highway Commission, Boulder County. Application No. 12241. Grade Crossing, State Highway No. 254. Case closed.*
- 343 *State Highway Commission, Yuma County. Application No. 12296. Grade Crossing, State Highway No. 51. Case closed.*
- 358 *State Highway Commission, Pueblo County. Application No. 12325. Grade Separation, 4th Street Viaduct, State Highway No. 96, Pueblo. Case closed.*
- 359 *State Highway Commission, Arapahoe County. Application No. 12326. Grade Crossing, State Highway No. 70. Case closed.*

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Docket No. 12

- 14 *State Highway Commission, Adams County. Application No. 12390. Grade crossing, Mike Levis Livestock Company Industry Spur. Case closed.*
- 20 *State Highway Commission, Garfield County. Application No. 12438. Grade crossing, State Highway 4, Rifle, Colorado. Case closed.*
- 34 *State Highway Commission, Adams and Arapahoe Counties. Application No. 12487. Grade crossing, State Highway 8. Case closed.*
- 47 *State Highway Commission, Sedgwick County. Application No. 12531. Grade crossing, State Highway 51. Case closed.*
- 63 *State Highway Commission. Application No. 1585. Tariff increase. Case pending.*
- 115 *State Highway Commission, Fremont County. Application No. 12625. Grade Crossing. Case pending.*
- 116 *State Highway Commission, Lake County. Application No. 12556. Grade Crossing. Case pending.*

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239	<i>State Highway Commission, Adams County. Grade Crossing. Case pending.</i>
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334	<i>State Highway Commission, Douglas County. Grade Separation. Case pending.</i>
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420	<i>State Highway Commission, Lake County. Crossing signals. Case pending.</i>

INDUSTRIAL COMMISSION CASES

1953-1954

In the Supreme Court of Colorado

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Aetna Casualty et al. v. Ind. Comm. et al.</i>	16997	Award Reversed
<i>American Mutual Liability et al. v. Ind. Comm. et al.</i>	17058	Award Reversed
<i>Austin Co. et al. v. Ind. Comm. et al.</i>	17060	Award Affirmed
<i>Bennett's Restaurant v. Ind. Comm. et al.</i>	16945	Award Affirmed
<i>Colorado Fuel & Iron Co. v. Ind. Comm. & Alitto</i>	17463	Award Affirmed
<i>Colorado Fuel & Iron Co. v. Ind. Comm. & Drain</i>	17353	Award Affirmed
<i>Colorado Fuel & Iron Co. v. Ind. Comm. & Reynolds</i>	17354	Award Affirmed (in part)
<i>Devore v. Ind. Comm. et al.</i>	17274	Award Affirmed

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Flake Motors v. Ind. Comm. et al.</i>	17197	Award Reversed
<i>Ind. Comm. et al. v. Pacific Employers Co. et al.</i>	17173	Award Affirmed
<i>Ind. Comm. et al. v. Plains Utility Co. Inc. et al.</i>	16979	Award Affirmed
<i>Journeyman Barbers et al. v. Ind. Comm.</i>	16885	Award Affirmed
<i>Montgomery Ward & Co. Inc. v. Ind. Comm. et al.</i>	17192	Award Affirmed
<i>Pacific Employers Ins. Co. et al. v. Ind. Comm. et al.</i>	16983	Award Reversed
<i>Resurrection Mining Co. et al. v. Ind. Comm. et al.</i>	17029	Award Affirmed
<i>School District No. 97 et al. v. Ind. Comm. et al.</i>	17223	Award Affirmed
<i>Standard Oil Co. v. Ind. Comm. et al.</i>	17556	Pending
<i>Stearns-Roger Mfg. Co. et al. v. Ind. Comm. et al.</i>	17155	Award Affirmed
<i>Transport Indemnity Co. et al. v. Ind. Comm. et al.</i>	17350	Award Affirmed
<i>United Mine Workers & Ind. Comm. v. Sunlight Coal Co.</i>	17330	Award Affirmed
<i>United States Fidelity & Casualty et al. v. Ind. Comm.</i>	17040	Award Remanded
<i>United States National Bank et al. v. Ind. Comm. et al.</i>	17242	Award Reversed
<i>University of Denver et al. v. Ind. Comm. et al.</i>	16945	Award Affirmed
<i>Yates v. Ind. Comm. et al.</i>	17204	Award Affirmed

**In the District Courts of Colorado
Boulder County**

<i>Branford v. Ind. Comm. et al.</i>	12565	Dismissed
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City and County of Denver

<i>Adamson et al. v. Ind. Comm. et al.</i>	A88218	Award Affirmed
<i>American Auto Ins., Co. et al. v. Ind. Comm. et al.</i>	A89831	Award Affirmed
<i>Austin Co. et al. v. Ind. Comm. et al.</i>	A86668	Award Affirmed
<i>Boulevard Cleaners v. Ind. Comm. et al.</i>	A89171	Pending
<i>Bowers v. Ind. Comm. et al.</i>	A97064	Pending

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Boyd v. Ind. Comm. et al.</i>	A91510	Award Affirmed
<i>City Park Dairy et al. v. Ind. Comm.</i> <i>et al.</i>	A90052	Award Modified
<i>Continental Oil Co. et al. v. Ind. Comm.</i> <i>et al.</i>	A92355	Award Affirmed
<i>Denver Chicago Trucking Co. et al. v.</i> <i>Ind. Comm. et al.</i>	A92223	Award Affirmed
<i>Distel v. Ind. Comm. et al.</i>	A85544	Award Affirmed
<i>Fisher v. Ind. Comm. et al.</i>	A91427	Award Reversed
<i>Flake Motors v. Ind. Comm. et al.</i>	A88230	Award Affirmed
<i>Forsyth v. Ind. Comm. et al.</i>	A96574	Dismissed
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<i>General Cleaners v. Ind. Comm. et al.</i>	A89648	Pending
<i>Hansen et al. v. Ind. Comm. et al.</i>	A77368	Award Reversed
<i>Iacino et al. v. Ind. Comm. et al.</i>	A97751	Pending
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<i>Laundry & Dry Cleaning Workers Local</i> <i>Union No. 304 v. Ind. Comm. et al.</i>	A89144	Pending
<i>Mauser v. Ind. Comm. et al.</i>	A84912	Award Affirmed
<i>Meyers Drug Co. v. Ind. Comm. et al.</i>	A72892	Dismissed
<i>Miller v. Ind. Comm. et al.</i>	A95093	Dismissed
<i>Montgomery Ward v. Ind. Comm. et al.</i>	A86525	Award Affirmed
<i>Nelson et al. v. Ind. Comm. et al.</i>	A88254	Award Reversed
<i>Ohio Casualty Co. et al. v. Ind. Comm.</i> <i>et al.</i>	A91455	Award Affirmed
<i>Pacific Employers Insurance Co. et al.</i> <i>v. Ind. Comm. et al.</i>	A93444	Dismissed
<i>Parton v. Ind. Comm. et al.</i>	A93786	Award Affirmed
<i>Pepper, dba Triangle Cleaners v. Ind.</i> <i>Comm. et al.</i>	A89164	Pending
<i>Pitts v. Ind. Comm. et al.</i>	A86394	Dismissed
<i>Santa Fe Transportation Co. et al. v.</i> <i>Ind. Comm. et al.</i>	A91267	Award Reversed
<i>School District No. 97 et al. v. Ind.</i> <i>Comm. et al.</i>	A88980	Award Affirmed
<i>Shepard's et al. v. Ind. Comm. et al.</i>	A72760	Pending
<i>Standard Oil Co. v. Ind. Comm. et al.</i>	A92398	Award Affirmed
<i>Stanton v. Ind. Comm. et al.</i>	A92572	Dismissed
<i>Thedford v. Ind. Comm. et al.</i>	A95191	Pending

<i>Title of Action</i>	<i>Number</i>	<i>Disposition</i>
<i>Transport Indemnity Co. et al. v. Ind. Comm. et al.</i>	A92057	Award Affirmed
<i>U. S. National Bank et al. v. Ind. Comm. et al.</i>	A89265	Award Affirmed
<i>Vancil v. Ind. Comm. et al.</i>	A97758	Pending
<i>Warden v. Ind. Comm. et al.</i>	A92229	Pending
<i>Winner et al. v. Ind. Comm. et al.</i>	A96536	Pending
<i>Yates v. Ind. Comm. et al.</i>	A86233	Award Affirmed

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<i>Kozak v. Ind. Comm. et al.</i>	31770	Award Affirmed
<i>Sears, Roebuck v. Ind. Comm. et al.</i>	28538	Award Reversed

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<i>Sunlight Coal Co. v. Ind. Comm. et al.</i> ..	4448	Award Reversed
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<i>Devore v. Ind. Comm. et al.</i>	11375	Dismissed
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<i>Colorado Fuel & Iron Co. v. Ind. Comm. & Reynolds</i>	36333	Award Affirmed
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FROM JANUARY 1, 1953, TO DECEMBER 31, 1954**

<i>Counties</i>	<i>Number</i>
Adams	1
Arapahoe	4
Baca	1
Boulder	1
Chaffee	1
Denver	48
El Paso	5
Fremont	2
Jefferson	1
La Plata	1
Larimer	1
Logan	1
Mesa	3
Montezuma	1
Morgan	1
Otero	1
Prowers	1
Pueblo	5
Rio Grande	1
Routt	2
Summit	1
Washington	1

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