

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



**Years 1957-1958**

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**DUKE W. DUNBAR**  
Attorney General

Publication Approved by E. G. Spurlin, Controller

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## ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

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A. J. Sampson.....	1877-1878
Charles W. Wright.....	1879-1880
Charles H. Toll.....	1881-1882
David F. Urmy.....	1883-1884
Theodore H. Thomas.....	1885-1886
Alvin Marsh.....	1887-1888
Samuel W. Jones.....	1889-1890
Joseph H. Maupin.....	1891-1892
Eugene Engley.....	1893-1894
Byron L. Carr.....	1895-1898
David M. Campbell.....	1899-1900
Charles C. Post.....	1901-1902
Nathan C. Miller.....	1903-1906
William H. Dickson.....	1907-1908
John T. Barnett.....	1909-1910
Benjamin Griffith.....	1911-1912
Fred Farrar.....	1913-1916
Leslie E. Hubbard.....	1917-1918
Victor E. Keyes.....	1919-1922
Russell W. Fleming.....	1923
Wayne C. Williams.....	1924
William L. Boatright.....	1925-1928
Robert E. Winbourn.....	1929-1930
John S. Underwood.....	1930
Clarence L. Ireland.....	1931-1932
Paul P. Prosser.....	1933-1936
Byron G. Rogers.....	1936-1940
Gail L. Ireland.....	1941-1944
H. Lawrence Hinkley.....	1945-1948
John W. Metzger.....	1949-1950
Duke W. Dunbar.....	1951-1958

PERSONNEL  
DEPARTMENT OF LAW

DIVISION OF LEGAL AFFAIRS

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FRANK E. HICKEY, Deputy Attorney General

JOHN B. BARNARD, JR., First Assistant Attorney General

Assistant Attorneys General

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(Appointed 10/1/58)

WILLIAM H. MOULTON

ROBERT L. NAGEL  
(Appointed 4/3/58)

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JAMES E. RENNER  
(Resigned 9/30/58)

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EDITH HEZMALHALCH

ELIZABETH V. KITTO

MARGIE LANPHERE  
(Resigned 10/13/57)

HELEN T. TRECKMAN  
(Transferred from  
Medical Board 9/1/57)

DOROTHY SACH  
(Transferred from Welfare  
Department 11/1/57)

INHERITANCE TAX DEPARTMENT

NEIL TASHER, Assistant Attorney General and Inheritance  
Tax Commissioner

FLOYD B. ENGEMAN, Assistant Attorney General

CATHERINE H. COURSEY, Deputy Inheritance Tax Commis-  
sioner

Inheritance Tax Analysts

MICHAEL J. O'HARA      DAVID CREGER      MERLE GIBSON

Assistant Inheritance Tax Analyst

FRANK MALLOY

Inheritance Tax Appraisers

J. CHALMERS EWING      SAMUEL TELEP  
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LEGISLATIVE REFERENCE OFFICE

CHARLES S. THOMAS, Director 1957

E. B. EVANS, Director 1958

CLAIR T. SIPPEL, Secretary

DIVISION OF SECURITIES

DUNCAN J. CAMERON, Securities Commissioner

WILLIAM J. ANDERSON

RICHARD G. LUXFORD

RHODA SON, Secretary

EVELYN FOLSOM, Clerk

January 1959

HONORABLE STEPHEN L. R. McNICHOLS  
Governor of Colorado  
State Capitol  
Denver, Colorado

Dear Governor McNichols:

Pursuant to law, I herewith submit the Biennial Report of the Attorney General, covering the period beginning January 1, 1957, and ending December 31, 1958.

Respectfully submitted,

DUKE W. DUNBAR

Attorney General



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

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**REPORT OF THE INHERITANCE TAX DIVISION**

The Inheritance Tax Division of the Department of Law administers the Inheritance and Succession Tax Law and the Gift Tax Law of the State of Colorado. The Department also handles all escheat estates.

From January 1, 1957, to December 31, 1958, the Inheritance Tax division collected \$9,422,424.35 in inheritance taxes and \$469,774.18 in gift taxes. This was an increase of \$1,759,682.73 over the previous two-year period. The inheritance and gift taxes are paid to the general fund of the State of Colorado.

In addition, the ten percent old age pension tax levied against inheritance taxes by the old age pension law in the amount of \$662,698.52 was collected.

During this two-year period 17,952 estates were audited and a fee or tax assessed against them. This was the largest number of estates ever handled in a two-year period by the division.

**LEGISLATIVE REFERENCE OFFICE**

The Legislative Reference Office is a division of the Department of Law, under the direction of the Attorney General. The office was established in 1927 and began functioning in 1930.

The three primary functions of the office are: (1) the drafting of legislative bills, resolutions, and memorials, and amendments thereto, for members of the General Assembly and for the Governor; (2) the maintenance of legislative records; and (3) legislative reference services.

While the office does approximately 60 to 70 percent of the actual drafting of bills, resolutions, and memorials introduced in and considered by the General Assembly, under a Joint Rule of the Senate and House adopted in 1959, all bills introduced in the assembly must be submitted to the office for approval as to form as set forth in the Joint Rule.

The office maintains complete legislative records on bills, resolutions, and memorials, and amendments thereto, and on other legislative actions. During a session of the General Assembly a subject index is maintained of all bills introduced, and a progress report is kept daily covering the consideration and passage of each bill through the assembly. Copies of all bills drafted by the office and all bills printed by the assembly are kept on file for reference purposes, and are available back to 1931.

The office maintains a legislative informational service for members of the General Assembly and the public, the purpose of which is to make available studies and information on legislative subjects and laws of other states. Spot research reports are prepared for members of the assembly. A small but selective legislative library is maintained. The office works closely with the Legislative Council and the Supreme Court Library, so as to eliminate duplication of legislative and law library facilities.

## REPORT OF THE DIVISION OF SECURITIES

for the period

July 1, 1957, to July 1, 1959

	1957	1958
Receipts from fees.....	\$67,024.35	\$63,938.28
Expenditures .....	37,819.97	39,077.15
Original registration statements filed.....	201	230
Renewal registration statements filed.....	79	83
Supplemental registration statements filed	2	1
Dealers' Original Licenses issued.....	48	77
Dealers' Renewal Licenses issued.....	100	142
Issuer-Dealers Licenses issued.....	51	41
Salesmen's Original Licenses issued.....	1,909	1,207
Salesmen's Renewal Licenses issued.....	973	1,141

The number of registrations of securities offered to the public and the number of registrations of securities dealers and salesmen has continued to increase at a substantial rate



during the past two years. The number of securities salesmen's applications processed has increased in the last three years from 988 to 2,348. There has also been an increase in the number of securities which have been offered to the public.

Emphasis has been placed during the past year upon enforcement of the Fraudulent Practice Act in that several injunctions were obtained against companies for failure to register securities and several hearings have been held to revoke or suspend dealers' or salesmen's licenses.

The number of securities offerings which have been strictly limited to registration with the Securities Division of the State of Colorado and not registered with the Federal Securities and Exchange Commission has decreased during the past two years. The trend now on securities offerings is to register them both in the State of Colorado and with the federal government.



**Part I**  
**DIGEST OF OFFICIAL OPINIONS OF THE**  
**ATTORNEY GENERAL**

**FOR**  
**BIENNIAL PERIOD**  
**1957-1958**

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



**INSURANCE—CITIES AND TOWNS****Opinion 57-3004**

Donald F. McClary, City Attorney  
Fort Morgan, Colorado  
January 2, 1957

Application of "Green River Ordinance" to insurance agent solicitations.

The fact that insurance agents are licensed by the State does not preclude the application of Fort Morgan's "Green River Ordinance" to them. However, the "Green River Ordinance" of Ft. Morgan does not apply to insurance agents soliciting for insurance policies, as insurance policies are not included in a strict definition of "goods, wares and merchandise."

STATUTES CONSTRUED—72-1-18 and 72-1-29, CRS '53.

**INSURANCE****Opinion 57-3005**

Sam N. Beery  
Commissioner of Insurance  
January 3, 1957

Common and preferred stocks as "admitted" assets within the scope of Colorado Insurance Investment Statutes.

Common and preferred stocks are not included as investments permitted for determining admitted assets in Colorado for insurance companies, and, therefore, may not be used for the purpose of making up the Colorado deposit requirements for such insurance companies doing business in Colorado.

STATUTES CONSTRUED—72-1-36, 72-2-5, CRS '53.

**SCHOOLS****Opinion 57-3006**

Dr. H. Grant Vest  
Commissioner of Education  
January 9, 1957

83-1-3, CRS '53 specifically authorizes placing of school funds in a Savings and Loan Association under conditions set forth in said section.

STATUTES CONSTRUED—83-1-3, CRS '53.

**PUBLIC WELFARE—HEALTH****Opinion 57-3007**

Guy R. Justis, Director  
State Department of Public Welfare  
January 10, 1957

Powers of Health Departments concerning recalcitrant persons afflicted with active tuberculosis.

State, county or local health departments and boards have the power to quarantine, isolate and confine persons infected with a communicable disease, such as tuberculosis, subject to due inquiry as to the actual condition of the person involved. Notice and opportunity to be heard should be given to the person involved.

STATUTES CONSTRUED—66-2-6(3), 66-2-7(4), 66-3-39, 66-3-23, and 66-3-2, CRS '53.

### FEDERAL—TAXATION—COUNTIES

**Opinion 57-3008**

Arthur C. Sheely, President  
Land Acquisition Commission

**January 11, 1957**

If the railroads located within the boundaries of the U. S. Air Force Academy convey their fee interest in the rights-of-way or other property involved to the U. S., these properties so conveyed remain subject to state taxation.

STATUTES CONSTRUED—137-4, CRS '53.

### GOVERNOR—LEGISLATION—TRAINING SCHOOLS

**Opinion 57-3009**

Hon. Stephen L. R. McNichols  
Governor of Colorado

**January 11, 1957**

Present statutes would have to be amended in order to give the Governor power to appoint one superintendent at the State Home and Training School at Ridge and one at the State Home and Training School at Grand Junction.

STATUTES CONSTRUED—71-4, CRS '53.

### OLD AGE PENSION—COUNTIES—WELFARE DEPT.

**Opinion 57-3010**

Hon. Charles J. Simon  
County Judge, El Paso County

**January 17, 1957**

Eligibility of County Farm Inmates for Class C Old Age Pension.

Said inmates otherwise eligible for old age pension are entitled to receive Class C, OAP.

STATUTES CONSTRUED—101-1-5, CRS '53.

**MISCELLANEOUS—A & M COLLEGE—EMPLOYEES**

**Opinion 57-3011**

Colorado A & M College

**January 17, 1957**

Liability of college employees to student occupants of employees' cars under "guest statute."

STATUTES CONSTRUED—13-9-1, CRS '53.

**A & M COLLEGE**

**Opinion 57-3012**

Dr. W. E. Morgan, President

Colorado Agricultural and Mechanical College

**January 27, 1957**

The name of the Colorado Agricultural and Mechanical College may be changed to Colorado State University by legislative enactment.

CONSTITUTION CONSTRUED—Art. VIII, Sec. 5, Colo. Const.

**CIVIL SERVICE**

**Opinion 57-3013**

State Civil Service Commission

**January 24, 1957**

Duty of Civil Service Commission to certify the correctness of all payrolls to the controller before vouchers are issued to pay various employees. Art. XVII of Rules and Regulations of Commission held to be constitutional in case of John P. James v. Civil Service Commission, et al., Civil Action No. A-38964, Denver District Court, decided in 1944. Said rule substantially same at present time and no further court decision thereon.

**SURPLUS PROPERTY—SCHOOLS—CIVIL DEFENSE**

**Opinion 57-3014**

John L. Myers, Director

Colo. Surplus Property Agency

**January 24, 1957**

The Civil Defense Agency and political subdivisions are authorized to accept donable property through the Colorado Surplus Property Agency for civil defense purposes under the rules and regulations thereof, for the reasons set forth in our Opinion Numbered 56-2944 and the statutory authority of the Civil Defense Agency.

STATUTES CONSTRUED—24-1-11(2), CRS '53.

**OIL AND GAS CONSERVATION—MISCELLANEOUS**  
**Opinion 57-3015**

Warwick M. Downing  
 Oil and Gas Conservation Commission  
**January 29, 1957**

Staff reports, stating as facts matters outside the record, may not be considered by the commission upon which to base its final decision, unless the parties to the hearing to which the report relates are given an opportunity to be heard and rebut the report.

**HEALTH—HOMES FOR THE AGED**  
**Opinion 57-3016**

Lyle N. Buckles, Chief  
 Hospital Standards and Licensure  
 Department of Public Health  
**January 29, 1957**

The Maxwell Home for the Aged in Boulder need not be licensed as a Home for the Aged, as the elderly people living there are given "absolutely no personal care," even though they receive their room and board, and does not come within the definition of Home for the Aged as adopted by the State Board of Health.

STATUTES CONSTRUED—66-1-7, CRS '53.

**LAND COMMISSION—FEDERAL—SCHOOLS**  
**Opinion 57-3017**

State Board of Land Commissioners  
**January 30, 1957**

Government Insured Loans made by the Farmers Home Administration under the provisions of the Bankhead-Jones Farm Tenant Act are legal investment for the State school funds.

STATUTES CONSTRUED—123-4-1, CRS '53.

**SURPLUS PROPERTY—FEDERAL**  
**Opinion 57-3018**

John L. Myers, Director  
 Colorado Surplus Property Agency  
**January 30, 1957**

The form of certification and the resolution certified by a governing board, which form was submitted by the Regional Office of the Department of Health, Education and Welfare, is valid under Colorado law and an agent acting thereunder would bind the political subdivisions or institutions adopting the resolution.



**LEGISLATURE—CONSTITUTIONAL LAW****Opinion 57-3019**

Hon. Betty Kirk West  
State Representative

**February 4, 1957**

A bill for an act to amend 123-11-1, CRS '53, concerning bonded indebtedness, is an addition to the constitutional section as it is now enacted and would be violative of Art. XI, Sec. 7, State Constitution.

CONSTITUTION CONSTRUED—Art. XI, Sec. 7, State Const.

**LEGISLATURE—CONSTITUTIONAL LAW****Opinion 57-3020**

Hon. Roy H. McVicker  
State Senator

**February 13, 1957**

A bill which provides for the creation of a judicial district at a future time is unconstitutional if it provides for the election of district judges and district attorneys therein before the date that the judicial district comes into existence.

CONSTITUTION CONSTRUED—Art. VI, State Constitution.

**SCHOOLS—TAXATION****Opinion 57-3021**

H. Grant Vest  
Commissioner of Education

**February 15, 1957**

Annexation or transfer of a portion of a school district prior to certification and levy of taxes entitles the district annexing the property to taxes resulting from such levy.

STATUTES CONSTRUED—137-2-2; 123-3-1 and 137-1-19, CRS '53.

**LEGISLATURE—GOVERNOR****Opinion 57-3022**

Hon. Stephen L. R. McNichols, Governor  
Hon. Ray B. Danks, Chairman, Senate Judiciary Committee

**February 26, 1957**

Legal aspects regarding constitutionality of House Bill 63, 41st General Assembly, entitled "A bill for an act providing for the reorganization of the executive department of state government," commonly known as the "Reorganization Act of 1957," set forth in full.

**TRAINING SCHOOLS—CORONERS****Opinion 57-3023**

Dr. F. O. Butler  
 State Home and Training School at Grand Junction  
**February 26, 1957**

Authority of superintendent to order autopsies upon students who may die at institution.

**COURTS—LEGISLATURE—COUNTIES****Opinion 57-3024**

Hon. Roy H. McVicker  
 State Senator  
**March 8, 1957**

A judicial district consisting of more than one county may have one of said counties severed therefrom and be constituted a separate judicial district during the term of the judges elected therein; and in such event those judges will continue in office until the end of their term even though one of the judges was at the time of his election and at the time of the severance a resident of the county which will constitute the new judicial district.

Such judge would not be a judge of the new judicial district unless he resigns and was appointed by the governor as the judge thereof. He could not be appointed a judge of the new judicial district by the legislature.

In the event he was appointed by the governor between the date of the last general election and before the general election in which all candidates for district judges would run, and the second Tuesday in January in the succeeding year, he would hold the office until the expiration rather than only until the next general election, and this irrespective of whether or not the governor who appointed him was re-elected at the general election immediately before the judge was appointed.

CONSTITUTION CONSTRUED—Art. VI, Secs. 12, 29, 16 and 14.

STATUTES CONSTRUED—49-19-11, as amended in 1955, CRS '53.

**PUBLIC WELFARE—FEDERAL—PUBLIC FUNDS****Opinion 57-3025**

Guy R. Justis, Director  
 Department of Public Welfare  
**March 14, 1957**

Subject to the conditions and limitations of the training program proposed by the state department of public welfare, state funds to the extent of 20% may be used as matching funds in order to obtain federal participation in a payment of stipends

to employees on leave for the purpose of training and education. This may be done for two reasons:

1. Under the plan the employees would be under the absolute control of the state.

2. Such payments would be for a public purpose and any personal benefit to a private person would be incidental to such public purpose; thus the constitutional prohibition would not apply.

CONSTITUTION CONSTRUED—Art. V, Sec. 34.

STATUTES CONSTRUED—119-1-16, CRS '53.

#### **JUSTICES OF THE PEACE—FEES AND SALARIES**

**Opinion 57-3026**

Leon H. Snyder, Attorney  
Colorado Springs, Colorado

**March 15, 1957**

The board of county commissioners has the implied power to determine whether or not the condition in the statute as to increase of compensation for justice of the peace has been satisfied; that is, whether the precinct contains the requisite number of inhabitants.

STATUTES CONSTRUED—56-2-13, CRS '53.

#### **PENITENTIARY—PAROLE**

**Opinion 57-3027**

Harry C. Tinsley, Warden  
State Penitentiary

**March 15, 1957**

A court has the authority to order a sentence in a case to run **consecutively** to the remainder of a sentence in a former case which the prisoner is to serve because of the violation of his parole.

At the time of a prisoner's second reception at the penitentiary, the maximum remainder of the sentence that he is to serve because of his parole violation should be added to his minimum sentence on his second conviction.

STATUTES CONSTRUED—105-4-7 and 11, CRS '53.

#### **WORKMEN'S COMPENSATION INSURANCE FUND— MORTGAGES—PUBLIC FUNDS**

**Opinion 57-3028**

Truman C. Hall, Chairman  
Industrial Commission of Colorado

**March 15, 1957**

83-1-1, '53 CRS, does not apply to the State Compensation Insurance Fund and no part of this fund, under the present law, may be invested in promissory notes secured by first lien

mortgages or deeds of trust on real estate situate in the State of Colorado, insured or guaranteed by any agency or instrumentality of the United States.

STATUTES CONSTRUED—81-15-20, and 83-1-1, '53 CRS.

#### LEGISLATION—CITIES AND TOWNS

**Opinion 57-3029**

Hon. William O. Lennox  
State Representative

**March 18, 1957**

Proposed amendment to House Bill No. 333 providing the business of selling water by a municipality to be a public utility would be violative of Sec. 35, Art. V, State Constitution.

CONSTITUTION CONSTRUED—Sec. 35, Art. V.

#### LEGISLATION—WATER CONSERVANCY DISTRICTS CITIES AND TOWNS

**Opinion 57-3030**

Hon. David J. Clarke  
State Senator

**March 21, 1957**

A water conservancy district formed after the enactment of House Bill 243 which provides that if a city is included in a water conservancy district over its express objection and without its consent, prior to the time any such district enters into a contract with the United States or the district incurs bonded indebtedness, such a city may by ordinance withdraw from the district, would be an "organization" as defined in paragraph 2(g) of the Reclamation Project Act of 1939, and as referred to in Section 4(b) of the Upper Colorado River Act.

STATUTES CONSTRUED—149-6-4(2), '53 CRS.

#### SCHOOLS

**Opinion 57-3031**

Mr. Francis Benedetti  
Attorney at law  
Wray, Colorado

**March 26, 1957**

No statute covering the distribution of surplus books and typewriters belonging to Yuma County High School System upon the establishment of a high school to be established by School District No. 2.

**SCHOOLS—ELECTIONS****Opinion 57-3032**

Mr. J. M. Hawthorne  
 Canon City, Colorado  
**March 26, 1957**

Taxpaying electors of that part of District No. 14 annexed to District No. 1 should be permitted to vote at a proposed bond election in District No. 1.

STATUTES CONSTRUED—123-11-9, '53 CRS.

**LEGISLATION****Opinion 57-3033**

Hon. Frank L. Hays  
 Lieutenant Governor  
**March 28, 1957**

A copy of a lost bill may be transmitted to the Senate from the House in substitution of and with the same effect as the copy which has been lost.

**JUSTICE OF THE PEACE—COURTS****Opinion 57-3034**

Hon. Reinhardt Schuhmann  
 Justice of the Peace, Gunnison  
**March 29, 1957**

A defendant in a justice of the peace court, charged with the commission of a misdemeanor, may obtain a change of venue by affidavit.

STATUTES CONSTRUED—79-14-1 and 79-15-24, '53 CRS.

**JUSTICE OF THE PEACE—COURTS****Opinion 57-3035**

Hon. Reinhardt Schuhmann  
 Justice of the Peace, Gunnison  
**March 29, 1957**

A person found guilty of a misdemeanor in a justice of the peace court, and sentenced to jail, may not be granted probation by the justice of the peace in a county having less than twenty thousand population.

STATUTES CONSTRUED—39-16-3 and Chapter 79, '53 CRS.

**PUBLIC WELFARE—HOMES FOR THE AGED****Opinion 57-3036**

Mr. Guy R. Justis, Director  
 Department of Public Welfare  
**April 9, 1957**

The State Board of Control of the Trinidad Home has broad powers and discretion concerning eligibility requirements of applicants to the state home, including power to

exempt ownership of real and personal property from consideration and power to exempt net income of applicants from consideration.

The State Board may, in its discretion, determine whether or not an applicant is in fact mentally capable of making voluntary application although under legal disability by reason of mental adjudication, although the admission of persons diagnosed as psychotic would jeopardize compliance with health department regulations.

Although there is no prohibition of accepting payment in advance, it would appear difficult to administer such collections as a practical matter.

STATUTES CONSTRUED—133-1-1 to 4, '53 CRS, as amended by Ch. 252, S.L. 1957.

### BANKS

**Opinion 57-3037**

Mr. Frank E. Goldy  
Bank Commissioner  
April 12, 1957

An arrangement under which titles to automobiles are held as collateral security for sight drafts, where the automobiles are subject to foreclosure if the drafts are not paid, the amount of the draft is not "money borrowed" within the meaning of the statute.

STATUTES CONSTRUED—14-1-37, '53 CRS.

### EMPLOYMENT SECURITY

**Opinion 57-3038**

Mr. Bernard E. Teets, Executive Director  
Department of Employment  
April 17, 1957

An employer who has been issued credit memoranda may use credit memoranda as a voluntary contribution and have the same credited to his account at any time after issuance thereof.

STATUTES CONSTRUED—82-6-3(3) (c), '53 CRS.

### SCHOOLS

**Opinion 57-3039**

Hon. H. Grant Vest  
Commissioner of Education  
April 17, 1957

Property of a school district that has been dissolved and annexed to another district is subject to assessment and levy for payment of annexing district's prior indebtedness.

STATUTES CONSTRUED—123-7-4 and 123-11-19, '53 CRS.

**PURCHASING AGENT—CONTRACTS****Opinion 57-3040**

Mr. Lacy L. Wilkinson  
Purchasing Agent  
**April 17, 1957**

It is not mandatory that bidder make the five percent preference claim with the submission of his bid in order to qualify for consideration as preference given to Colorado products is a statutory right and cannot be denied or curtailed by bid specifications.

STATUTES CONSTRUED—3-4-3, '53 CRS.

**CONTROLLER—SUPREME COURT****Opinion 57-3041**

Mr. James A. Noonan  
Controller  
**April 17, 1957**

The widow of a former Supreme Court Justice is entitled to pension payments from the effective date of the act to the date when pension payments to her were commenced, as the act does not contain any provision penalizing an eligible person for failure to make claim within any period, nor does it contain any provision to the effect that payment shall start only after claim is made.

STATUTES CONSTRUED—37-2-16, '53 CRS as amended by Ch. 107, S.L. 1955.

**LEGISLATORS—COUNTY OFFICERS****Opinion 57-3042**

Hon. Norman W. Ohlson  
State Representative  
**April 22, 1957**

A member of the house of representatives or an elected county official may seek appointment as postmaster during their term of office, if the one receiving the appointment resigns from his present position.

CONSTITUTION CONSTRUED—Art. V, Sec. 8, State Constitution.

**COUNTIES—TAXATION—HOSPITALS****Opinion 57-3043**

Mr. Charles B. Pierce  
County Attorney, La Jara  
**April 22, 1957**

Failure to strictly comply with 88-1-7 and 88-1-9, '53 CRS concerned with procedures for adoption of county budgets is not of such a nature as to render a subsequent one mill levy

tax illegal and void, for the reason that such provisions are directory and not mandatory, and the failure to timely comply therewith did not affect the taxpayer specifically; such failure did not deprive the taxpayer of notice or opportunity to be heard.

STATUTES CONSTRUED—88-1-7, 88-1-9, '53 CRS.

### SCHOOLS

**Opinion 57-3044**

Hon. H. Grant Vest  
Commissioner of Education  
**April 24, 1957**

Electors living in the portion of District 38 to be annexed to District 20 are eligible to vote in the District 38 election to be held May 6, 1957.

STATUTES CONSTRUED—123-7-3, '53 CRS.

### COUNTIES—EMBALMERS

**Opinion 57-3045**

Mr. Guy R. Justis, Director  
Department of Public Welfare  
**April 25, 1957**

A body may be moved from one county to another without embalming by someone other than a mortician provided a removal permit is secured. A body may be buried without embalming as there is no specific requirement in the Colorado laws for such embalment. A person may be buried in the county where his death occurred where there are no objections from relatives or friends and such county is the county of responsibility for burial, pursuant to 36-10-10, '53 CRS, even though the deceased's residence may be in another county.

A county is responsible for burial of a deceased person when such person is determined to be a pauper and is chargeable to the county as a resident thereof.

"Decent burial" defined.

STATUTES CONSTRUED—66-8-4, 61-1-16, and 36-10-10 to 13, '53 CRS.

### COURTS

**Opinion 57-3046**

Hon. Mitchell B. Johns  
Judge of the Superior Court  
**April 12, 1957**

135-4-29, '53 CRS, relating to tax levy on civil actions, as amended by Ch. 262, S.L. '57, construed.

STATUTES CONSTRUED—135-4-29, as amended by Ch. 262, S.L. 757.



**SCHOOLS—ELECTIONS****Opinion 57-3047**

Hon. H. Grant Vest  
Commissioner of Education  
**April 25, 1957**

The function of the board of education is not to pass upon the qualification of a candidate's name appearing on the ballot for a regular school election for school director. The qualification of the candidate to serve is a judicial matter to be determined by the courts.

STATUTES CONSTRUED—123-10-7, '53 CRS.

**COSMETOLOGY****Opinion 57-3048**

Miss Beryl W. Maus, Executive Secretary  
Department of Cosmetology  
**April 26, 1957**

A Colorado licensed operator may instruct other licensed operators in a unit meeting of the Colorado Hairdressers and Cosmetology Association, or unit workshop, even though these work units are not licensed beauty schools; therefore, the instruction given in unit workshops of licensed cosmetologists does not violate the statute.

STATUTES CONSTRUED—32-1-5, '53 CRS.

**INSURANCE****Opinion 57-3049**

Mr. Sam N. Beery  
Commissioner of Insurance  
**April 29, 1957**

A solvent unimpaired insurance company incorporated in Colorado and doing business in Colorado may reduce its capital stock pursuant to 31-3-4, '53 CRS, providing such reduction of capital stock does not cause a violation of the Colorado insurance company's paid-up capital requirements.

The General Corporation Law concerning reduction of capital stock applies to an insurance corporation and is limited only by the minimum capital requirements as set forth in the statute, there being no other specific limitation or prohibition in the insurance laws.

STATUTES CONSTRUED—31-3-4, 72-1-51, 72-1-36, 72-2-6, '53 CRS.

**LEGISLATION—COURTS****Opinion 57-3050**

Hon. Stephen L. R. McNichols, Governor  
**April 30, 1957**

The legislature may not by dividing judicial districts effect removal of a judge from office during his term (Art. VI,

Sec. 14, State Constitution); neither may the General Assembly appoint to fill a vacancy inasmuch as the power to fill vacancies in the district is vested by virtue of Art. VI, Sec. 29, in the Governor. Further, provision may not be made for the election of the officer prior to the creation and existence of the office which such officer is to hold. (Senate Bill 58, 41st G.A., relating to judicial districts, vetoed by Governor.)

#### **REAL ESTATE—COUNTY CLERKS AND RECORDERS**

**Opinion 57-3051**

Mr. Shelby F. Harper, Director  
Legislative Council

**May 7, 1957**

Senate Bill 222, Chap. 211, S.L. 1957, known as "The Realty Recording Act." See also Opinion No. 57-3095.

The act becomes effective upon the first day of July, 1957.

The printing of the forms is an expense of the administration of the act, and since the county is to receive three-fourths of the fees, it is reasonable to assume that the county should pay the major part of the cost of administration, and the Legislative Council is not obligated to furnish to the county clerks and recorders in the state a supply of printed forms. For the sake of convenience, the form of certificate and clerk's record has been left to the Legislative Council.

STATUTES CONSTRUED—Ch. 211, S.L. 1957.

#### **EMPLOYEES' RETIREMENT**

**Opinion 57-3052**

Mr. Raymond J. Heath, Secretary  
Public Employees' Retirement Association

**May 8, 1957**

Re: S.B. 194 (Ch. 201, S.L. 1957). Although the act became effective upon the date it was signed by the Governor, Sections 8 and 9 providing for an increased contribution of 1% from employer and employees do not become effective until July 1, 1958.

STATUTES CONSTRUED—111-8-1 et seq. '53 CRS, as amended by Ch. 201, S.L. 1957.

#### **CITIES AND TOWNS**

**Opinion 57-3053**

George Pomainville, Town Attorney  
Lyons, Colorado

**May 9, 1957**

A volunteer reporter of fire alarms in an incorporated town is liable for his negligence in performance of the duties for which he is not paid to the persons damaged by his lack of due care.

**CITIES AND TOWNS****Opinion 57-3054**

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

**May 13, 1957**

Once the voters authorized the City of Pueblo to use the \$90,000 which was placed in a special sinking fund from a \$200,000 bond issue for the purpose of constructing a municipal hospital, which project was abandoned, the City of Pueblo can enter into an agreement with the county to utilize the \$90,000 to construct a clinic.

**COUNTIES—RECREATION****Opinion 57-3055**

William S. Rush, Esq.  
County Attorney, Salida

**May 16, 1957**

Chaffee County may not operate recreational facilities jointly with the Old Timers Baseball League, nor may the county make a donation to the Old Timers Baseball League as compensation to that body for furnishing recreation to the boys of the county. The county may allow the Old Timers Baseball League to use the county's recreational facilities without charge.

**NURSE EXAMINERS****Opinion 57-3056**

Miss Joy Erwin, Director  
State Board of Nurse Examiners

**May 17, 1957**

The exclusion clause as used in S.B. 78 (Ch. 189, S.L. 1957) covers graduates of an accredited nursing school, either Colorado or out-of-state, who take the first Colorado licensing examination given by the board after the graduation of said applicants. The exclusion only applies from the time of graduation until the results of the first examination given after graduation, and not to any subsequent examination. A permit pursuant to 97-1-15, as amended, need not be issued to those graduate nurses coming within the provisions of the exclusion clause.

STATUTES CONSTRUED—97-1-26, '53 CRS, as amended  
by Ch. 189, S.L. 1957.

**NURSE EXAMINERS****Opinion 57-3057**

Miss Joy Erwin, Director  
 State Board of Nurse Examiners  
 May 17, 1957

Under Ch. 189, S.L. 1957, no distinction is made between a graduate from a Colorado school or from an out-of-state school. Proof of citizenship, loyalty affidavit, etc., should be required of all applicants. As to the requirement of a birth certificate as proof of citizenship, this is primarily an administrative matter.

STATUTES CONSTRUED—97-1-9 and 10, '53 CRS, as amended by Ch. 189, S.L. 1957.

**APPROPRIATIONS—WATER****Opinion 57-3058**

Mr. James A. Noonan  
 State Controller  
 May 21, 1957

Construction of appropriations for underground water bill administration.

STATUTES CONSTRUED—Long Appropriation Bill, Ch. 16, S.L. 1957.

**COLORADO STATE UNIVERSITY****Opinion 57-3059**

Mr. Joseph M. Whalley  
 Business Manager and Treasurer  
 May 21, 1957

The State Board of Agriculture has authority to pledge certain earnings, such as student union fees, etc., to secure a newly proposed bond issue for the construction of a new Student Union Building.

**SCHOOLS****Opinion 57-3060**

Mr. Lloyd C. Romero, Secretary  
 School District 61, Trinidad  
 May 22, 1957

Filling vacancies on school board.

STATUTES CONSTRUED—123-10-20, '53 CRS.

**COLORADO STATE UNIVERSITY—FORT LEWIS A & M****Opinion 57-3061**

Mr. James R. Miller, Secretary  
 State Board of Agriculture  
 May 24, 1957

The Treasurer of the State Board of Agriculture is liable for the proper handling and application of the Ft. Lewis school

funds under the control of the board. The Treasurer, however, cannot be held responsible for such of these funds that are not received by him and over which he has no control. The Ft. Lewis school funds should not be placed in a bank subject only to the check of the President of the Ft. Lewis school and the business manager should be subject to the control of the board.

STATUTES CONSTRUED--124-11-5 and 6; 124-14-2, '53 CRS.

### COSMETOLOGY

**Opinion 57-3062**

Miss Beryl W. Maus, Executive Secretary  
Department of Cosmetology,

**May 24, 1957**

Individuals demonstrating products to licensed cosmetologists only, need not obtain an instructor's license.

STATUTES CONSTRUED—32-1-2(8), '53 CRS.

### JUSTICES OF THE PEACE—CRIMINAL LAW

**Opinion 57-3063**

Al H. Haas, Esq.  
Deputy District Attorney, Durango

**May 28, 1957**

Justices of the peace have jurisdiction to try adult persons for misdemeanors of contributing to the delinquency or dependency of a child (22-8-14, '53 CRS), but only in counties where there is no juvenile court.

STATUTES CONSTRUED—22-8-14, '53 CRS.

### SCHOOLS

**Opinion 57-3064**

Mr. A. L. McDonald  
Granada, Colorado

**May 29, 1957**

In the absence of a definite provision as to who shall serve as officers of a union high school board, it would appear that the members of the union high school board would determine who may serve as officers of the board without regard as to the district from which such members are elected.

Inasmuch as the district is a body corporate the record of the transactions of the board should be kept separate from the transactions of another board.

STATUTES CONSTRUED—123-16-10, '53 CRS.

**TAXATION—SCHOOLS****Opinion 57-3065**

Mr. Howard A. Latting  
 Colorado Tax Commission  
**May 27, 1957**

The property transferred from School District 13 in Garfield County to Rifle Consolidated 2 as of April 8, 1957, would be subject to the 1957 taxes in District No. 13.

STATUTES CONSTRUED—Ch. 267, S.L. 1957 (H.B. 4).

**SCHOOLS—ELECTIONS****Opinion 57-3066**

Hon. H. Grant Vest  
 Commissioner of Education  
**June 3, 1957**

Under the provisions of Ch. 237, S.L. 1957 (S.B. 385), a person who pays a specific ownership tax on an automobile would not qualify him as a taxpaying elector eligible to vote.

STATUTES CONSTRUED—Ch. 237, S.L. 1957.

**MOTOR VEHICLES—HIGHWAY PATROL****Opinion 57-3067**

Chief G. F. Carrel  
 Colorado State Patrol  
**June 6, 1957**

Under the provisions of Ch. 84, S.L. 1957 (S.B. 138) concerning the posting and advertising of rates for rooms and other accommodations in auto camps, neither the State Patrol Board nor the State Patrol is charged with the duty of enforcing said provisions thereunder.

STATUTES CONSTRUED—Ch. 84, S.L. 1957.

**SCHOOLS—FEDERAL****Opinion 57-3068**

Hon. H. Grant Vest  
 Commissioner of Education  
**June 10, 1957**

A school building may be erected on land within the school district which is not owned by the school district. The questions of erecting such a school building and that said building is not on property owned by the district should be submitted to the voters at the bond election.

STATUTES CONSTRUED—123-10-21, '53 CRS.

**SCHOOLS—CHILDREN****Opinion 57-3069**

Mr. Orville L. Countryman  
Supt. Del Norte Consolidated Schools  
**June 11, 1957**

Under the provisions of the Colorado Constitution and statutes, all resident children between the ages of six and twenty-one years shall be admitted without cost to the public schools.

Exclusion of married children between such ages because of their marital status would be illegal.

CONSTITUTION CONSTRUED—Art. IX, Sec. 2.

STATUTES CONSTRUED—123-21-2, '53 CRS.

**PLANNING COMMISSION—SCHOOL OF MINES****Opinion 57-3070**

Mr. W. M. Williams, Director  
State Planning Commission  
**June 11, 1957**

Money raised by ad valorem taxes provided by statute for the erection of buildings at the School of Mines may not be used for the acquisition of land or the construction of buildings for living purposes, and neither may it be used to pay architects for carrying out their employment to do preliminary site planning of the living groups area.

STATUTES CONSTRUED—124-9-21 and 23, '53 CRS.

**BANKING****Opinion 57-3071**

Mr. Frank E. Goldy  
State Bank Commissioner  
**June 20, 1957**

Re: proposed method of liquidation of the Heco Credit Union.

One credit union may transfer its assets to another, in exchange for shares in the second, and distribute those shares to its members, in the course of voluntary dissolution.

STATUTES CONSTRUED—38-1-20 and 22.

**PUBLIC FUNDS—WELFARE****Opinion 57-3072**

Mr. Guy R. Justis, Director  
State Department of Public Welfare  
**June 26, 1957**

State and county funds may be used to contract for medical care and services with Blue Cross and Blue Shield for the benefit of recipients of welfare categorical assistance, and such

expenditure would not be prohibited by Art. V, Sec. 4, Colo. Constitution, which prohibits appropriations for the benefit of any person, corporation or community not under the absolute control of the state.

CONSTITUTION CONSTRUED—Art. V, Sec. 4.

STATUTES CONSTRUED—22-11-1 as amended by Ch. 90, S.L. 1957; 16-3-1 as amended by Ch. 88, S.L. 1957.

### SCHOOLS

**Opinion 57-3073**

Mr. Dallas H. Knaus, Secretary  
Rifle Union High School Board  
June 26, 1957

Teacher tenure status of Harold K. Peercy.

In view of the interpretation of the 1949 law by the State Department of Education and the policy followed by such department, the 1949 law contemplated that tenure only applied to full time teachers and not part time teachers. If Mr. Peercy qualifies as part time under both acts then he is not entitled to tenure.

STATUTES CONSTRUED—123-18-3, '53 CRS.

### CITIES AND TOWNS—COUNTY COMMISSIONERS— CONTRACTS

**Opinion 57-3074**

Mr. Ralph E. Miller  
Attorney, Montrose, Colorado  
June 26, 1957

A cooperative association is prohibited from contracting with the board of county commissioners or the city council for sale of its products to the county or city when members of the association are also members of the board of county commissioners and city council. However, such prohibition extends only to formal express contracts and does not apply to a "casual purchase" as defined in the case of *Peo. v. Brown*, 60 Colo. 276.

STATUTES CONSTRUED—40-19-10, '53 CRS.

### SCHOOLS

**Opinion 57-3075**

Hon. H. Grant Vest  
Commissioner of Education  
June 27, 1957

Disposition of school sites, school busses, school houses, books, equipment, and furnishings when a portion of a second class district is ordered to be transferred to an adjoining district.

STATUTES CONSTRUED—123-7-3, '53 CRS.



**SCHOOLS****Opinion 57-3076**

Hon. H. Grant Vest  
Commissioner of Education

**June 27, 1957**

State Board of Education has no legal right to act on a petition for detachment and annexation initiated under 123-7-3, '53 CRS, as amended by Ch. 237, S.L. 1957, as said Ch. 237 provides for an entirely new type of procedure and Section 39 thereof specifically provides that no school district shall be organized except under the provisions of the new law. The new law clearly repeals the old law and all organizations uncompleted under the old law would become a nullity.

STATUTES CONSTRUED—123-7-3, '53 CRS, as amended by Ch. 237, S.L. 1957.

**GAME AND FISH—CONTRACTS****Opinion 57-3077**

Department of Game and Fish

**July 2, 1957**

“Class A” licenses.

The imposition of increased license fees, shortening of license periods and re-classification of previously issued licenses is not an impairment of the obligation of contracts and is not unconstitutional.

CONSTITUTION CONSTRUED—Art. II, Sec. 11, Colo. Constitution.

STATUTES CONSTRUED—62-9-8, '53 CRS, as amended by Ch. 153, S.L. 1957.

**TAXATION—WATER CONSERVANCY DISTRICT—  
COUNTIES****Opinion 57-3078**

Mr. J. R. Seaman, Chairman  
Colorado Tax Commission

**July 8, 1957**

The tax levied by a water conservancy district must be levied on all the property within the county and collected as such, and the county commissioners may not make an appropriation from the county general fund for that purpose where the conservancy district includes all the property within the county.

STATUTES CONSTRUED—36-2-15, '53 CRS and 149-6-17, '53 CRS.

**EMPLOYEES RETIREMENT****Opinion 57-3079**

Mr. Raymond J. Heath, Secretary  
Public Employes' Retirement Association

**July 11, 1957**

A widow of a retired state employe may waive part of her annuity.

**INDUSTRIAL COMMISSION—EMPLOYEES—  
FEES AND SALARIES****Opinion 57-3080**

Industrial Commission of Colorado

**July 11, 1957**

In view of the specific wording in 3-1-6, Sec. 97 of the Workmen's Compensation Act as amended by Ch. 180, S.L. 1957, cannot be construed as permitting additional compensation or additional fees to be paid to an employee in addition to the salary received.

STATUTES CONSTRUED—3-1-6, '53 CRS; Ch. 180, S.L. 1957.

**COLORADO STATE HOSPITAL****Opinion 57-3081**

Dr. F. H. Zimmerman  
Colorado State Hospital

**July 11, 1957**

An operation may be performed on a patient without his consent if the patient does not have sufficient mental capacity to be capable of giving or withholding consent, the wife having given her written consent, and the operation is necessary for the preservation of the patient's life or his well-being.

**WATER****Opinion 57-3082**

Mr. J. E. Whitten  
State Engineer

**July 16, 1957**

Underground water law. Stock watering and domestic wells with discharge pipes of two inches or less, artesian wells with discharge pipes not exceeding three inches in diameter, do not require a permit to use ground water. However, a permit to drill the well must be secured by a commercial well driller. Fees already collected for permits to use ground water in these circumstances should be refunded.

"Domestic use" means "such use as the riparian owner has at common law to take water for himself, his family, or his

stock, and the like," under an early case in the Colorado Supreme Court.

STATUTES CONSTRUED—Ch. 289, S.L. 1957, repealing 147-19, '53 CRS.

**COUNTY COURT—SOLDIERS' AND SAILORS' HOME**

**Opinion 57-3083**

Mr. James M. French

State Representative

**July 17, 1957**

The governor may transfer an inmate of the Colorado State Hospital to the Soldiers' and Sailors' Home in Monte Vista without regard to eligibility and admission requirements of said home, pursuant to 143-1-10(8) (a), as amended by Ch. 112, S.L. 1956, p. 213, provided that the committing county court has ordered such transfer or where the committing order makes it possible for the governor to exercise the power of transfer or a subsequent order is obtained permitting such transfer.

The person so transferred remains under the jurisdiction of the county court in the event the law is changed to provide for commitment or care of non-veteran persons in the soldiers and sailors home, although retaining preference for veterans. There would apparently be no effect on the present federal subsidy, although any such proposed law should be cleared with the Veterans Administration prior to enactment in order not to endanger said federal subsidy.

STATUTES CONSTRUED—143-1-10, '53 CRS, as amended by Ch. 112, S.L. 1956.

**CIVIL DEFENSE**

**Opinion 57-3084**

Mr. Gordon M. Connelly

Executive Director

Colorado Survival Plan Commission

**July 18, 1957**

Interpretation of Sections 3 and 6 of the Colorado Civil Defense Act as they appear in Ch. 111, p. 245, S.L. 1951.

STATUTES CONSTRUED—Ch. 111, S.L. 1951.

**PUBLIC FUNDS—HEALTH**

**Opinion 57-3085**

Dr. Roy L. Cleere, Executive Director

Department of Public Health

**July 22, 1957**

A district board of health can accept, use and disburse additional state aid, federal aid, and private moneys, for public health purposes by means of official agreements or board

resolutions, not inconsistent with the laws, if such additional aid were not anticipated at the time the district health department declared its estimated sources of revenue in the form of a budget, and if by accepting and disbursing such aid the health department does not exceed that portion of the budget agreed upon by the county commissioners from the county general fund.

STATUTES CONSTRUED—66-2-7(6), CRS '53.

### DEAF AND BLIND SCHOOL

**Opinion 57-3086**

Mr. Roy M. Stelle, Superintendent  
Colo. School for the Deaf and the Blind  
**July 25, 1957**

Under the provisions of Ch. 299, S.L. 1955, the board of trustees of the School is **empowered and authorized** but not directed to sell the land specified in the act in whole or by parcels.

STATUTES CONSTRUED—Ch. 299, S.L. 1955.

### SOIL CONSERVATION—TAXATION

**Opinion 57-3087**

Hon. Fred E. Sisk  
District Attorney  
Las Animas, Colorado  
**July 29, 1957**

Personal property of a soil conservation district is exempt from general ad valorem taxes regardless of the use to which the property is put.

CONSTITUTION CONSTRUED—Art. X, Sec. 4, Colo. Constitution.

STATUTES CONSTRUED—128-1, '53 CRS.

### TAXATION

**Opinion 57-3088**

Mr. A. A. Hall, Commissioner  
Colorado Tax Commission  
**August 1, 1957**

Under 137-3-25, '53 CRS, "raw or unprocessed" agriculture products are not subject to assessment. Question of fact whether the barley actually can be considered as "unprocessed." If such barley is not assessable under said statute, it would be assessable under the general laws relating to taxation of real and personal property.

STATUTES CONSTRUED—137-3-25, '53 CRS and Ch. 267, S.L. 1957.

**SCHOOL OF MINES****Opinion 57-3089**

Mr. Gurnett Steinhauer, Business Manager  
Colorado School of Mines

**August 2, 1957**

Legal residence outlined for purpose of fixing minor son's tuition.

**SECURITIES COMMISSION****Opinion 57-3090**

Mr. Duncan J. Cameron  
Assistant Securities Commissioner

**August 5, 1957**

Under 125-2-3(6), '53 CRS, as amended, the maximum liability on any one bond cannot be larger than \$5,000 each.

STATUTES CONSTRUED — 125-2-3(6), '53 CRS, as amended.

**PENITENTIARY****Opinion 57-3091**

Mr. Harry C. Tinsley, Warden  
State Penitentiary

**August 6, 1957**

1. An inmate who attempts to escape must "serve the maximum sentence" imposed with credit for actual calendar days served but without credit for "good time" and the next two years so served are without credit for "good time." The sentence imposed for the attempted escape is added to his maximum as one continuous sentence.

2. Whether or not the inmate who attempts to escape is subject to further administrative punishment is an administrative decision to be made by the warden.

STATUTES CONSTRUED—39-18-1 and 4(2); 40-7-51; 105-4-6 to 11, '53 CRS.

**GAME AND FISH****Opinion 57-3092**

Mr. J. D. Hart, Deputy Director  
Game and Fish

**August 12, 1957**

Wives, sons and daughters of personnel of the armed forces of the United States and foreign consulates stationed in this state on permanent duty are not entitled to receive resident hunting or fishing licenses by virtue of Ch. 151, S.L. 1957.

STATUTES CONSTRUED—62-3-5, '53 CRS, as amended by Ch. 151, S.L. 1957.

**OLD AGE PENSION—WELFARE—TREASURER****Opinion 57-3093**

Mr. Guy R. Justis, Director  
 Department of Public Welfare  
**August 12, 1957**

Ten Million Dollar Health and Medical Care Fund.

The Health and Medical Care Fund of the Old Age Pension Fund as created by Art. XXIV, Sec. 7, State Constitution, consists of state funds and any available federal grants and the limitation of expenditures to defray the costs of a medical care program in the amount of ten million dollars applies to the entire fund including both state and federal funds.

CONSTITUTION CONSTRUED—Art. XXIV, Sec. 7, State Const.

**SCHOOLS****Opinion 57-3094**

Mr. Richard C. Hopkins  
 Boulder, Colorado  
**August 19, 1957**

Illegal for any member of a school board, voting or non-voting, to receive any benefit from a contract awarded by the board.

STATUTES CONSTRUED—40-19-10, '53 CRS.

**REAL ESTATE—COUNTY CLERKS—LEGISLATIVE COUNCIL****Opinion 57-3095**

Hon. Steve McNichols  
 Governor of Colorado  
**September 4, 1957**

Re: Chapter 211, S.L. 1957, known as "The Realty Recording Act."

FACTS: S.B. 222 was enacted into law by the first regular session of the Forty-first General Assembly of Colorado. This Act became effective on July 1, 1957. Many questions have arisen concerning the proper interpretation of this Act, and the question of its validity under the Constitution has been raised.

**QUESTIONS AND CONCLUSIONS:**

1. Does S.B. 222 violate the Constitution of Colorado:
  - (a) By virtue of being a revenue measure originating in the Senate in contravention of Sec. 31, Art. V, Constitution of Colorado?

Conclusion: No.

- (b) By virtue of imposing a requirement beyond the power of the legislature to impose?

Conclusion: No.

- (c) In providing for fees to be retained by the county and deposited in the county general fund, instead of being credited to the fee fund of the county clerk and recorder?

Conclusion: No. The fees should be deposited to the credit of the fee fund of the county clerk and recorder in the first instance (See analysis).

2. Do the county clerks have the authority to refuse to comply with the requirements of the Act if they are in doubt as to its constitutionality?

Conclusion: No.

3. In respect to the proper construction of the Act:

- (a) Where an instrument discloses on its face that the fee must be excused, may the clerk refuse to record the instrument if a certificate is not filed in accordance with the Act?

Conclusion: No.

- (b) If the instrument does not disclose on its face that the fee must be excused, may the clerk refuse to record the document if the certificate is not filed in accordance with the Act?

Conclusion: Yes.

- (c) What instruments must be accompanied by a certificate?

Conclusion: Instruments which must be accompanied by certificates are unconditional contracts of sale, deeds, and grants or other instruments having the effect of a conveyance of substantially the entire interest in the property where there is a seller and purchaser of such interest.

Instruments which do not require the accompanying certificates are mineral leases; releases of such leases; patents, receiver's receipts; easements; licenses; certificates of location of mining claims; tax sales certificates and redemptions; liens and encumbrances and releases and extensions thereof; levies under execution; transcripts of judgment dockets; notices of lis pendens; sheriffs' deeds; executor's deeds to a devisee; assignments of rents; mechanics' liens; and other instruments of a similar nature.

- (d) In the case of an exchange of properties, what should be stated as the consideration?

Conclusion: If the parties have agreed on the value of the property exchanged, orally or by separate writing, or in any other way, such value must be expressed as the consideration. Otherwise, no consideration can be expressed, except to note in explanation that an exchange is involved and that no consideration in terms of dollars has been agreed upon for any purpose.

- (e) In the case of a consideration which is uncertain in amount, what should be stated as the consideration?

Conclusion: The consideration which should be stated is that which is actually paid or unconditionally agreed to be paid.

- (f) Where the property is transferred subject to a lien or encumbrance and the obligation secured by the lien or encumbrance is not assumed by the purchaser, does the consideration include the amount of such obligation?

Conclusion: Yes.

- (g) May the clerk accept the fee from either purchaser or seller?

Conclusion: Yes.

STATUTES CONSTRUED—Ch. 211, S.L. 1957.

#### REAL ESTATE—TAXATION—COUNTIES

**Opinion 57-3096**

Hon. Albert J. Tomsic  
State Representative  
**September 4, 1957**

Under 137-10-43, '53 CRS, the notice that property acquired by the county by tax deed will be sold must describe each and every parcel of land which is to be **offered for sale**. It does not need to describe each and every parcel of land which has been acquired by the county by tax deed, unless it is to be offered for sale.

Said section does not prohibit the board of county commissioners from selling at less than the appraised value fixed by the county assessor.

Said section also expressly provides that the property may be sold only at **public sale**.

STATUTES CONSTRUED—137-10-43, '53 CRS.

#### CHILDREN—JUSTICE OF THE PEACE COURT

**Opinion 57-3097**

Hon. C. C. Aldrich  
County Judge  
**September 5, 1957**

A child a few days past his 16th birthday may be properly tried in a justice of the peace court for a traffic violation.

A child is under sixteen years of age before he reaches his 16th birthday and over sixteen years of age one day past his birthday, for the purposes of 22-8-7, '53 CRS.

A child is not considered to be 16 years of age until he reaches his 17th birthday.

STATUTES CONSTRUED—22-8-7, '53 CRS.



**NURSES****Opinion 57-3098**

Joy Erwin, Director  
Nursing Education and Licenses

**September 9, 1957**

Under Sec. 15(2), Ch. 189, S.L. 1957, the State Board of Nursing cannot charge a \$25.00 fee to applicants for a temporary permit. "Permits" and "licenses" are not synonymous; therefore, a "license fee" could not be charged for a permit.

STATUTES CONSTRUED—Ch. 189, S.L. 1957, Sec. 15(2).

**WORKMEN'S COMPENSATION—CITY AND COUNTY OF DENVER—POLICEMEN AND FIREMEN****Opinion 57-3099**

Mr. Truman C. Hall, Chairman  
Industrial Commission of Colorado

**September 13, 1957**

Firemen and policemen of the City and County of Denver entitled to workmen's compensation in addition to full pay.

The Industrial Commission of Colorado or a referee thereof does not have the authority under the Workmen's Compensation Act either to withhold payment of compensation to an employee otherwise entitled thereto or to order payment of such compensation directly to his employer for the reason that such employer has continued payment of the employee's regular wage during the period for which compensation is due. (Cases cited.)

**STATE COLLEGES****Opinion 57-3100**

Hon. H. Grant Vest  
Commissioner of Education

**September 18, 1957**

The extension service of Colorado State University is a part of a state institution of higher learning in Colorado and those individuals that qualify, based on duties performed, as "faculty members" are eligible for benefits under Ch. 242, S.L. 1957; provided such faculty members meet the other requirements of the act and specifically the requirements of 124-17-1(1), '53 CRS, as amended.

STATUTES CONSTRUED — 124-17-1(1), '53 CRS, as amended by Ch. 242, S.L. 1957.

**LOTTERIES—LEGISLATURE****Opinion 57-3101**

Hon. Ben Klein  
 State Representative  
**September 19, 1957**

The game of Bingo is a lottery prohibited by the constitution and any legislation which would permit its operation by an organization of any character would be unconstitutional.

CONSTITUTION CONSTRUED—Art. XVIII, Sec. 2, State Constitution.

**WELFARE—STATE TREASURER****Opinion 57-3102**

Mr. Guy R. Justis, Director  
 Department of Public Welfare  
**September 18, 1957**

Re: Investment of Old Age Pension Stabilization Fund.

The State Treasurer is impliedly authorized to invest or place for return moneys of the Old Age Pension Stabilization Fund by virtue of Art. X, Sec. 12, State Constitution, as interpreted in *State v. Walsen*, 17 Colo. 170. This may be done in the discretion of the state treasurer and he and his sureties are absolutely liable for the principal fund.

The treasurer is the only one who may invest said funds. The interest received from said funds will go to the general fund if invested or deposited pursuant to 130-4-5, or 130-4-10, '53 CRS, otherwise the interest will follow the principal and be credited to the Stabilization Fund of the Old Age Pension Fund.

CONSTITUTION CONSTRUED—Art. XXIV, Sec. 7(b); Art. X, Sec. 12, State Constitution.

STATUTES CONSTRUED—130-4-5 and 10, '53 CRS.

**PURCHASING AGENT—CONTRACTS****Opinion 57-3103**

Mr. Lacy L. Wilkinson  
 State Purchasing Agent  
**September 24, 1957**

The preference granted by 3-4-3, '53 CRS, is limited to materials, supplies and provisions **produced or grown** in Colorado and where a product is only partially produced in Colorado the application of the preference should be limited to that portion of the total cost represented by Colorado labor.

STATUTES CONSTRUED—3-4-3, '53 CRS.

**SCHOOLS****Opinion 57-3104**

Hon. H. Grant Vest  
Commissioner of Education

**September 26, 1957**

A reorganized district under 123-8-29, '53 CRS, may not assume the bonded indebtedness of the other districts and said issue may not be legally voted upon at a bond election.

STATUTES CONSTRUED—123-11-1, '53 CRS.

**CIVIL SERVICE—DEPARTMENT OF EMPLOYMENT  
OFFICE BUILDING AUTHORITY****Opinion 57-3105**

Mr. A. C. Johnson, President  
State Civil Service Commission

**September 26, 1957**

Janitors and other persons employed by the Colorado Department of Employment Office Building Authority, which is a body corporate set up by the state, is part of the state, and its employees are subject to the civil service of the state.

CONSTITUTION CONSTRUED—Art. XII, Sec. 13, State Constitution.

STATUTES CONSTRUED—Ch. 82, Art. 12, '53 CRS.

**ESTATES—FEES****Opinion 57-3106**

John C. Banks  
City Attorney, Denver

**September 27, 1957**

Under the provisions of Sec. 5, Ch. 295, S.L. 1957 (152-9-12) additional docket fees should not be collected in decedents' estates where the decedent had, previous to his death, an estate as a minor or mental incompetent which was pending at the time of his death.

STATUTES CONSTRUED—152-9-12, '53 CRS, as amended by Sec. 5, Ch. 295, S.L. 1957.

**BASIC SCIENCES****Opinion 57-3107**

Dr. Esther B. Starks, Secretary  
State Board of Examiners in Basic Sciences

**September 30, 1957**

The Colorado State Board of Examiners in the Basic Sciences does not have power to promulgate the following

rule: "Any candidate failing in the examination given by this board will not be permitted to apply for reciprocity after having passed the Basic Science Board examination in another state."

STATUTES CONSTRUED—91-5-9, '53 CRS.

### LEGISLATION

**Opinion 57-3108**

Hon. Herrick S. Roth  
State Senator

**October 14, 1957**

(a) A bill amending the statute respecting the highway ton-mile tax or (b) a bill amending the statute respecting the port of entry system would not be revenue raising measures and, therefore, could not be enacted by the regular session of the General Assembly meeting in 1958 unless their subjects were designated in writing by the Governor during the first ten days of the session.

CONSTITUTION CONSTRUED—Art. V, Sec. 7, Colo. Const.

STATUTES CONSTRUED—13-5-23 and 27, '53 CRS.

### WATER CONSERVANCY DISTRICT

**Opinion 57-3109**

Board of Directors  
Middle Park Water Conservancy District  
Granby, Colorado

**October 15, 1957**

A water conservation district must comply with the provisions of Ch. 88, Art. 1, '53 CRS. (See Opinion No. 1940-54, dated October 29, 1954.)

STATUTES CONSTRUED—88-1-2, '53 CRS.

### COUNTIES—CONSTITUTIONAL LAW

**Opinion 57-3110**

Hon. Stephen L. R. McNichols  
Governor of Colorado

**October 18, 1957**

A county may not be divided to form two or more senatorial or representative districts, each of them to be totally within such county, unless the Colorado constitution is first amended to make this possible.

CONSTITUTION CONSTRUED—Art. V, Sec. 47, Colo. Const.

**SCHOOLS****Opinion 57-3111**

Hon. H. Grant Vest  
Commissioner of Education

**October 22, 1957**

1. A district voting bonds may not certify a bond and interest levy greater than that needed to pay the principal of bonds due and the principal and interest on bonds due for the ensuing years.

2. The board may provide funds for redemption of bonds that become due during the ensuing fiscal year.

3. The county treasurer has no authority with reference to determining the amount of the levy. He is primarily a custodian of funds.

4. County high school districts are governed by the provisions of 123-14-21 and 2, '53 CRS, for paying bonded indebtedness.

STATUTES CONSTRUED—123-11-14 and 123-14-21 and 22, '53 CRS.

**COURTS—MOTOR VEHICLES****Opinion 57-3112**

Harold A. Grant, District Attorney  
Leadville, Colorado

**October 25, 1957**

Apparently a vice-consul of a foreign government cannot be prosecuted in a state court for a violation of the state statute prohibiting reckless driving.

CONSTITUTION CONSTRUED—Art. III, Sec. 12, U. S. Const., USCA Title 28, Sec. 1351.

**SCHOOLS—MOTOR VEHICLES****Opinion 57-3113**

Dr. H. Grant Vest  
Commissioner of Education

**October 30, 1957**

Buses used by church agencies for transporting children between home and Sunday school; buses owned by private agencies or parties under contract to school districts when operated for transportation of children on Saturday or Sunday to church worship sessions or church school, Sabbath schools, etc.; buses used by ballet school for transporting children to and from such schools do not come within the provisions of 13-1-1(46), '53 CRS, or the provisions of 13-4, '53 CRS, relating to school buses. However, the fact that a bus is used to trans-

port children to and from school from private or parochial schools would not take it out of the provisions of the section and article mentioned if the other elements of a "school" are present.

STATUTES CONSTRUED—13-1-1(46) and 13-4, '53 CRS.

### **SCHOOLS—PENITENTIARY—REFORMATORY**

**Opinion 57-3114**

Herbert E. Allen, Director  
Department of Public Institutions

**October 31, 1957**

Canned goods produced at the Colorado State Penitentiary may be sold for use by the public schools in their hot lunch program.

Articles manufactured at the Colorado State Reformatory or the Penitentiary may be sold to school districts.

STATUTES CONSTRUED—105-5-1 and 3, '53 CRS.

### **COUNTY COMMISSIONERS—LEGISLATION**

**Opinion 57-3115**

Hon. Roy H. McVicker  
State Senator

**November 12, 1957**

When a county has had only three county commissioners and its population increases so that it equals or exceeds seventy thousand and for that reason it may have five commissioners under Art. XIV, Sec. 6, of the State Constitution, there is no statutory procedure for increasing the number of county commissioners, neither does this article of the constitution provide a method for so doing, neither is there any provision of the constitution or statutes providing for the method of determining when the population of a county equals or exceeds seventy thousand for the purpose of increasing the number of county commissioners. Any increase of county commissioners under these circumstances is further complicated by the provisions of 35-3-6, '53 CRS. Hence Art. XIV, Sec. 6 should be supplemented by appropriate legislation providing a procedure therefor.

STATUTES CONSTRUED—35-3-6, '53 CRS.

CONSTITUTION CONSTRUED—Art. XIV, Sec. 6, State Constitution.

**STATE TREASURER—PUBLIC FUNDS**

**Opinion 57-3116**

Hon. Homer F. Bedford  
State Treasurer

**November 6, 1957**

Warrants issued previously to July 1, 1941, which have never been presented for payment nor have otherwise come into the possession of the state or its officers may be cancelled, although the originals of such warrants are not in the physical possession of the state treasurer. In such a case it might be advisable to follow the provisions of 132-4-8, 9 and 13 regarding posting.

The moneys represented by the warrants which are cancelled should be credited as ordered in the second paragraph of 132-4-9, '53 CRS.

STATUTES CONSTRUED—132-4-8, 9 and 13, '53 CRS.

**COUNTY ASSESSOR—TAXATION—CITIES AND TOWNS**

**Opinion 57-3117**

Mr. Jerald J. Perotti  
County Assessor

**November 21, 1957**

The county assessor should not extend the taxes on the valuation that the Tri-County Water Conservancy District based their levy, but the assessor should exclude the value of the city of Ouray. If prior to assessment or levy the property becomes tax exempt it should not be assessed or taxed. As the ordinance was filed on the same day the levies were made, the property became exempt. *Denver v. Research Bureau*, 101 Colo. 140.

**GAME AND FISH**

**Opinion 57-3118**

Mr. Felix L. Sparks  
Assistant District Attorney  
Delta, Colorado

**November 22, 1957**

No statutes exist in Colorado providing for the prosecution of persons who trespass on private lands without actually hunting or fishing thereon.

STATUTES CONSTRUED—62-1-4, '53 CRS.

**COUNTY TREASURERS—WATER—FEES****Opinion 57-3119**

Hon. M. E. H. Smith  
 District Attorney  
 Greeley, Colorado

**November 27, 1957**

Class D assessments under the Water Conservancy District Act should be collected together with and as a part of the collection of general taxes by the county treasurer, and the county treasurer should charge a one percent fee for such collections.

STATUTES CONSTRUED—149-6-16, 20, and 23; 56-4-2, '53 CRS.

**SCHOOLS****Opinion 57-3120**

Mrs. Wallace E. Peterson  
 Bellevue, Colorado

**November 26, 1957**

Under the School District Reorganization Act (Ch. 237, S.L. 1957) alternate members of school planning committee have no rights to vote after creation of permanent committee.

STATUTE CONSTRUED—Ch. 237, S.L. 1957.

**COUNTY COMMISSIONERS—SOIL CONSERVATION****Opinion 57-3121**

Mr. Kenneth W. Chalmers, Secretary  
 State Soil Conservation Board

**December 6, 1957**

The board of county commissioners may employ either a full-time or part-time secretary to assist a soil conservation district in the county.

STATUTES CONSTRUED—128-1-17, '53 CRS.

**STATE BOARD OF AGRICULTURE****Opinion 57-3122**

Mr. Lowell H. Watts, Secretary  
 State Board of Agriculture

**December 4, 1957**

Ten percent of the Permanent Land Fund may not be withdrawn for use in purchasing an experimental farm. Where several statutes are in apparent conflict, the later act must be held to control.

STATUTES CONSTRUED—124-12-4 and 112-3-35, '53 CRS.



**SOIL CONSERVATION**

**Opinion 57-3123**

Mr. Kenneth W. Chalmers, Secretary  
State Soil Conservation Board

**December 2, 1957**

A soil conservation district has no power to enact land use ordinances to regulate commercial, industrial or residential building and development within drainageways.

STATUTES CONSTRUED—128-1-9, '53 CRS.

**EMPLOYMENT SECURITY—CHILDREN**

**Opinion 57-3124**

Mr. Bernard E. Teets  
Executive Director  
Department of Employment

**December 6, 1957**

Under the Employment Security Act, the term "child" is interpreted to mean and include stepchildren for exemption purposes.

STATUTES CONSTRUED—82-1-3(7) (e) (iv), '53 CRS.

**SOIL CONSERVATION—COUNTIES—FEDERAL**

**Opinion 57-3125**

Mr. Kenneth W. Chalmers, Secretary  
State Soil Conservation Board

**December 6, 1957**

A board of county commissioners can legally expend county funds to maintain flood prevention structures for the protection, in part, of county property, even though a soil conservation district holds an easement to the land upon which the structure is constructed, and can enter into a long-term contract with the district to do the necessary maintenance work.

STATUTES CONSTRUED—128-1-17, '53 CRS.

**CITIES AND TOWNS—PUBLIC BUILDINGS**

**Opinion 57-3126**

Hon. Stephen L. R. McNichols  
Governor of Colorado

**December 16, 1957**

Zoning regulations of the City and County of Denver do not apply to state-owned property which is to be used solely for governmental purposes.

STATUTES CONSTRUED—130-7-3 and 130-8-11, '53 CRS.

**COUNTIES—FEDERAL—CIVIL DEFENSE—WATER****Opinion 57-3127**

Hon. T. Everett Cook  
State Senator

**December 18, 1957**

In an emergency situation, a county may enter into an agreement with the U. S. Army Corps of Engineers that the county will hold the Government harmless. (Re Emergency flood control work on the Arkansas River in the vicinity of Canon City). (OPINION 2406-52 OVERRULED.)

**LEGISLATION—CONSTITUTIONAL LAW****Opinion 57-3128**

Hon. Martin P. Miller  
Judge of First Judicial District  
Arapahoe County

**December 19, 1957**

Proposed amendments to 37-3, '53 CRS, relating to the division of the first judicial district, appointment and election of judges for districts created and the terms of office thereof, if enacted, would comply with the applicable provisions of the constitution.

CONSTITUTION CONSTRUED—Art. VI, State Constitution.

STATUTES CONSTRUED—37-3, '53 CRS.

**ACTIONS—FEDERAL—SOIL CONSERVATION****Opinion 57-3129**

Mr. Kenneth W. Chalmers, Secretary  
State Soil Conservation Board

**December 23, 1957**

A soil conservation district, acting in a proprietary capacity, may be liable for damages resulting from injury caused by a negligence on the part of the district, as would any municipality, in the operation of maintenance of flood control projects.

STATUTES CONSTRUED—128-1-8 (10), '53 CRS.

**HEALTH**

**Opinion 57-3130**

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

**December 23, 1957**

A restaurant license may not be transferred from one location to another and may not be transferred if the licensee either individual, partnership or corporation is changed and the location remains the same.

STATUTES CONSTRUED—68-2-6, '53 CRS.

**FEES—JUSTICES OF THE PEACE**

**Opinion 57-3131**

John Hoyman, Attorney  
Telluride, Colorado

**December 27, 1957**

The costs assessed against a defendant found guilty in a criminal case in a justice of the peace court should be \$3.00 per day for each juror attending, plus mileage, plus \$2.00 for the justice of the peace fee.

STATUTES CONSTRUED—56-6-3; 56-4-4(g) and 39-10-5, '53 CRS.

**SCHOOLS**

**Opinion 58-3132**

Mr. B. F. Kitchen, Supt.  
School District No. 2, Loveland

**January 2, 1958**

A first and second class school district may purchase land for school purposes without submitting the matter to a vote of the qualified electors if no debt by loan is involved in the purchase.

CONSTITUTION CONSTRUED—Art. XI, Sec. 7, Colorado Constitution.

**LEGISLATION—REVENUE DEPARTMENT**

**Opinion 58-3133**

Mr. John F. Healy, Deputy Director  
Department of Revenue

**January 10, 1958**

The balance of moneys received by the Department of Revenue for services rendered in the machine accounting and

electro-data processing must be paid into the general fund at the end of each fiscal year.

A bill to increase the percentage of funds allocated to the department of revenue administration fund must be a subject designated by the governor in his message to a session of the legislature in an even-numbered year.

STATUTES CONSTRUED—130-6-2(10) (8); 130-6-3, '53 CRS.

CONSTITUTION CONSTRUED—Art. V, Sec. 7, Colorado Constitution.

### **BANKING**

**Opinion 58-3134**

Mr. Frank E. Goldy  
State Commissioner of Banking

**January 14, 1958**

The charge for life, accident and health insurance in connection with the making of loans is not a charge for the loan.

STATUTES CONSTRUED—73-3-5 and 73-5-1 and 2, '53 CRS.

### **EMPLOYMENT SECURITY—MORTGAGES AND LIENS**

**Opinion 58-3135**

Mr. Bernard E. Teets  
Executive Director  
Department of Employment

**January 14, 1958**

Chap. 138, Art. 7, '53 CRS does not apply to liens of the department of employment for unpaid contributions as are provided in 82-9-3, et seq.

The department of employment is not precluded from executing partial releases of the liens filed pursuant to Chap. 82, Art. 9, by virtue of 82-9-5, '53 CRS.

STATUTES CONSTRUED—138-7, '53 CRS; 82-9-3, et seq., '53 CRS.

### **SCHOOLS—FEDERAL—COUNTY TREASURER**

**Opinion 58-3136**

Hon. H. Grant Vest  
Commissioner of Education

**January 17, 1958**

County high school district may withdraw portion of funds from county treasurer and invest in Federal Savings and Loan Association.

STATUTES CONSTRUED—83-1-3, '53 CRS.

**SCHOOLS****Opinion 58-3137**

Hon. H. Grant Vest  
Commissioner of Education

**January 21, 1958**

1. Proceeds of bond election may be used only for construction of buildings and purchase of land in area for which voted.

2. New district may sell bonds voted by old district after reorganization.

STATUTES CONSTRUED—Chap. 237, S.L. 1957.

**BANKING****Opinion 58-3138**

Mr. Frank E. Goldy  
Commissioner of Banking

**January 22, 1958**

The charter of a bank may be withdrawn if it does not commence business within a reasonable time after approval of its charter under all the facts and circumstances involved.

STATUTES CONSTRUED—Chap. 86, S.L. 1957.

**INHERITANCE TAX****Opinion 58-3139**

Mr. Neil Tasher  
Inheritance Tax Commissioner

**January 20, 1958**

The value of decedent's interest in real estate held in joint tenancy for inheritance tax purposes is the fair market value of the real estate less the deductions for any notes and deeds of trust and/or any liens for unpaid real estate taxes against the property, divided by the number of joint tenants.

STATUTES CONSTRUED—138-4-6, 8, 16 and 48, '53 CRS.

**SCHOOLS—FEDERAL****Opinion 58-3140**

Hon. H. Grant Vest  
Commissioner of Education

**January 23, 1958**

A school district should not set up separate accounts of not more than \$10,000 in a Savings and Loan Association, unless the funds are held for clearly separate uses in clearly separate custodial capacities.

**WELFARE—OLD AGE PENSION****Opinion 58-3141**

Mr. Guy R. Justis, Director  
 Colorado Department of Welfare  
**January 28, 1958**

Class C Pension (101-1-5, '53 CRS) may be paid to pensioners who are maintained in state institutions and under the provisions of H.B. 12, 41st G.A., Second Regular Session, presently pending before the legislature (Ch. 143, Art. 1, '53 CRS), concerning Soldiers and Sailors Home at Monte Vista, Class C Pension may be paid to old age pensioners who are members in said home and payments may be made directly to the pensioner, unless he is mentally incompetent.

STATUTES CONSTRUED—101-1-5, '53 CRS. H.B. 12, 41st G.A. Second Regular Session (pending at this date).

**INSURANCE—WORKMEN'S COMPENSATION****Opinion 58-3142**

Mr. Truman C. Hall, Chairman  
 Industrial Commission of Colorado  
**January 29, 1958**

Re tax on premiums on workmen's compensation insurers under 81-17-8. Under provisions of 81-17-1, if upon a June 30 of a particular year a determination is made by the Industrial Commission that there is a balance of less than \$20,000 in the safety device and method fund, then upon the following July 1 the tax will be effective and will be collectible for the next full fiscal year or until the next June 30 when a new determination will be made and the tax shall abate or be collectible according to that determination.

STATUTES CONSTRUED—81-17-1 and 8, CRS 1953.

**SCHOOLS****Opinion 58-3143**

Dr. H. Grant Vest  
 Commissioner of Education  
**January 31, 1958**

Under 123-10-21, a school board has no authority to expel or restrict the activities of a student who has been found guilty of contributing to the delinquency of a minor if the act was committed off school property and not during school hours.

STATUTES CONSTRUED—123-10-21, CRS 1953.

**ACCOUNTANTS****Opinion 58-3144**

Mr. Robert J. Miles, Secretary  
State Board of Accountancy

**February 6, 1958**

A candidate for the certificate of certified public accountant may not be given credit for the passing of an examination in another state where the examination was not specifically prescribed by the Colorado Board of Accountancy.

STATUTES CONSTRUED—2-1-6, 9(6)(c), 10 and 14(3),  
CRS 1953.

**WELFARE DEPARTMENT—OLD AGE PENSION—PUBLIC  
INSTITUTIONS****Opinion 58-3145**

Mr. Guy R. Justis, Director  
Department of Public Welfare

**February 6, 1958**

For the purposes of the payment of Class C OAP, a man committed to the Colorado State Hospital and subsequently transferred by executive order of the Governor to the Colorado State Penitentiary pursuant to 71-2-4 for safekeeping may continue to receive Class C OAP payments. On the other hand a man convicted of a crime and sentenced to the penitentiary and subsequently transferred to the Colorado State Hospital pursuant to 71-2-4 remains an inmate of the state penitentiary and is not eligible to Class C OAP under 101-1-5.

STATUTES CONSTRUED—71-2-4 and 101-1-5, CRS 1953.

**BANKS AND BANKING****Opinion 58-3146**

Mr. Frank E. Goldy  
State Bank Commissioner

**February 7, 1958**

The creation of a valid trust of stock in a Colorado state bank renders the creator ineligible to act as a director if all of his qualifying shares are subject to the trust.

STATUTES CONSTRUED—14-13-64(1), CRS 1953.

**HEALTH—CHILDREN****Opinion 58-3147**

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

**February 10, 1958**

The Department of Health has power to enact and enforce sanitary standards for summer camps for children.

STATUTES CONSTRUED—66-1-7(13), CRS 1953.

**COAL MINES****Opinion 58-3148**

Mr. Thomas Allen, Chief Inspector  
State Coal Mine Inspection Department

**February 10, 1958**

A person must be licensed as an engineer or land surveyor in the State of Colorado in order to certify coal maps to be filed with the State Coal Mine Inspection Department.

STATUTES CONSTRUED—92-7-1, CRS 1953.

**PUBLIC WELFARE—CHILDREN****Opinion 58-3149**

Hon. Alberto Lobato  
County Judge of Conejos County

**February 13, 1958**

A county judge in a county where there is no probation officer for the Juvenile Court may request that the county welfare department make an investigation and furnish the court with a "social history" of any child alleged to be delinquent.

STATUTES CONSTRUED—119-1-13, CRS 1953.

**ELECTIONS—GROUND WATER DISTRICTS****Opinion 58-3150**

Mr. J. H. Cuykendall, Chairman  
Ground Water Commission

**February 18, 1958**

Qualifications defined for electors of tentatively critical ground water districts.

STATUTES CONSTRUED—Chap. 289, Sec. 4, Session Laws 1957.



**INDUSTRIAL COMMISSION****Opinion 58-3151**

Mr. Truman C. Hall, Chairman  
Industrial Commission of Colorado

**February 21, 1958**

Employers may require employees to pay the cost, if any, of furnishing records necessary to support the applicant's statements in the application for employment.

STATUTES CONSTRUED—Ch. 175, S.L. 1957, p. 491.

**NURSES****Opinion 58-3152**

Miss Margaret Metzger, President  
Colo. State Board of Nursing

**February 21, 1958**

The board must have a sworn complaint before initiating any disciplinary action against a professional nurse. The sworn complaint need not be signed by a board member, but if signed by a board member said member should not participate in the hearing thereof.

STATUTES CONSTRUED—97-2-21 and 22, CRS 1953.

**FAIR EMPLOYMENT PRACTICES ACT****Opinion 58-3153**

Mr. Roy M. Chapman, Coordinator  
Anti-Discrimination Commission

**February 27, 1958**

Authority of Colo. Anti-Discrimination Commission to adopt rules regarding filing of complaints, etc., under the provisions of Chap. 176, S.L. 1957.

STATUTES CONSTRUED—Chap. 176, S.L. 1957.

**DEAF AND BLIND SCHOOL****Opinion 58-3154**

Mr. R. M. Stelle, Superintendent  
Colorado School for the Deaf and the Blind

**March 3, 1958**

Advertising costs and fees of the auctioneer and real estate broker incurred in the sale of the land authorized by Chap. 299, S.L. 1955, may be paid from the gross proceeds of the sale and proper receipt furnished to the Treasurer and Controller. The net proceeds should be deposited with the State Treasurer.

STATUTES CONSTRUED—Chap. 299, S.L. 1955 as amended by H.B. 43, Sec. Reg. Session, 41st G.A.

**INSURANCE****Opinion 58-3155**

Mr. Sam N. Beery  
Commissioner of Insurance

**March 12, 1958**

The statutory effective date of casualty insurance rate increases is the date twenty days after filing of same, unless there is an extension of the period for not more than twenty days, in which case it becomes effective at the end of the extended period.

If further information is necessary, the filing becomes effective twenty days after such information is furnished. The filing for a rate increase and information in support thereof cannot be made public until said **effective date** of the filing.

STATUTES CONSTRUED—72-13-4-4(1), CRS '53.

**BOARD OF STANDARDS OF CHILD CARE****Opinion 58-3156**

Miss Mary McConnell, Director  
Board of Standards of Child Care

**March 12, 1958**

The jurisdiction of the board of standards of child care does not extend to public, private or parochial schools. A school operating under the auspices of a kindergarten does not come under the jurisdiction of said board.

STATUTES CONSTRUED—22-12-1, CRS '53 and 123-1-26, CRS. '53.

**GOVERNOR—INSURANCE****Opinion 58-3157**

Hon. Stephen L. R. McNichols  
Governor of Colorado

**March 4, 1958**

The Governor's Office has no legal authority or power to delay the effective date of an insurance rate increase, nor to affect a determination of the Insurance Commissioner in such matters. Sole discretion concerning effective dates and approval or disapproval of proposed rates is vested in the Insurance Commissioner, subject to review of the courts.

STATUTES CONSTRUED—72-13-3, CRS '53.

**CITIES AND TOWNS—CONTRACTS****Opinion 58-3158**

William Atha Mason, Esq.  
Rifle, Colorado

**March 21, 1958**

In 1957 "A" executed a contract with the town of Rifle, whereby certain payments are to be made to him and he is to make certain payments and all of the rights and obligations are embodied in the contract. In 1958 "A" seeks election to the Council. If elected and qualified, "A" would not be barred from either obtaining or receiving, or giving, benefits under the contract.

STATUTES CONSTRUED—40-19-10 and 11, CRS '53. People v. Brown, 60 Colo. 276, 152 P. 1169.

**OLD AGE PENSION****Opinion 58-3159**

Hon. Charles J. Simon  
County Judge of El Paso County

**March 26, 1958**

An aged person, otherwise qualified for an old age pension, who has been adjudicated under a mental health proceeding without psychosis and who resides or is in the custody of a private institution, not a mental institution, is entitled to receive old age pension payments, provided that such private institution has been licensed by the Colorado Department of Public Health.

STATUTES CONSTRUED—101-1-4(6), CRS '53.

**HOMES FOR THE AGED—OLD AGE PENSION****Opinion 58-3160**

Mr. Guy R. Justis, Director  
Department of Public Welfare

**March 26, 1958**

Class C old age pension recipients residing at the Monte Vista Golden Age Center are eligible for the old age pension health and medical care program.

CONSTITUTION CONSTRUED—Art. XXIV, Sec. 7(c), Colorado Constitution. (Chap. 191, S.L. 1957.)

STATUTES CONSTRUED—Chap. 59, Sec. 8(5)(e), S.L. 1958.

**WORKMEN'S COMPENSATION—CITIES AND TOWNS****Opinion 58-3161**

Mr. Truman C. Hall, Chairman  
Industrial Commission of Colorado

**April 2, 1958**

Only regularly enrolled members of a volunteer fire department in a city, town, municipality, or legally organized fire protection district are covered by the Workmen's Compensation Act while performing duties as volunteer firemen. Persons who are not within the above category, whether they are retired firemen or simply bystanders, are not so covered.

STATUTES CONSTRUED—81-2-7(1), CRS '53.

**UNIVERSITY OF COLORADO****Opinion 58-3162**

Mr. R. I. Hislop  
Assistant Business Manager

**April 3, 1958**

The Regents of the University have authority to sell property received by the University or the Regents as a gift without the authorization of the General Assembly.

CONSTITUTION CONSTRUED—Art. IX, State Constitution.

**ACTIONS—SCHOOLS****Opinion 58-3163**

Hon. H. Grant Vest  
Commissioner of Education

**April 8, 1958**

School districts as governmental agencies are not liable for injuries or damages that might be sustained by a pupil because of the governmental immunity. However, the court has not yet decided that the state has no immunity from suit for damages resulting from negligence of the state's servants or agents while performing a government function.

**OIL INSPECTION—MOTOR VEHICLES****Opinion 58-3164**

Mr. Harvey H. Houston  
Inspector of Oils

**April 8, 1958**

The Oil Inspection Department does not have authority to regulate fire extinguishers on vehicles transporting flammable

liquids with the exception of liquid petroleum gases. The control of the transportation of dangerous articles, with the exception of liquefied petroleum gases, is under the jurisdiction of the Department of Revenue and not the State Inspection Department.

STATUTES CONSTRUED—100-5-2 CRS '53; 100-2, CRS '53, and 13-4-113(3), CRS '53.

### INSURANCE

**Opinion 58-3165**

Mr. Sam N. Beery  
Commissioner of Insurance

**April 23, 1958**

A Colorado insurance company licensed to do business in Colorado, which solicits life insurance within the exterior boundaries of a federally owned military reservation located in another state and which company is not licensed by the insurance department of said state, may not have its certificate of authority to do business in Colorado revoked pursuant to 72-1-40, CRS '53, because the other state has no jurisdiction over companies doing business on federally owned military reservations under such circumstances.

STATUTES CONSTRUED—72-1-4, CRS '53.

### MOTOR VEHICLES

**Opinion 58-3166**

Motor Vehicle Division  
State Department of Oil Inspection  
Public Utilities Commission

**May 1, 1958**

The authority to determine fire extinguisher requirements on motor vehicles transporting explosives and other dangerous articles is in the Department of Revenue, with the exception of motor vehicles transporting liquefied petroleum gas in which case the authority is in the State Department of Oil Inspection.

STATUTES CONSTRUED — 100-5-2, CRS '53; 115-9-20, CRS '53.

CONSTITUTION CONSTRUED—Art. XXV.

The term "dangerous articles" as used in statute has been defined by numerous cases cited in Words and Phrases as perilous, hazardous or unsafe.

STATUTE CONSTRUED—13-4-113, CRS '53.

**HOSPITALS—CHILDREN—UNIVERSITY OF COLORADO****Opinion 58-3167**

Mr. Robert L. Denholm, Administrator  
University of Colorado Medical Center

**May 7, 1958**

The consent of both parents should be secured for the performance of an autopsy where a child is stillborn, dies after premature birth, dies after term birth or dies after infancy. Under some circumstances the consent of one parent would probably be sufficient.

STATUTES CONSTRUED—152-2-1, CRS '53.

**PUBLIC WELFARE****Opinion 58-3168**

Mr. Guy R. Justis, Director  
Colorado State Department of Public Welfare

**May 8, 1958**

1. The Board of Welfare and the Manager of the Denver Department of Welfare perform the duties and functions of county boards of commissioners who are acting in the capacity of county boards of welfare. In accordance with the Denver Charter provision the Manager of Welfare performs these functions in the City and County of Denver and the Board of Welfare is purely advisory.

2. The Manager of the Denver Welfare Department cannot be a merit system employee because he holds his office at the pleasure of the Mayor and not being such a merit system employee he cannot perform the administrative duties and functions of a county director of welfare.

STATUTES CONSTRUED—119-1-8 to 12, CRS '53.

**EMPLOYMENT SECURITY****Opinion 58-3169**

Governor Stephen L. R. McNichols

**May 9, 1958**

The Governor does not have authority, without additional legislative action, to extend unemployment benefits and the financing thereof.

STATUTES CONSTRUED—Chap. 82, CRS '53.

**SCHOOLS****Opinion 58-3170**

Hon. H. Grant Vest  
Commissioner of Education

**May 15, 1958**

Under the reorganization bill, if all of the districts in a county have not approved the plan by June 30, 1959, a new county planning committee may be created to succeed the present committee.

Should a subsequent county committee be elected the five reorganized districts will be entitled to one vote each in establishing the new committee and each district in the area not approving the plan will be entitled to one vote for each district in setting up the new committee.

STATUTES CONSTRUED—Chap. 237, S.L. 1957.

**PENITENTIARY****Opinion 58-3171**

Mr. Harry C. Tinsley  
Colorado State Penitentiary

**May 16, 1958**

Punishment to be imposed in cases of certain escapees as outlined in opinion.

STATUTES CONSTRUED—39-18-4(2), CRS '53; 105-4-7, 8 and 9, CRS '53.

**COURTS****Opinion 58-3172**

Mr. Chas. E. Snively  
Clerk, Boulder District Court

**May 21, 1958**

The following applies to docket fees in the district court.

Under the provisions of 56-5-1, CRS '53, as amended by Sec. 6, subsec. (4), Chap. 44, S.L. 1958, a defendant filing a cross claim or counterclaim should pay a total docket fee of \$15 and not \$22.50.

Sec. 15, Chap. 44, S.L. 1958, in effect, re-enacts 56-5-7, CRS '53, with the sole addition that it provides that the clerk shall file a copy of the abstract of his books, under oath, with the treasurer of the State of Colorado. The abstract of business transacted in the clerk's office refers to the business transacted therein for which by law fees are paid.

Where the defendant in an action first files a motion or pleading, not containing a cross claim or counterclaim and

pays a \$7.50 docket fee, and the clerk remits one-third thereof to the state treasurer and the defendant later files a counterclaim or cross claim and pays an additional \$7.50 docket fee, the clerk should remit 30% of the additional fee to the state treasurer, no part of the original remittance should be taken as a credit upon the final remittance.

STATUTES CONSTRUED—56-5-1, CRS '53, as amended by Sec. 6, subsec. (4), Chap. 44, S.L. 1958.

### **COUNTY COMMISSIONERS—JUSTICES OF THE PEACE**

**Opinion 58-3173**

Mr. Ronald J. Hardesty  
County Attorney, Jefferson County

**May 27, 1958**

The board of county commissioners has authority to reduce the number of justice precincts in the county to one precinct for the entire county, provided such board determines the creation of one precinct for the entire county will serve the necessities of the county and the public good.

In event population of the county-wide precinct exceeds 70,000 people justices can receive as compensation their fees not to exceed \$5,000 per annum.

The county commissioners survey and determination would be a sufficient basis on which to fix the salary of justices serving in the resulting precinct.

Should the population survey indicate in excess of 100,000, the county would be obligated to establish a juvenile court and a detention home.

STATUTES CONSTRUED—79-1-1, 2, 5, CRS '53; 56-2-13, CRS '53; 37-9-1, CRS '53.

### **MOTOR VEH. DEALERS ADMIN.—HIGHWAY PATROL**

**Opinion 58-3174**

Gilbert R. Carrel, Chief  
Colorado State Highway Patrol

**May 28, 1958**

A dealer engaged solely in the business of selling used or second hand automobiles is not required to procure a license therefor from the State Highway Patrol under the provisions of 13-13-6, CRS '53. He must procure a license to operate as such from the Motor Vehicle Dealers Administrator pursuant to the provisions of 13-11, CRS '53, and he is still subject to the duties imposed by 13-13-7, CRS '53, and 13-13-8, CRS '53. Those who in addition to selling new or used automobiles,



also sell second hand or used automobile parts, equipment, attachments or accessories, etc., or operate a garage must secure a license from both the Motor Vehicle Dealers' Administration and the Colorado State Patrol.

STATUTES CONSTRUED—13-11, CRS '53; 13-13-6, 7, 8, CRS '53; 135-4-2, 5, CRS '53.

### CITIES AND TOWNS

**Opinion 58-3175**

Mr. Carl Becker  
Management Officer  
City and County of Denver

**May 29, 1958**

Section 69-3-10(4), CRS '53, does not **require** the Denver Housing Authority to make an annual audit of tenants' annual income for the purpose of adjusting the rent upward retroactive to the date of the increase in income.

STATUTES CONSTRUED—69-3-10(4), CRS '53.

### STATE PLANNING DIVISION

**Opinion 58-3176**

Mr. W. M. Williams  
Executive Director  
State Planning Division

**June 3, 1958**

Authority of Boards of Control of State Colleges, State Planning Division and State Purchasing Agent outlined and authorities cited re proposed building projects.

### LICENSED PRACTICAL NURSE EXAMINERS

**Opinion 58-3177**

Mrs. Ethel M. House  
Executive Secretary

**June 10, 1958**

A wife whose husband is in the armed services and has lived in various parts of the country with her husband and has been practicing nursing where her husband has been stationed and has kept Colorado as her legal residence is considered a resident of Colorado and entitled to a license by waiver.

STATUTES CONSTRUED — 97-3-11(5), CRS '53, as amended.

## CITIES AND TOWNS

Opinion 58-3178

Honorable Steve McNichols

June 11, 1958

The City of Thornton came into existence several years after the taking of the United States Census in 1950 and is not now eligible for contributions from the State Treasurer to a Firemen's Pension Fund under the provisions of Sec. 139-50-4, CRS '53, as amended by the laws of 1957.

Since the City is not so eligible, the Governor may not establish its eligibility by executive or administrative order.

STATUTES CONSTRUED—139-50-4, CRS '53, as amended by 1957 S.L.

## HIGHWAYS—COUNTIES

Opinion 58-3179

Mr. Earl A. Wolvinton  
County Attorney, Logan County

June 12, 1958

From the facts recited in the deeds attached to this opinion, these instruments do convey fee simple title to the county so as to convey ownership of the underlying mineral estate unless same had been previously conveyed or reserved by prior holders in the chain of title.

STATUTES CONSTRUED—36-1-1(2), 36-1-7(8) and 120-13-12, CRS '53.

## HIGHWAYS—ADVERTISING

Opinion 58-3180

Mr. Mark U. Watrous  
Chief Engineer, Department of Highways

June 16, 1958

The highway department is not obligated by Colorado law to publicly advertise invitations to bid on highway construction projects. The only statute requiring publication of invitations in a newspaper of general circulation is 120-1-9, CRS '53, which relates exclusively to such activities by boards of county commissioners for county highway construction. (Affirming Opinion 1938-361.)

STATUTES CONSTRUED—120-2-6, CRS '53; 120-2-5(3)(10), CRS '53.

**OLD AGE PENSIONS—HOMES FOR THE AGED**

**Opinion 58-3181**

Mr. Herbert E. Allen, Director  
Department of Public Institutions

**June 18, 1958**

In determining the eligibility of a veteran member of the Golden Age Center for Class C old age pension, the Federal subsidy of \$58.33 per month paid to the State of Colorado for such veteran member may be considered as a resource or income in kind to such veteran member otherwise eligible for Class C pension.

The old age pension law provides that the amount of net income from whatever source, either in cash or in kind, must be deducted from the amount of pension which such member would otherwise receive, and the Federal subsidy constitutes payment for support and maintenance of the individual veteran at the Center.

STATUTES CONSTRUED—101-1-5(3), 7(1) and 10, CRS '53.

**PUBLIC INSTITUTIONS—HOMES FOR THE AGED**

**Opinion 58-3182**

Hon. Stephen L. R. McNichols  
Governor of Colorado

**June 20, 1958**

The director of the Golden Age Center does have the power to lease or sub-let lands owned by the State of Colorado for the use of the Golden Age Center, which lands were acquired prior to February 22, 1958, the effective date of the new law.

The re-enactment of the law concerning the previous power to lease or sub-let did not impair such power.

STATUTES CONSTRUED—143-10-6, CRS '53, as amended by Chap. 59, S.L. 1958, Sec. 16.

**SCHOOLS—ELECTIONS**

**Opinion 58-3183**

Hon. H. Grant Vest  
Commissioner of Education

**June 24, 1958**

Taxpaying elector defined as used in Senate Bill No. 385, Chap. 237, Sec. 3 (8), S.L. 1957.

STATUTES CONSTRUED—Chap. 237, Sec. 3(8), S.L. 1957.

**INSURANCE****Opinion 58-3184**

Mr. Sam N. Beery  
Commissioner of Insurance

**June 30, 1958**

Re: American Ambulance Association.

The business of contracting for the furnishing of ambulance service to dues paying members of an association does not constitute the doing of an insurance business in Colorado. Where an association contracts with an independent operator to furnish services to dues paying members of such an association, there is no risk, hazard or peril assumed.

**CHILDREN****Opinion 58-3185**

Mr. Guy R. Justis, Director  
Department of Public Welfare

**June 30, 1958**

The father of a child conceived prior to an annulment of the marriage between such parties and born subsequent to such annulment must be a party for any relinquishment proceedings concerning such child. Such child is deemed to be a legitimate child of each of the parents.

STATUTES CONSTRUED—46-3-5, CRS '53.

**SECURITIES****Opinion 58-3186**

Mr. Duncan J. Cameron  
Securities Commissioner

**July 1, 1958**

If a company files a registration in full compliance with the statute, the securities commissioner does not have any discretion to refuse to register the issue because of past violations or for any other reason.

STATUTES CONSTRUED — 125-1-6(1), CRS '53, as amended.

**TAXATION—FEDERAL****Opinion 58-3187**

Colorado Tax Commission

**July 3, 1958**

The federal tax paid on cigarettes by the manufacturer is in the same category as the similar tax paid on distilled spirits and such tax should be included in the valuation for ad valorem taxation.

**PUBLIC INSTITUTIONS—TRAINING SCHOOLS****Opinion 58-3188**

Mr. Herbert E. Allen, Director  
Department of Public Institutions  
**July 8, 1958**

Persons who are inmates in the Colorado State Homes and Training Schools at Ridge and Grand Junction, and who receive Class C old age pension payments, are not entitled to receive medical care pursuant to the constitutional medical care program for old age pensioners.

STATUTES CONSTRUED—101-1-7(3), CRS '53, as amended by Ch. 192, Sec. 3, S.L. 1957.

CONSTITUTION CONSTRUED—Art. XXIV, Sec. 7(c), Colorado Constitution.

**INSURANCE****Opinion 58-3189**

Mr. Sam N. Beery  
Commissioner of Insurance  
**July 8, 1958**

Re: Proposed contract submitted by Prepaid Visual Care Plan, Inc.

From an examination of the contract, it would appear that the corporation is operating merely as an agency for the furnishing of services without assuming any risk, hazard or peril which would constitute the doing of an insurance business. See Opinion 58-3184.

**SCHOOL DISTRICT****Opinion 58-3190**

Honorable H. Grant Vest  
Commissioner of Education  
**July 16, 1958**

Although Secs. 28(1) and (2) of Ch. 237, S.L. 1957 (S.L. 385), do not specifically provide that contractual obligations shall be assumed by the new district, it seems clear that such is the intent as the new district obtains all assets unless otherwise provided in the plan. The liabilities should follow such assets. Unless such contract obligations are otherwise provided for in the plan they are assumed by the new district.

STATUTES CONSTRUED—Secs. 28(1) and (2), Ch. 237, S.L. 1957.

**PAROLE BOARD****Opinion 58-3191**

Mr. Edward W. Grout  
Executive Director  
State Department of Parole

**July 25, 1958**

A person sentenced under Article 19 of Chapter 39, CRS '53, for a period of one day to life may be discharged from his sentence only by order of the Governor.

STATUTES CONSTRUED—39-19-7, CRS '53.

**ELECTIONS—CITIES AND TOWNS****Opinion 58-3192**

Charles T. Byrne  
Brighton, Colorado

**August 4, 1958**

Absentee ballots may be cast in water and sanitation district elections.

The spouse of a taxpaying elector of a water and sanitation district may not vote in an election of directors of that district if she does not own any taxable property in the district.

STATUTES CONSTRUED—89-5-2(6), CRS 53.

**SCHOOLS****Opinion 58-3193**

Mr. Adolph G. Sebben, Pres.  
Las Animas County High School

**August 6, 1958**

The distribution of funds among the various units of the reorganized district should be made in accordance with the Public School Foundation Act (Ch. 238, S.L. 1957).

The contract obligations of the County High School System become the obligations of the new districts unless otherwise provided in the plan. See Opinion 58-3190.

STATUTES CONSTRUED—Ch. 238, S.L. 1957.

**SCHOOLS****Opinion 58-3194**

Hon. H. Grant Vest  
Commissioner of Education

**August 29, 1958**

Ch. 237, S.L. 1957 (School District Organization Act) does not contemplate that the entire plan be approved by all proposed districts before becoming effective.

STATUTES CONSTRUED—Sec. 24, Ch. 237, S.L. 1957.

**EMPLOYEES RETIREMENT****Opinion 58-3195**

Mr. Raymond J. Heath, Secretary  
Public Employes Retirement Association

**September 4, 1958**

Dependents of a retired member who died subsequent to retirement are not entitled to survivor annuity payments under 111-8-1, et seq., CRS '53, 1957, S.L. Chap. 201.

STATUTES CONSTRUED—111-8-1, et. seq., CRS '53, as amended by Chap. 201, S.L. 1957.

**SECRETARY OF STATE—LIQUORS****Opinion 58-3196**

Mr. George J. Baker  
Secretary of State

**September 8, 1958**

1. The Secretary of State, acting as the State Licensing Authority, does not have the power to adopt and enforce a regulation prohibiting the delivery of malt, vinous or spirituous liquors by licensed retail liquor stores, or liquor licensed drug-stores, to the purchaser thereof where the order for such liquors is not taken at the same time as delivery.

2. The Secretary of State does not have the power to revise the present method of collection of the excise tax upon vinous or spirituous liquors by enacting a regulation eliminating the use of excise tax stamps.

3. The Secretary of State does not have the power to adopt and enforce a regulation prohibiting licensed retail liquor stores and liquor licensed drugstores from selling malt, vinous or spirituous liquors to purchasers on credit.

4. Authority of Secretary of State to adopt a regulation limiting number of licenses as to any area or vicinity.

STATUTES CONSTRUED—75-2, CRS '53.

**COLORADO STATE HOSPITAL****Opinion 58-3197**

Dr. F. H. Zimmerman, Superintendent  
Colorado State Hospital

**September 16, 1958**

The chief financial officer at the state hospital receives and disburses Class C OAP funds on behalf of patients and has no power or authority to refund moneys alleged to have been erroneously paid, unless ordered to do so by a court of competent jurisdiction.

If a warrant has not been endorsed and therefor not deposited as provided by law, the chief finance officer may return the warrant to the county department involved, or if he has reason to dispute the ineligibility determination by the county department he may appeal the decision as provided by 101-1-13, CRS '53.

STATUTES CONSTRUED—101-1-5(2), (3), (4) and 13, CRS. '53.

### SCHOOLS

**Opinion 58-3198**

Hon. H. Grant Vest  
Commissioner of Education  
**September 16, 1958**

Authority of a school district of the first class to buy property on the installment plan, give note and deed of trust to secure balance of purchase price to original owner and enter into contract to lease a home on said property defined.

STATUTE CONSTRUED—88-1-14, CRS '53.

### ELECTIONS

**Opinion 58-3199**

Mrs. Betty L. Reichwein  
County Clerk and Recorder  
Georgetown, Colorado  
**September 19, 1958**

1. A person defeated in the primary is ineligible to run for the same office in the ensuing general election as an independent.

2. If a person uses a mark other than an X to vote, his vote should be counted if the intent of the voter can be reasonably gathered from his mark.

3. If the name of a person as a candidate for office is written in by the voter but no X is placed after the name, a vote should not be counted for that office. 57 Colo. 155.

STATUTES CONSTRUED—49-4-14, CRS '53; 49-10, 15, 22 and 23, CRS '53.

### INSURANCE

**Opinion 58-3200**

Hon. George J. Baker  
Secretary of State  
**September 22, 1958**

An insurance corporation not doing business as an insurance company is required to pay filing fees and make annual



reports to the Secretary of State as provided by the corporation law.

STATUTES CONSTRUED—31-7-11, 121, 13, 20, CRS '53; 72-1-12, 13, 14, 34, 35, CRS '53.

#### FEDERAL—WATER

**Opinion 58-3201**

Mr. W. G. Evans  
Omaha District Corps of Engineers  
**September 25, 1958**

Regulations re boats and boating on Cherry Creek Reservoir.

Authority of the Department of Natural Resources, Game and Fish Commission and State Park and Recreation Board to enact rules and regulations governing the use of Cherry Creek Reservoir defined.

STATUTES CONSTRUED—3-1-8, CRS '53; 112-9-3, CRS '53.

#### LIQUOR

**Opinion 58-3202**

Mr. George J. Baker  
Secretary of State  
**October 1, 1958**

1466-1470 Grant Street, Denver, Colorado.

A hotel and restaurant liquor license may be issued on a building or premises that has more than one entry, and if the entries have different street addresses it does not affect this conclusion. Under the factual situation, the fact that only one building or premises is involved, the respective licensing authority can properly issue such license.

#### AGRICULTURE

**Opinion 58-3203**

Mr. Paul W. Swisher, Commissioner  
Department of Agriculture  
**October 24, 1958**

If a retail store sells poultry to another retail store, it is a wholesale sale and the seller must obtain a \$20 wholesale dealer's license.

STATUTES CONSTRUED—7-1-3, CRS '53.

**JUNIOR COLLEGES****Opinion 58-3204**

Hon. H. Grant Vest  
 Commissioner of Education

**October 27, 1958**

The term "school district" defined. Since junior colleges are not included within the definition of "school districts," they are ineligible to make application to the state board of education for supplemental support under Sec. 13(2), Ch. 238, S.L. 1957, as amended by Ch. 51, S.L. 1958.

STATUTES CONSTRUED—123-23, CRS '53. Sec. 13(2), Ch. 238, S.L. 1957, as amended by Ch. 51, S.L. 1958.

**EMPLOYMENT SECURITY****Opinion 58-3205**

Bernard M. Teets, Executive Director  
 Department of Employment

**October 28, 1958**

The provisions of the Colorado bulk sales law may be used in addition to the provisions of the Colorado Employment Security Act to enable the Department of Employment to enforce its rights to contributions where an employer makes a transfer within the provisions of the bulk sales law.

STATUTES CONSTRUED—82-9-3, CRS '53; Ch. 18, CRS '53.

**FEES AND SALARIES—COUNTY OFFICERS****Opinion 58-3206**

M. E. H. Smith, Esq.  
 District Attorney

**November 19, 1958**

The 1954 amendment to Art. 14, Sec. 8, Colo. Constitution, changed the terms of the following county officers—clerk and recorder, sheriff, coroner, treasurer, superintendent of schools, surveyor, assessor and attorney—from two to four years. It provided that the subsequent terms should start on the 2nd Tuesday in January next following their election, or at such time as may be provided by law, and that the above officers elected at the 1954 general election to hold their respective offices until the 2nd Tuesday of January, 1959.

CONSTITUTION CONSTRUED—Amendment to Art. 14, Sec. 8 (1954).

STATUTES CONSTRUED—Sec. 2, Ch. 41, S.L. 1958.

**ELECTIONS—SCHOOLS****Opinion 58-3207**

Mr. Nathan V. Mellott  
County Superintendent of Schools  
November 28, 1958

In determining the qualifications of a person to hold office as county superintendent it is the function of the courts and not the election officials to pass upon the eligibility of a person to hold office. In the absence of such determination a person would appear qualified to be placed on the ballot and elected. The requirement of a person to hold a teaching certificate would be as of the date the person assumes the office for which he has been elected.

STATUTES CONSTRUED—35-10-1, CRS '53.

**SCHOOLS****Opinion 58-3208**

Hon. H. Grant Vest  
Commissioner of Education  
November 28, 1958

Archuleta County under "The School District Reorganization Act of 1957."

It appears that the intent of Sec. 4(1), Ch. 237, S.L. 1957, in requiring that the school planning committee be formed within sixty days applies to unorganized districts or districts reorganized that contemplated additional reorganization. Archuleta County was reorganized and did not contemplate additional reorganization. In view of the provisions of Sec. 39 of Ch. 237, to deprive such county of the privilege of creating a committee at this time would nullify all reorganization involving such county. Further the electors in the entire proposed district would be denied the privilege of voting on the proposed plan. This is contrary to the intent of the act as stated in Sec. 2 of said Ch. 237.

STATUTES CONSTRUED—123-25, CRS '53, as amended by Ch. 237, S.L. 1957.

**PUBLIC FUNDS—CONTROLLER****Opinion 58-3209**

Mr. Homer F. Bedford  
State Treasurer  
December 2, 1958

The state controller has authority by law to prescribe the period of time after which unclaimed warrants may be void and canceled.

STATUTES CONSTRUED—3-3-2(9), CRS '53; 132-4-8, 9, CRS '53.

**PUBLIC FUNDS—SCHOOLS—COLLEGES****Opinion 58-3210**

Hon. Herrick S. Roth  
State Senator

**December 3, 1958**

State funds may not be used for grants in aid programs to students.

CONSTITUTION CONSTRUED—Art. V, Sec. 34, Colorado Constitution.

**CORPORATIONS****Opinion 58-3211**

Hon. George J. Baker  
Secretary of State

**December 3, 1958**

Sec. 11, Chap. 32, S.L. 1958, Second Regular Session, is effective on January 1, 1959, and applies to all domestic corporations then in existence, and the first designation by a domestic corporation in its annual report due in 1959 of its registered office and registered agent, is not in compliance therewith, unless filed on January 2, 1959.

The Secretary of State may charge and collect \$5.00 for filing the designation by a domestic corporation of its registered office and registered agent.

STATUTES CONSTRUED—Sec. 11, Chap. 32, S.L. 1958, Second Regular Session.

**INSURANCE****Opinion 58-3212**

Mr. Sam N. Beery  
Commissioner of Insurance

**December 3, 1958**

Certain insurance policy forms of the Perpetual Life Insurance Company, known as the Estate Builder Policy and the Founders Policy (Dividend Master Plan) do not violate the insurance laws of the State of Colorado.

The determination of the existence of unfair trade practices is a factual question that must be decided by the insurance commissioner after investigation.

STATUTES CONSTRUED: Article 72, CRS '53.

**CHIROPODY****Opinion 58-3213**

George F. Helbig, President  
Colorado Chiropractic Board

**December 8, 1958**

Persons licensed to practice chiropractic in Colorado may administer local anesthetics, which may consist of narcotic drugs, to persons upon whom they are performing surgery as authorized by law, but they may not prescribe or dispense narcotic drugs or administer anesthesia which is other than local.

STATUTES CONSTRUED—91-2-2, CRS '53.

**JUSTICE OF THE PEACE—FEES AND SALARIES****Opinion 58-3214**

Leo W. Rector, Esq.  
District Attorney

**December 11, 1958**

If the defendant demands a jury trial in a criminal case in a justice of the peace court, he shall not be obligated to advance the jury fees as provided in 79-7-1, CRS '53, which applies only to the trial of civil cases. If the defendant is convicted, however, he shall be assessed as part of the costs of the case the sum of \$3.00 per day for each juror attending, which fee is provided in Sec. 56-6-1, CRS '53, as amended.

78-1-1, CRS '53, applies only to courts of record, and has no application to justice of the peace courts.

STATUTES CONSTRUED—79-7-1, CRS '53.

**RECREATION DISTRICTS****Opinion 58-3215**

Herbert F. Miller, Esq.  
Estes Park, Colorado

**December 12, 1958**

A metropolitan recreation district, organized under the provisions of 89-12-14, CRS '53 as amended, may not incur an indebtedness when it is already indebted without submitting the proposition of incurring such indebtedness to the qualified taxpaying electors of the district at an election held for that purpose.

STATUTES CONSTRUED—89-12-14, CRS '53.

**FEDERAL—SCHOOLS****Opinion 58-3216**

Hon. Herrick S. Roth  
State Senator

**December 12, 1958**

Testing programs as outlined in the National Defense Education Act of 1958, Title V, under "Program A—Grants to States" would not be in violation of any of the provisions of the state constitution or statutes.

**COUNTY COURTS****Opinion 58-3217**

Hon. Morton G. Wyatt  
Judge of the County Court

**December 10, 1958**

In appeals in criminal cases from justices of the peace courts to county courts or the superior court the judge and not the jury imposes the penalty if the defendant is found guilty by the jury.

STATUTES CONSTRUED—79-13-1, CRS '53; 79-15-11, CRS '53.

**COSMETOLOGY****Opinion 58-3218**

Miss Beryl W. Maus  
Executive Secretary

**December 15, 1958**

Demonstrations "for the purpose of a sale" are excluded from the provisions of 32-1-5, CRS '53. Persons who demonstrate beauty preparations in the home for the purpose of sale are, therefore, within the exclusion clause and need not be licensed.

STATUTES CONSTRUED—32-1-5, CRS '53.

**LICENSED PRACTICAL NURSE EXAMINERS****Opinion 58-3219**

Miss Catherine L. Caffrey  
Executive Secretary

**December 15, 1958**

When refund of fees should be made.

STATUTES CONSTRUED—97-3-19, CRS '53.

**INSURANCE—FUNERAL****Opinion 58-3220**

Mr. Sam N. Beery  
Commissioner of Insurance

**December 3, 1958**

Pursuant to 72-17-1, CRS '53, all funds received for the sale of prepaid or prearranged funeral arrangements or contracts must be held in trust until the contemplated funeral has been performed or full return made to the contract holder. Authorized regulations by the insurance department also so provide and the legislation is presumed to be constitutional until shown to be otherwise.

STATUTES CONSTRUED—72-17-1, CRS '53.

**TEACHER'S RETIREMENT****Opinion 58-3221**

Hon. Herrick S. Roth  
State Senator

**December 19, 1958**

123-19-11, CRS '53, specifies the conditions of employment as to retired teachers and benefit payments. Any conditions of greater scope than set forth in said section would be illegal and void. The section also provides that the school district "shall not be required to deduct." In the absence of a direct provision that the school district shall not deduct, corrective legislation would be advisable.

STATUTES CONSTRUED—123-19-11, CRS '53.

**INSURANCE—FUNERAL****Opinion 58-3222**

Mr. Delmer E. Hunter, Jr., President  
State Board of Funeral Directors and Embalmers

**December 22, 1958**

A pre-need funeral plan which permits a deduction for the seller of the plan is in violation of 61-3-24(e), CRS '53.

STATUTES CONSTRUED—61-3-24(e), CRS '53.

**JUNIOR COLLEGE DISTRICTS****OPINION 58-3223**

Hon. Grant Vest  
Commissioner of Education

**December 23, 1958**

Junior college districts may not create "director districts" in a proposed plan of organization under Ch. 123, Art. 23, CRS '53, as amended by Ch. 236, S.L. 1957.

STATUTES CONSTRUED—123-23, CRS '53, as amended by Ch. 236, S.L. 1957.



**PART II**  
**CASES PENDING AND DISPOSED OF IN ALL**  
**COURTS**

**1957-1958**



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- 226 *United States of America v. Floy Mays, Treasurer of Kiowa County, et al.* No. 5979. Priority of liens. Case closed.

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO****Docket No. 14**

- 216 *In the Matter of K. D. Drug Stores, Inc.* No. 19681. Bankruptcy. Case closed.
- 354 *Arthur J. Taylor v. Harry C. Tinsley, Warden State Penitentiary.* No. 5867. Habeas Corpus. Case closed.
- 417 *United States of America v. National Insurance Company, et al.* No. 5928. Foreclosure of lien. Case pending.

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- 146 *R. L. Freeman v. State Parole Board, et al.* Habeas Corpus.
- 147 *Charles W. Garton v. Harry S. Tinsley, Warden State Penitentiary.* Habeas Corpus.
- 179 *Ellsworth Medberry v. Wayne K. Patterson, Warden State Reformatory, et al.* Habeas Corpus. Case closed.
- 238 *Audrey I. Cutting v. Mitchel B. Johns, Judge of the Superior Court, et al.* No. 6153. Conspiracy. Case pending.
- 268 *People ex rel James Bowland v. Warden Harry Tinsley.* No. 6208. Habeas Corpus. Case closed.
- 285 *Josef Petsche v. Wayne Patterson, Warden State Reformatory, et al.* No. 6100. Declaratory Judgment. Case closed.

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218	<i>R. L. Freeman v. Harry Tinsley, Warden State Penitentiary.</i> No. 791 Misc. Writ of Certiorari. Case closed.
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80	<i>LeRoy Adolph Leick v. People of the State of Colorado.</i> No. 708. Writ of Certiorari. Case closed.
280	<i>Robert Leon Wiseman v. Harry C. Tinsley, Warden State Penitentiary.</i> No. 360 Mis. Certiorari. Case closed.
303	<i>Ellsworth Medberry v. Wayne K. Patterson, Warden State Reformatory, et al.</i> No. 542. Certiorari. Case closed.

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99	<i>State of Colorado v. Emma Jane Rogers, et al.</i> No. 18176. Escheat. Case pending.
108	<i>Lillain Marjorie Diernfeld v. People of the State of Colorado.</i> No. 18129. Custody of minor child. Case closed.
117	<i>F. H. Zimmerman, Superintendent, Colorado State Hospital v. Mary Angele.</i> No. 18188. Haebas Corpus. Case closed.
118	<i>Dan P. Vigil v. People of the State of Colorado.</i> No. 18190. Statutory Rape. Case closed.
127	<i>Audrey I. Cutting v. Edward O. Geer, et al.</i> No. 18203. Extradition. Case closed.
134	<i>Edwin H. Logan, et al. v. People of the State of Colorado.</i> No. 18211. Money Demand. Case pending.

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135	<i>Thomas Mitchell v. People of the State of Colorado.</i> No. 18209. Burglary and Habitual Criminal. Case closed.
137	<i>Frank Walton Oates v. People of the State of Colorado.</i> No. 18215. Habeas Corpus. Case closed.
157	<i>Public Utilities Commission v. Denver District Court.</i> No. 18108. PUC matter.
158	<i>Earl L. Sullivan v. Modern Music Company, et al.</i> No. 18166. Order pinball machines destroyed. Case closed.
160	<i>William Harold Latham v. People of the State of Colorado.</i> No. 18223. To correct sentence in penitentiary. Case closed.
167	<i>Sam Gorum v. People of the State of Colorado.</i> No. 18226. Grand Larceny. Case closed.
168	<i>Harry C. Tinsley, Warden State Penitentiary v. Roy A. Woods.</i> No. 18232. Habeas Corpus. Case closed.
173	<i>Marshall D. Johnston, M.D. v. Colorado Board of Medical Examiners, et al.</i> No. 18245. Revocation of license. Case closed.
176	<i>Lewis Der. Mowry v. State Board of Land Commissioners.</i> No. 18252. Public Land Sale. Case pending.
192	<i>Harold Seigler v. Charles Canterbury, Sheriff of Fremont County.</i> No. 18315. Habeas Corpus. Case closed.
193	<i>John L. Armbeck v. People of the State of Colorado.</i> No. 18265. To reduce sentence. Case closed.
197	<i>Harry M. Pownall v. People of the State of Colorado.</i> No. 18269. Habeas Corpus. Case closed.
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221	<i>Colorado Board of Examiners of Architects v. Roger A. Reeves.</i> No. 18318. Licensing matter. Case closed.
222	<i>Colorado Board of Examiners of Architects v. Donald L. Marshall.</i> No. 18316. Licensing matter. Case closed.
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253	<i>Bernard C. Bevins v. People of the State of Colorado.</i> No. 18353. Confidence Game. Case closed.
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314	<i>People ex rel Colorado Bar Association v. Raymond D. Buckles.</i> No. 18427. Disbarment. Case pending.
320	<i>Thomas F. Kenny v. State Civil Service Commission, et al.</i> No. 18430. Action for dismissal. Case pending.

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348	<i>O. C. Kinney v. Bernard E. Teets, Department of Employment, et al.</i> No. 18464. Unemployment compensation contributions. Case pending.
350	<i>People of the State of Colorado v. South Platte Water Conservancy District, et al.</i> No. 18471. Quo Warranto. Case pending.
351	<i>Orchard City Irrigation District v. J. E. Whitten, State Engineer, et al.</i> No. 18470. Water rights. Case pending.
353	<i>Marvin Audrey Teeters v. People of the State of Colorado.</i> No. 18474. Habeas Corpus. Case closed.
355	<i>People of the State of Colorado v. Raymond D. Buckles.</i> No. 18475. Disbarment. Case pending.
360	<i>Kenneth F. Lee v. People of the State of Colorado.</i> No. 18481. Larceny. Case closed.
368	<i>J. B. Shreve v. People of the State of Colorado.</i> No. 18493. Case pending.
371	<i>Board of Education of the State of Colorado, et al. v. James A. Noonan, Controller, et al.</i> No. 18498. Classification of certain positions. Case pending.
372	<i>Morris Lee v. People of the State of Colorado.</i> No. 18499. Larceny. Case closed.
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405	<i>Chester V. Stull v. People of the State of Colorado.</i> No. 18515. Receiving Stolen Goods. Case pending.
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421	<i>Frank Abel, et al. v. People of the State of Colorado.</i> No. 18535. Kidnapping and Robbery. Case closed.
424	<i>People of the State of Colorado v. People ex rel City and County of Denver.</i> No. 18538. Escheat.
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431	<i>Ace Flying Service, Inc. v. Colorado Department of Agriculture, et al.</i> No. 18607. Breach of Contract. Case pending.
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188	<i>Nick Rueda v. People of the State of Colorado.</i> No. 18798. Habeas Corpus. Case closed.
189	<i>Edith Every Marshall v. Walter F. Johnson, Chief of Police, et al.</i> No. 18805. Extradition. Case pending.
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251	<i>Marion Harden Brown, Jr. v. Harry C. Tinsley, Warden State Penitentiary.</i> No. 18850. Habeas Corpus. Case closed.
254	<i>Elizabeth M. Sterling v. H. N. Archambault, et al.</i> No. 18844. Strike name of candidate from ballot. Case closed.
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265	<i>Cleo Eugene Roderick v. Harry C. Tinsley, Warden State Penitentiary.</i> No. 18865. Habeas Corpus. Case closed.
266	<i>Marshall Lewis v. Harry C. Tinsley, Warden State Penitentiary.</i> No. 18868. Habeas Corpus. Case closed.
267	<i>Ernest Joseph Mills v. People of the State of Colorado.</i> No. 18869. Murder. Case pending.
274	<i>Orley William Mathews v. People of the State of Colorado.</i> No. 18875. Habeas Corpus. Case closed.
275	<i>Fred G. Trujillo v. People of the State of Colorado.</i> No. 18874. Possession of Narcotics. Case closed.
276	<i>Adolph Ceja v. People of the State of Colorado.</i> No. 18873. Habeas Corpus. Case closed.
277	<i>D. C. Burns Realty and Trust Co. v. City and County of Denver, et al.</i> No. 18877. To maintain land as public park. Case pending.
279	<i>A. W. Burress v. People of the State of Colorado.</i> No. 18879. No account check. Case closed.

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284	<i>People ex rel State Board of Equalization, et al. v. Albert R. Hively, Assessor of Arapahoe County, et al.</i> No. 18871. Objection to increase in tax assessment. Case closed.
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304	<i>Keith Miller v. People of the State of Colorado.</i> No. 18895. Murder. Case pending.
306	<i>John R. Cundiff v. People of the State of Colorado.</i> No. 18901. Habeas Corpus. Case closed.
309	<i>John F. Espinoza v. People of the State of Colorado.</i> No. 18907. Causing death while driving under influence of intoxicating liquor. Case pending.
310	<i>John K. Barnhisel v. People of the State of Colorado.</i> No. 18908. Case pending.
311	<i>Jose Antonio Aragon v. People of the State of Colorado.</i> No. 18910. Habeas Corpus. Case closed.
319	<i>People ex rel Colorado Bar Association v. David W. Sarvas.</i> No. 18916. Disbarment. Case closed.
320	<i>Emil Kravarick, et al. v. Harry C. Tinsley, Warden State Penitentiary.</i> No. 18919. Habeas Corpus. Case closed.
321	<i>George F. Frerree v. Harry C. Tinsley, Warden State Penitentiary.</i> No. 18920. Habeas Corpus. Case closed.
323	<i>Mildred Cline v. J. Eugene Whitten, Water Engineer, et al.</i> No. 18923. Water rights. Case pending.

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329	<i>The Cottrell Clothing Company v. Bernard E. Teets, et al.</i> No. 18931. Unemployment Compensation.
330	<i>Juan De Dios Vigil v. People of the State of Colorado.</i> No. 18926. Murder. Case pending.

**IN THE DISTRICT COURTS OF THE  
STATE OF COLORADO**

Number of Quiet Title cases handled:	
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Total .....	<u>162</u>

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STATE OF COLORADO**

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103	<i>DeWeese-Dye Ditch and Reservoir Company v. J. E. Whitten, State Engineer, et al.</i> Custer County No. 1513. Water Rights. Case closed.
109	<i>M. Humphries, et al. v. C. Welby Schrader, et al.</i> Mesa County No. 10599. Artesian wells. Case pending.
110	<i>Gordon R. Dillard v. State of Colorado, et al.</i> Mesa County No. 10594. Restrain taking possession of motor vehicles. Case pending.
111	<i>Board of County Commissioners of Weld County, et al. v. Steven S. Stevens, et al.</i> Weld County No. 13400. Condemnation. Case closed.
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- 40 *Hubert D. Henry v. Robert A. Theobald, Director of Revenue.* City and County of Denver No. B23547. Motor Vehicle Inspection Law. Case closed.
- 43 *Cottrell Clothing Company v. Bernard E. Teets, Director of Employment, et al.* City and County of Denver No. B23701. Unemployment compensation.
- 44 *John A. Horvath v. State of Colorado.* Jefferson County No. 12197. Damages—flooding of Georgetown Dam. Case pending.
- 45 *Board of County Commissioners of Clear Creek County v. State of Colorado.* Jefferson County No. 12172. Damages—flooding of Georgetown Dam. Case pending.
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220	<i>Southgate State Bank v. Frank E. Goldy, State Bank Commissioner.</i> El Paso County No. 37160. Denial of bank charter. Case closed.
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228	<i>Robert Patrick v. Robert A. Theobald, Director of Revenue.</i> City and County of Denver No. B26918. Appeal from income tax liability. Case closed.
229	<i>Glen Luellen v. Bessie Kirk.</i> Montezuma County. Highway Department matter. Case pending.
232	<i>Board of County Commissioners of Adams County, et al. v. Albert F. Lorenzeni, et al.</i> Adams County No. 9160. Condemnation. Case pending.
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264	<i>Stephen I. Beach v. J. E. Whitten, et al.</i> Ouray County. Water Rights. Case pending.
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293	<i>Board of County Commissioners of Bent County, et al. v. Arthur M. Martenson, et al.</i> Bent County No. 884. Condemnation. Case pending.
294	<i>Board of County Commissioners of Bent County, et al. v. K. I. Hasui.</i> Bent County No. 882. Condemnation. Case pending.
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296	<i>Margaret R. Heafer v. Board of County Commissioners of Boulder County, et al.</i> Boulder County No. 13731. To vacate liquor license issued. Case pending.
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305	<i>Maxine Miller v. City of Aurora, et al.</i> Adams County. Constitutionality of Zoning Ordinance.
307	<i>City and County of Denver v. Colorado Department of Public Health, et al.</i> City and County of Denver No. B28496. Appeal decision re Sewage Treatment Plant. Case pending.
308	<i>Fred L. Rees v. Colorado State Banking Board, et al.</i> City and County of Denver No. B28467. Violations of banking code. Case closed.
312	<i>People ex rel Duncan J. Cameron, Securities Commissioner v. Mt. Olympus Beryl, et al.</i> City and County of Denver No. B28661. Fraudulent practices.

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326	<i>Peter Martinez v. Wayne K. Patterson, Warden State Reformatory.</i> City and County of Denver No. 45579. Habeas Corpus. Case closed.
327	<i>George Franklin v. Harry Tinsley, Warden. State Penitentiary, et al.</i> City and County of Denver No. 45578. Habeas Corpus. Case closed.
331	<i>Columbine Kennel Club v. Colorado Racing Commission, et al.</i> Morgan County No. 9185. Application for dog track license. Case closed.
333	<i>The J.R.B. Corporation, et al. v. City and County of Denver, et al.</i> City and County of Denver No. B-28867. Prevent construction of divider on Colorado Blvd. Case pending.
334	<i>Board of County Commissioners of Adams County, et al. v. Louise A. Hawkins, et al.</i> Adams County No. 9373. Condemnation. Case pending.
335	<i>Board of County Commissioners of Boulder County, et al. v. Isaac W. Overholt.</i> Boulder County No. 14059. Condemnation. Case pending.
336	<i>Board of County Commissioners of Boulder County, et al. v. Frank Sigvaldson, et al.</i> Boulder County No. 14058. Condemnation. Case pending.
337	<i>Department of Highways v. Security Investment Company, et al.</i> City and County of Denver No. B28927. Condemnation. Case pending.

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- 338 *Department of Highways v. Chester Sobol, et al.*  
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- 339 *Department of Highways v. Jake Cohen, et al.*  
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- 340 *Department of Highways v. Sam S. Silver, et al.*  
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- 233 *Howard Harrland Hudson v. Robert Theobald, Director of Revenue, et al.* No. S 7780. Suspension of driver's license. Case closed.
- 234 *Robert Charles Waller v. Robert Theobald, Director of Revenue, et al.* No. S 7781. Suspension of driver's license. Case closed.

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- 313 *In the matter of the petition of Donald Thomas Hutchins.* Bent County No. 7197. Suspension of driver's license. Case closed.
- 317 *Gus W. Carter v. Department of Revenue.* Larimer County No. 14485. Replevy record machines.
- 395 *In the matter of the Estate of Paulina Rosenkranz.* Boulder County No. 9157. Probate of will.
- 423 *In the matter of the Estate of Josie Roy.* City and County of Denver. No. P-11750. Probate of will. Case closed.

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- 18 *In the matter of the Estate of George R. Speelman.* Archuleta County No. 1385. Old age pension. Case pending.

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- 81 *In the matter of the Estate of Charles M. Stebbins.*  
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- 235 *In the matter of the Estate of Williamina Lennig*  
*Fullerton.* City and County of Denver No. P8781.  
Inheritance Tax matter. Case pending.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

**Docket No. 14**

- 100 *State Highway Department. Larimer County.*  
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- 115 *State Highway Department. Weld County.* Grade  
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- 121 *State Highway Department. Pueblo Freeway.*  
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- 122 *State Highway Department. Logan County.* Grade  
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- 165 *State Highway Department. Larimer County.*  
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- 166 *State Highway Department. Boulder County.*  
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- 202 *State Highway Department. El Paso County.*  
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- 203 *State Highway Department. Rio Grande County.*  
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- 365 *State Highway Department. Garfield County.*  
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- 366 *State Highway Department. La Plata County.*  
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- 367 *State Highway Department. Pueblo County.* Grade  
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370. *State Highway Department. Morgan County.*  
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- 376 *State Highway Department. El Paso County.*  
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- 378 *State Highway Department. Prowers County.* Grade crossing, Highways No. 6 and 59. No. 15953.
- 379 *State Highway Department. Mesa County.* Grade crossing, Highway No. 141. No. 15954.
- 415 *State Highway Department. Weld County.* Flashing light signals, Highway No. 66. No. 15973.
- 428 *State Highway Department. Wagon Wheel Gap.* Grade crossing, Highway No. 149. No. 16043.
- 463 *State Highway Department. Otero County.* Grade separation, Highway No. 6. No. 16134.

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- 192 *State Highway Department. Adams County.* Grade crossing. No. 16520.
- 218 *State Highway Department. Otero County.* Grade crossing. No. 16516.
- 219 *State Highway Department. Pueblo County.* Railroad overpass. No. 16517.
- 269 *State Highway Department. Weld County.* Grade separation. No. 16708.
- 270 *State Highway Department. Weld County.* Grade crossing. No. 16707.
- 282 *State Highway Department. Adams County.* Widen highway bridge. No. 16732.
- 283 *State Highway Department. Bent County.* Grade crossing.
- 322 *State Highway Department. El Paso County.* Grade separation.



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INDUSTRIAL COMMISSION OF COLORADO  
1957-1958  
IN THE SUPREME COURT OF COLORADO**

No.	Title	S. Ct. No.	Disposition
967	<i>Alexander Film Company, et al. v. Industrial Commission, et al.</i>	18339	Award Affirmed
1012	<i>Leo W. Bennett v. Industrial Commission, et al.</i>	18410	Award Affirmed
1005	<i>Charles E. Cain v. Industrial Commission, et al.</i>	18189	Award Reversed
970	<i>Denver Truck Exchange, et al. v. Industrial Commission, et al.</i>	18027	Award Reversed
978	<i>Gates Rubber Company v. Industrial Commission, et al.</i>	18208	Dismissed
1034	<i>Graden Coal Company, et al. v. Industrial Commission, et al.</i>	18526	Award Affirmed
991	<i>Graham Furniture Company v. Industrial Commission, et al.</i>	18772	Award Reversed
1028	<i>Shealie Wilson Gregory v. Industrial Commission, et al.</i>	18445	Award Reversed
1006	<i>C. D. Hays v. Industrial Commission, et al.</i>	18712	Award Affirmed
1053	<i>Industrial Commission, et al. v. Edith B. Baldwin, et al.</i>	18887	Pending
1036	<i>Industrial Commission, et al. v. City and County of Denver</i>	18577	Dismissed
981	<i>Industrial Commission, et al. v. Colorado Fuel &amp; Iron. Corp.</i>	18201	Award Affirmed
995	<i>Industrial Commission, et al. v. Employers Casualty Company, et al.</i>	18367	Award Affirmed
1002	<i>Industrial Commission, et al., v. Minnie Mildred Havens, et al.</i>	18261	Award Reversed
1035	<i>Industrial Commission, et al. v. Clarence H. Horner</i>	19521	Award Affirmed

No.	Title	S. Ct. No.	Disposition
992	<i>Industrial Commission, et al. v. London and Lancashire Indemnity Company, et al.</i>	18169	Award Reversed
1019	<i>Industrial Commission, et al. v. New Amsterdam Casualty Company, et al.</i>	18343	Award Affirmed
979	<i>Industrial Commission, et al. v. Newton Lumber and Manufacturing Company, et al.</i>	18273	Award Reversed
971	<i>Industrial Commission, et al. v. Bert L. Swort</i>	18007	Award Reversed
1015	<i>Bella Johnson, et al. v. Industrial Commission, et al.</i>	18590	Award Reversed
1022	<i>Richard G. Lyttle, et al., v. Industrial Commission, et al.</i>	18373	Award Affirmed
1018	<i>Curtis H. Miller, et al. v. Industrial Commission, et al.</i>	18372	Award Affirmed
1004	<i>R.C.S. Lumber Company, et al. v. Industrial Commission, et al.</i>	18225	Award Affirmed
977	<i>Carl S. Smith v. Industrial Commission, et al.</i>	18098	Award Reversed
1013	<i>Harley J. Snyder v. Industrial Commission, et al.</i>	18709	Award Reversed in part
1046	<i>Harley J. Snyder v. Industrial Commission, et al.</i>	18710	Award Reversed in part
1011	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	18284	Award Reversed
1045	<i>University of Denver, et al. v. Industrial Commission, et al.</i>	18810	Award Affirmed
986	<i>Vanadium Corp. of America, et al. v. Industrial Commission, et al.</i>	18092	Award Affirmed

## IN THE DISTRICT COURTS OF COLORADO

No.	Title	Dist. Ct. No.	Disposition
<b>Arapahoe County</b>			
991	<i>Graham Furniture Co. v. Industrial Commission, et al.</i>	11984	Award Affirmed
<b>Boulder County</b>			
1053	<i>Baldwin, et al. v. Industrial Commission, et al.</i>	13825	Award Reversed
1006	<i>Hays v. Industrial Commission, et al.</i>	13293	Advisement
<b>Conejos County</b>			
1004	<i>R.C.S. Lumber Company, et al. v. Industrial Commission, et al.</i>	2742	Award Affirmed
<b>City and County of Denver</b>			
1010	<i>American Fidelity and Casualty Co., et al. v. Industrial Commission, et al.</i>	B-14469	Dismissed
1040	<i>American Sanitary Products Co., et al. v. Industrial Commission, et al.</i>	B-21843	Pending
1041	<i>American Sanitary Products Co., et al. v. Industrial Commission, et al.</i>	B-21842	Pending
1032	<i>Black Beauty Coal Co., et al. v. Industrial Commission, et al.</i>	B-18655	Award Reversed
926	<i>Boulevard Cleaners v. Industrial Commission, et al.</i>	A-89171	Pending
1033	<i>Bracken, et al. v. Industrial Commission, et al.</i>	B-18657	Award Affirmed
1023	<i>Chambers v. Industrial Commission, et al.</i>	B-16944	Award Reversed in part
1036	<i>City and County of Denver v. Industrial Commission, et al.</i>	B-20099	Award Reversed

No.	Title	Dist. Ct. No.	Disposition
1039	<i>Climax Molybdenum Company v. Industrial Commission, et al.</i>	B-21372	Award Reversed
981	<i>Colorado Fuel and Iron Corp. v. Industrial Commission, et al.</i>	B-6847	Award Reversed
1060	<i>Colorado Fuel and Iron Corp. v. Industrial Commission, et al.</i>	B-27281	Pending
1037	<i>Cosmopolitan Realty Company v. Industrial Commission, et al.</i>	B-20827	Pending
1007	<i>Cosner, et al. v. Industrial Commission, et al.</i>	B-14036	Dismissed
1020	<i>Denver Dry Goods Company, et al. v. Industrial Commission, et al.</i>	B-16273	Award Affirmed
1050	<i>Dillon v. Industrial Commission, et al</i>	B-23938	Pending
1056	<i>Divelbiss v. Industrial Commission, et al.</i>	B-26231	Pending
1025	<i>Dry Cleaning and Laundry Workers Local Union No. 304 v. Industrial Commission, et al.</i>	B-10625	Dismissed
995	<i>Employers Casualty Co., et al. v. Industrial Commission, et al</i>	B-10118	Award Reversed
964	<i>Gary, et al. v. Industrial Commission, et al.</i>	B-2451	Dismissed
927	<i>General Cleaners v. Industrial Commission, et al</i>	A-89648	Pending
1057	<i>General Plant Protection, et al. v. Industrial Commission, et al.</i>	B-26955	Pending
987	<i>Graden Coal Co., et al. v. Industrial Commission, et al</i>	B-8356	Award Affirmed

No.	Title	Dist. Ct. No.	Disposition
1034	<i>Graden Coal Co., et al. v. Industrial Commission, et al</i>	B-18693	Award Affirmed
1028	<i>Gregory v. Industrial Commission, et al.</i>	B-7735	Award Affirmed
1047	<i>Griggs v. Industrial Commission, et al.</i>	B-23152	Dismissed
1002	<i>Havens, et al. v. Industrial Commission, et al.</i>	B-11474	Award Reversed
1044	<i>Havens, et al. v. Industrial Commission, et al.</i>	B-20761	Pending
985	<i>Hendricks, et al. v. Industrial Commission, et al.</i>	B-8472	Pending
1021	<i>Industrial Commission, et al. v. C. L. Browning</i>	B-16695	Dismissed
1014	<i>International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 146 v. Industrial Commission, et al.</i>	B-15138	Award Reversed
972	<i>International Union of Operating Engineers Local Union No. 9, et al. v. Industrial Commission, et al.</i>	B-4297	Dismissed
1054	<i>Johnson Pontiac, Inc., et al. v. Industrial Commission, et al.</i>	B-25081	Pending
1003	<i>Kurgsner v. Industrial Commission, et al.</i>	B-12268	Pending
1052	<i>Lamirato, et al. v. Industrial Commission, et al.</i>	B-25058	Pending
1043	<i>Larson v. Industrial Commission, et al.</i>	B-21872	Dismissed
1042	<i>Larson v. Industrial Commission, et al.</i>	B-21873	Dismissed
923	<i>Laundry &amp; Dry Cleaning Workers Union No. 304 v. Industrial Commission, et al.</i>	A-89144	Pending

No.	Title	Dist. Ct. No.	Disposition
1008	<i>Gus Lerner Fixture Company v. Industrial Commission, et al.</i>	B-14014	Dismissed
1058	<i>Mathews v. Industrial Commission, et al.</i>	B-27117	Pending
1051	<i>Mercer v. Industrial Commission, et al.</i>	B-24029	Award Affirmed
1059	<i>Metropolitan Casualty Insurance Company, et al., v. Industrial Commission, et al.</i>	B-27437	Award Affirmed
1018	<i>Miller v. Industrial Commission, et al.</i>	B-15999	Award Affirmed
1017	<i>More v. Industrial Commission, et al.</i>	B-15837	Award Affirmed
1061	<i>The Navigators, Inc., et al. v. Industrial Commission, et al.</i>	B-27802	Pending
1019	<i>New Amsterdam Casualty, et al. v. Industrial Commission, et al.</i>	B-15977	Award Reversed
1000	<i>J. J. Newberry Co., Inc., et al v. Industrial Commission, et al.</i>	B-11178	Dismissed
979	<i>Newton Lumber and Manufacturing Company, et al. v. Industrial Commission, et al.</i>	B-6544	Award Reversed
987	<i>Ohio Casualty Insurance Co., et al. v. Industrial Commission, et al.</i>	B-10192	Dismissed
1049	<i>John Ott, et al., v. Industrial Commission, et al.</i>	B-23604	Award Affirmed
1027	<i>Pacific Intermountain Express and Truck Insurance Exchange v. Industrial Commission, et al.</i>	B-17589	Award Affirmed
1038	<i>Park Lane Operating Company v. Industrial Commission, et al.</i>	B-20826	Pending

No.	Title	Dist. Ct. No.	Disposition
924	<i>Pepper dba Triangle Cleaners v. Industrial Commission, et al.</i>	A-89164	Pending
1048	<i>Short v. Industrial Commission, et al.</i>	B-23560	Pending
1013	<i>Snyder v. Industrial Commission, et al.</i>	B-14875	Award Affirmed
1046	<i>Snyder v. Industrial Commission, et al.</i>	B-14875	Award Affirmed
1030	<i>Standard Oil Company v. Industrial Commission, et al.</i>	B-18011	Dismissed
1009	<i>State Compensation Insurance Fund et al. v. Industrial Commission, et al.</i>	B-14538	Award Affirmed in part
1011	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-14721	Award Affirmed
1022	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-16702	Award Reversed
1064	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-28045	Pending
1066	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-28801	Pending
1063	<i>Sunnyside Cleaners and Shirt Laundry v. Industrial Commission, et al.</i>	B-28209	Pending
950	<i>Thedford v. Industrial Commission, et al.</i>	A-95191	Award Affirmed
999	<i>Thedford v. Industrial Commission, et al.</i>	A-95191	Award Affirmed
1070	<i>Truak v. Industrial Commission, et al.</i>	B-27970	Pending

No.	Title	Dist. Ct. No.	Disposition
1029	<i>Truck Insurance Exchange, et al. v. Industrial Commission, et al.</i>	B-17661	Pending
1045	<i>University of Denver, et al. v. Industrial Commission, et al.</i>	B-22360	Award Affirmed
955	<i>Vancil v. Industrial Commission, et al.</i>	A-97758	Award Affirmed
998	<i>Vorhies v. Industrial Commission, et al.</i>	B-10834	Pending
1031	<i>Western Auto Transports, Inc., et al. v. Industrial Commission, et al.</i>	B-18138	Award Affirmed
<b>El Paso County</b>			
1065	<i>Golden v. Industrial Commission, et al.</i>	37488	Pending
1015	<i>Johnson, et al. v. Industrial Commission, et al.</i>	35178	Award Affirmed
1026	<i>Robinson v. Industrial Commission, et al.</i>	35663	Dismissed
<b>Fremont County</b>			
1062	<i>White v. Industrial Commission, et al.</i>	8016	Pending
<b>La Plata County</b>			
1012	<i>Bennett v. Industrial Commission, et al.</i>	6502	Award Affirmed
1055	<i>Heisers &amp; DeLashmets, et al. v. Industrial Commission, et al.</i>	6774	Award Affirmed
<b>Logan County</b>			
1035	<i>Homer v. Industrial Commission, et al.</i>	9501	Award Reversed
<b>Montrose County</b>			
1016	<i>Galloway, et al. v. Industrial Commission, et al.</i>	7675	Award Affirmed
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994	<i>Armknrecht v. Industrial Commission, et al.</i>	4331	Pending
1001	<i>Hammack v. Industrial Commission, et al.</i>	4340	Pending



**PART III**

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OF THE ATTORNEY GENERAL**

**NOTE: Opinion Number Follows Each Lead.**

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