

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



**Years 1959-1960**

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**DUKE W. DUNBAR**  
Attorney General

Publication Approved by E. G. Spurlin, Controller

Printed by Publishers Press, Denver

## 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.....	1951-1960

PERSONNEL  
DEPARTMENT OF LAW

DIVISION OF LEGAL AFFAIRS (OFFICE OF ATTORNEY GENERAL)

DUKE W. DUNBAR, Attorney General

FRANK E. HICKEY, Deputy Attorney General

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

ANN G. LANDY, Administrative Assistant

Assistant Attorneys General

JOHN E. BUSH  
appointed 6/15/59  
resigned 12/19/60

JOHN E. BRAUER  
appointed 1/8/60

ROBERT F. CARR

JOHN J. CONWAY  
appointed 5/16/60

PETER L. DYE

CLIFFORD A. FLOWERS  
appointed 3/16/59

SAMUEL R. FREEMAN

RONALD J. HARDESTY

GERALD HARRISON  
appointed 6/1/59  
resigned 11/30/59

ROBERT D. INMAN  
appointed 9/1/60  
resigned 11/15/60

PATRICIA H. MALOY  
resigned 3/31/60

JAMES D. McKEVITT

WILLIAM H. MOULTON

ROBERT L. NAGEL  
resigned 5/30/60

GAIL F. OUREN  
resigned 5/31/59

JOHN W. PATTERSON  
resigned 8/31/60

ROBERT G. PIERCE  
appointed 4/1/60

DONALD B. ROBERTSON

WENDELL P. SAYRES

CHARLES S. THOMAS

HENRY E. ZARLENGO  
resigned 1/19/59

RICHARD A. ZARLENGO  
appointed 12/15/60

GEORGE A. WOLLBRINCK  
appointed 12/1/60  
resigned 1/30/61

Legal Stenographers

ELEANOR GIACOMOZI

ELIZABETH V. KITTO

EDITH HEZMALHALCH

HELEN T. TRECKMAN

DOROTHY SACH

**HIGHWAY DIVISION**

**JOHN P. HOLLOWAY, Chief Counsel and Assistant Attorney General**

**GEORGE L. ZOELLNER, Assistant**

**DONALD P. SMITH, JR., Assistant**

**Legal Stenographers**

**NANCY NAPPE**

**CAROL STATON**

**INHERITANCE TAX DIVISION**

**NEIL TASHER, Asst. Attorney General and Inheritance Tax Commissioner**

**FLOYD ENGEMAN, Asst. Attorney General**

**CATHERINE H. COURSEY, Deputy Inheritance Tax Commissioner**

**DAVID CREGER, Inheritance Tax Analyst**

**MICHAEL O'HARA, Inheritance Tax Analyst**

**GEORGE BOUSSELAIRE, Asst. Inheritance Tax Analyst**

**EDWARD F. O'BRIEN, Asst. Inheritance Tax Analyst**

**DAVID WILLIAMS, Asst. Inheritance Tax Analyst**

**J. CHALMERS EWING, Real Estate Appraiser**

**CHARLES GAST, Real Estate Appraiser**

**JAMES KNOX, Real Estate Appraiser**

**SAMUEL TELEP, Real Estate Appraiser**

**LENA DINSMORE, Legal Stenographer**

**LU SHAFFER, Legal Stenographer**

**ANN COGAN, Intermediate Clerk Typist**

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**INA SMEAD, Clerk Typist**

**PEARL BINNEY, Posting Machine Operator**

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**LEGISLATIVE REFERENCE OFFICE**

**E. B. EVANS, Director, 1959-1960**

**GERALD H. KOPEL, Assistant, 1959**

**JERRY L. SMITH, Assistant, 1959**

**CLAIR T. SIPPEL, Secretary**

**DIVISION OF SECURITIES**

**DUNCAN J. CAMERON, Commissioner**

**WILLIAM J. ANDERSON**

**CHARLES CRANSTON**

**RHODA SON, Secretary**

**EVELYN FOLSOM, Clerk**

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, 1959, and ending December 31, 1960.

Respectfully submitted

DUKE W. DUNBAR

Attorney General



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

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**REPORT OF INHERITANCE TAX COMMISSIONER**

The Inheritance Tax Division of the Department of Law administers the inheritance and succession tax law, the gift tax law, as well as all escheat estates. From January 1, 1959, to December 31, 1960, collections were as follows:

Inheritance Tax .....	\$11,043,580.18
Gift Tax .....	765,718.12

This was an increase of \$1,917,099.77 over the previous two-year period. In addition to the above amounts, there was collected for the Old Age Pension Fund \$963,303.06. All inheritance and gift taxes collected are deposited to the General Fund of the State of Colorado.

During this two-year period 20,975 estates were audited and a fee or tax assessed thereon. This was the largest number of estates ever handled in a two-year period in the history of the Department.

**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 intro-

duced 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, 1959, to July 1, 1961

	1959	1960
Receipts from fees .....	\$72,984.24	\$73,759.76
Expenditures .....	41,788.47	40,775.50
Original registration statements filed.....	379	367
Renewal registration statements filed.....	102	96
Dealers' original licenses issued .....	44	45
Dealers' renewal licenses issued.....	137	146
Salesmen's original licenses issued.....	1,208	1,229
Salesmen's renewal licenses issued.....	977	1,048
Miscellaneous fees .....	2	5

The Division of Securities administers the Securities Law, Fraudulent Practices Law, and the Act relating to investment contracts. In this connection it processes applications for broker-dealers' and salesmen's licenses to engage in the securities business. It has the duty to investigate complaints where alleged violations of the Act have occurred and holds hearings for refusal or revocation of registration upon examination and



findings that the statutory requirements have not been met. During this period the Securities Commissioner adopted rules and regulations which in part provide for a written examination as a requirement for dealers' and salesmen's licenses to determine applicants' qualification on the basis of such factors as training, experience and general knowledge of the securities business. Hearings were held before the Commission and several dealers' registrations were revoked when they were found to be guilty of dishonest or unethical practices, or failed to comply with the financial requirement as provided by the Act.

The Division is also charged with the responsibility for registration of new public offerings of securities. The Commissioner adopted a rule providing for the use of an offering circular in connection with such public offerings to effect a full disclosure so that prospective purchasers may be informed of material facts affecting the security. The number of registrations as shown by this report reflects an increase of approximately 60 percent from the previous two-year period.

## **REPORT OF THE FIRST YEAR OPERATION OF HIGHWAY DIVISION**

**Office of the Attorney General**

John P. Holloway, Chief Highway Counsel

In addition to all other phases of legal representation for the Department of Highways and State Patrol, this division, from March 1, 1959, to March 31, 1960, disposed of the following *active* law suits in the manner set forth below:

### **CONDEMNATION CASES**

<b>Settled</b>	<b>Tried-Jury</b>	<b>Tried-Commission</b>	<b>Total</b>
80*	21†	23	124

\*It should be noted that several of these settlements were originated by staff or field right of way personnel, and concluded in this office.

†Two mistrials included—subsequently retried or settled—actual total disposition is therefore 122.

### **OTHER CASES**

Twenty-one cases, including two Supreme Court actions, which involved contracts, real property and torts, were terminated by trial, settlement or dismissal. This does not include tort actions involving motor vehicle accidents which were handled by the department's insurance carrier.

## PUBLIC UTILITIES COMMISSION

Eight hearings were held and Certificates of Convenience and Necessity issued the department in all of said hearings. These matters, incidentally, are handled primarily by the Assistant to the Engineer of Surveys & Plans, who prepares the application, contracts with other interested public utilities, etc. This office merely reviews the contracts and assists in the presentation of testimony at the hearing.

### EXPLANATION AND ANALYSIS

With respect to the above *condemnation* disposition record, the following should be noted:

	1958	1959
Settled .....	16	80
Tried—commission or jury.....	20	44

In addition to disposition of the above matters regarded by us as "active litigation," we completed review of all old highway files, some of which dated back to 1945, and formally closed seventy of same. Your office was so advised with a complete list. Many of these, while closed or inactive, had so many loose ends, such as unrecorded decrees, unclaimed deposits, etc., that I did not feel we would have a true picture of pending matters until this was done.

### NEW AND PENDING CASES

During the above one-year period, new law suits filed and their character were as follows:

Condemnations .....	62
Other cases .....	23
P.U.C. ....	13
	—
Total .....	98

Cases pending as of March 31, 1960, and prior to docket 16-339, are as follows:

Condemnations .....	57
Other cases—State District Courts.....	14
U. S. District Court .....	2
Colorado Supreme Court .....	5
P.U.C. ....	14
	—
Total .....	92

As can be seen from the above, we have almost completely eliminated the backlog of pending condemnation cases. Currently, we have approximately seven cases still pending which were filed prior to 1957, and approximately eight cases which were filed in 1957—the balance are all 1958, 1959 and 1960 cases.

#### MISCELLANEOUS MATTERS

It is impractical to discuss in detail other activities of this division not reflected in the above litigation disposition record. Of special significance, however, and worthy of comment, are the following:

1. We have inaugurated a new master case status and disposition record which permits us to ascertain immediately whether or not a given case is pending or closed, and its current status.

2. We have established a trial docket and by designation of specific duties, know exactly who does what and when.

3. We assisted the Assistant to the Staff Construction Engineer through city council negotiations, for a rebate to the department from the City and County of Denver for sales taxes. It is estimated that this will probably amount to \$22,000.00 for the period March 1958 to August 1959.

4. We have established procedure, as yet to be contested or objected to, whereby our deposits for immediate possession of right of way are now invested by the Clerks of the various District Courts in time deposits in duly chartered banks or savings institutions, of not less than successive 90-day periods, or in United States Treasury bills, *interest payable to the department*. Formerly, the money was merely deposited in the Registry Fund of the Court without interest to either the State or the land owner. As we often have as much as \$500,000, plus or minus, on deposit throughout the State at any given date, it can readily be seen that the interest on this item is significant.

5. We have endeavored to provide better legal service to the State Patrol. Significant in this sphere was the preparation of a completely new and revised combined Summons and Complaint for patrol use throughout the State. In addition, we spent many hours as instructors in the field of evidence at the patrol school, both for recruits and in-service officers.

## CONCLUSION

It is gratifying to report that in its initial year of operation, the division has accomplished its primary objectives, namely, the elimination of the case backlog and the establishment of a system with positive direction. The department has been an extremely cooperative client and I feel that they have received legal services of maximum quality and quantity for a minimum expenditure. Staff utilization and output has been good and, in accordance with instructions, the services of the part-time assistants, paid on a per diem basis, has been limited to the point that they are utilized only when trial volume or conflict so require. While we are perhaps somewhat understaffed, both as to lawyers and secretaries, I would prefer this condition to an overstaffing. In peak periods we utilize part-time secretarial services, rather than add to the permanent secretarial staff. Similarly, the part-time lawyers assist the legal staff during these peak times. I have endeavored to schedule cases and activities so as to have at least one lawyer on duty in the office; this has been achieved with very few exceptions.

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

**FOR**  
**BIENNIAL PERIOD**  
**1959-1960**

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



**LEGISLATURE**

59-3224

Hon. Norman W. Enfield  
State Representative  
**January 8, 1959**

Members of the general assembly may not properly charge to the state long distance telephone tolls for personal calls or for any calls which are unconnected with the business of the general assembly. It is also unlawful for the state to furnish postage stamps to members of the general assembly for personal use or any use unconnected with the business of the general assembly.

CONSTITUTION CONSTRUED—Art. V, Sec. 6, Colo. Const.

STATUTES CONSTRUED—63-2-7, CRS '53 as amended.

**GAME AND FISH**

59-3225

Mr. Thomas L. Kimball  
Executive Director  
**January 12, 1959**

The Department of Game and Fish is not capable of holding title to land in its own name. The Game and Fish Department is by statute placed under the jurisdiction of the Game and Fish Commission which is given power to acquire land, etc. Title to lands purchased by the Game and Fish Commission is taken in the name of the State of Colorado for the use and benefit of the Game and Fish Commission.

STATUTES CONSTRUED—62-2-1, CRS '53 and 62-2-19, CRS '53.

**SCHOOL DISTRICTS**

59-3226

Hon. H. Grant Vest  
Commissioner of Education  
**January 12, 1959**

Several school districts may execute a joint agreement to hire a school psychologist who is a qualified teacher to serve all districts on a part time basis in each district.

STATUTES CONSTRUED—123-10-21, CRS '53; 88-2-1 and 2, CRS '53.

**PUBLIC WELFARE—OLD AGE PENSIONS****59-3227**

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

**January 14, 1959**

The administrative costs of the Old Age Pension Medical Care Program must be paid out of the administrative account of the State Public Welfare Fund and are subject to appropriation by the State Legislature. The constitutional \$10,000,000 limitation for the medical care fund refers only to program benefits for Old Age Pensioners and does not include administrative costs of such a program, as such costs are deducted from revenues earmarked for the Old Age Pension.

CONSTITUTION CONSTRUED—Art. XXIV, Secs. 2 and 7(c) as amended.

STATUTES CONSTRUED—119-3-3, CRS '53.

**BINGO****59-3228**

Andrew D. Kelly  
State Representative

**January 14, 1959**

Legality of questions submitted relating to proposed legislation supplementing the so-called "bingo amendment" to the constitution adopted at the 1958 general election.

CONSTITUTION CONSTRUED—Art XVIII, Sec. 2.

**COUNTY—SOIL CONSERVATION DISTRICTS****59-3229**

Clarence Svedman, Secretary  
Soil Conservation Board

**January 20, 1959**

There is no express provision giving a county or soil conservation district the power to acquire land or interest therein by eminent domain proceedings for the purpose of acquiring easements and rights of way, unless the acquisition comes within the constitutional provision.

CONSTITUTION CONSTRUED—Art. XVI, Sec. 7.



**COUNTY COMMISSIONERS—HEALTH DISTRICTS—  
PUBLIC FUNDS**

59-3230

Gilbert Maes, Treasurer  
Las Animas County

**January 21, 1959**

Warrants upon the funds of the district health department should be issued by the public health officer and by the president of the board or any other member of the board designated by the president for such purpose and not by the board of county commissioners.

STATUTES CONSTRUED—Chap. 66, Art. 2.

**BINGO—LEGISLATURE**

59-3231

Andrew D. Kelley  
State Representative

**January 21, 1959**

In our opinion, the general assembly does not have the power to impose a tax for general revenue purposes on activities authorized or organizations enumerated in Sec. 2, Art. XVIII of the constitution. However, should the license fees imposed prove inadequate such tax as might be necessary to defray costs of administering said provisions would not be a tax for general revenue purposes and would undoubtedly be considered proper legislation supplementary to and in pursuance of the amendment. See cases cited.

**COURTS—EMPLOYMENT SECURITY**

59-3232

Judge Harry R. Sayre  
County Judge of Las Animas County

**January 21, 1959**

All employees of political subdivisions who are covered by agreements entered into under the provisions of the Colorado Public Employees Social Security Law are required to pay their own contributions for such coverage and they are not entitled to increased compensation or reimbursement for such contributions as is afforded to employees of courts of record under 56-3-11, CRS 1953, who are covered under a retirement or disability plan.

STATUTES CONSTRUED—111-7-1, et seq. and 56-3-11, CRS '53.

**RACING COMMISSION****59-3233**

H. A. Christensen  
Executive Secretary

**January 23, 1959**

A licensee is restricted to two 30-day race meets in any year, but the 30 days of racing do not have to be held consecutively.

STATUTES CONSTRUED—129-2-8 and 10, CRS '53.

**SCHOOL DISTRICTS****59-3234**

H. Grant Vest  
Commissioner of Education

**January 20, 1959**

Status of teacher's tenure when school districts are re-organized under Chap. 237, S.L. 1957.

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

**SCHOOL DISTRICTS****59-3235**

Charles W. Kreager  
Sterling, Colorado

**January 26, 1959**

No statute authorizing a school district to pay premiums on liability insurance except liability and property damage insurance covering buses.

**SCHOOLS****59-3236**

H. Grant Vest  
Commissioner of Education

**January 27, 1959**

Under the provisions of the National Defense Education Act of 1958, such a testing program in private schools would not be in violation of any of the provisions of our constitution or statutes. (See Opinion 58-3216.)

CONSTITUTION CONSTRUED—Art. IX, Sec. 7.

**SCHOOL DISTRICTS****59-3237**

H. Grant Vest  
Commissioner of Education

**January 27, 1959**

A school district may not vote bonds for the purpose of constructing administration buildings, warehouses, teacher-ages, bus garages and maintenance shops. A board of education only has such powers as are expressly provided by statute. There are no statutes authorizing formation of a nonprofit corporation, borrowing from FHA, or private agencies or authorizing board members to sign a trust deed on property.

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

**LAND BOARD****59-3238**

A. M. Ramsey, President  
Board of Land Commissioners

**January 30, 1959**

In the absence of statutory authorization, the Board of Land Commissioners cannot set up a petty cash fund.

STATUTES CONSTRUED—130-4-2, CRS '53.

**LEGISLATURE****59-3239**

Edward J. Byrne  
State Representative

**February 2, 1959**

It would require a constitutional amendment to exempt Gold Star Mothers from the ad valorem property tax.

CONSTITUTION CONSTRUED—Art. X, Sec. 6.

**OPTOMETRIC—HEALTH—PUBLIC WELFARE****59-3240**

Stewart C. Lee, President  
State Board of Optometric Examiners

**February 2, 1959**

There are no specific prohibitions placed on health or welfare officials as to which group of equally qualified licensed practitioners they may recommend for health care. As a matter of public policy, it would seem unfair for a governmental agency to establish a standard policy of preferring one class of equally qualified licensed practitioners over another.

**CIVIL SERVICE—GAME AND FISH****59-3241**

Thomas L. Kimball, Director  
Game and Fish Department

**February 3, 1959**

Sec. 49 of Chap. 31, S.L. 1958, directing the department to pay from its funds its pro rata share to the credit of the civil service commission is questionable.

The provision in the Game and Fish appropriation bill for 1958 providing that funds may be used to reimburse other departments for services rendered to the game and fish department and directing the state controller to see that the charges are properly made, fairly computed and promptly paid is mandatory.

STATUTES CONSTRUED—Sec. 49, Chap. 31, S.L. 1958.

**GAME AND FISH****59-3242**

Thomas L. Kimball, Director  
Department of Game and Fish

**February 3, 1959**

No legal objection to the Game and Fish Commission negotiating for a purchase in July from funds to be appropriated during the next fiscal year, providing such agreement contains a provision that such purchase would be contingent upon an appropriation being made available for such purpose.

The Game and Fish Commission may act upon matters which concern the activities of the commission, even though such activities may occur beyond the tenure of the terms of some of the members thereof.

**WATER CONSERVATION BOARD****59-3243**

Felix L. Sparks, Director  
Colorado Water Conservation Board

**February 3, 1959**

In the absence of specific authorization, board members could not be paid compensation for special services which are not in the normal scope of their duties.

**DISTRICT ATTORNEYS—FEES AND SALARIES****59-3244**

James C. Merbs  
District Attorney  
17th Judicial District

**February 3, 1959**

Under Sec. 1, Chap. 34, S.L. 1958, approved and effective as to such Sec. 1 on February 14, 17th Judicial District, the legal salary of the District Attorney is \$4,600 per annum, the legal salary of the Assistant District Attorney to be set by the District Attorney with the approval of the District Judge shall not exceed \$3,600 per annum and the legal salaries of the Deputy District Attorneys shall be as directed by the District Judge with the approval of the Board of County Commissioners and shall not exceed \$3,600 per annum for each deputy.

STATUTES CONSTRUED—Sec. 1, Chap. 34, S.L. 1958

**NURSING****59-3245**

Madolin M. Dickinson, Director  
Nursing Education and Licensing

**February 4, 1959**

Members of the so-called organization known as the American Association of Medical Assistants are not licensed to practice professional nursing in Colorado and any member assuming the title of "Registered Doctor's Nurse" or the abbreviation "R.D.N." would be in violation of the professional nursing practice act. Such violation may be prosecuted by the district attorney of the judicial district in which the offense is committed.

STATUTES CONSTRUED—97-2-2, 25, 26, CRS '53.

**SCHOOL DISTRICT****59-3246**

H. Grant Vest  
Commissioner of Education

**February 4, 1959**

A bond issue approved at a special school election for the construction of a school building cannot at a later meeting be proposed that the bond issue funds be not used for the construction of the school building.

STATUTES CONSTRUED—123-10-51, CRS '53.

**NURSING****59-3247**

Madolin M. Dickinson, Director  
Nursing Education and Licensing

**February 5, 1959**

An anesthetist, if not a licensed physician, would be practicing professional nursing within the definition of the laws of Colorado and would have to be licensed under the professional nurse licensing act which is regulated by the Colorado State Board of Nursing.

STATUTES CONSTRUED—97-2-2(1), CRS '53.

**SECURITIES****59-3248**

Duncan J. Cameron  
Securities Commissioner

**February 5, 1959**

An investment company would have to pay a fee of \$300 for registering an additional 100,000 shares and a uranium company would have to pay a fee of \$150 to register another \$300,000 issue. Said fees are based on the theory that once the original issue has been sold in its entirety there is nothing left to renew.

STATUTES CONSTRUED—125-1-6(1)(j) and 125-1-8(2), CRS '53.

**PLANNING DIVISION****59-3249**

W. M. Williams  
Executive Director  
State Planning Division

**February 9, 1959**

Contract No. Colo. P-8(G), by the United States of America to the Colorado State Planning Division, herein called the "Planning Agency" is legal and binding.

**COLORADO STATE UNIVERSITY****59-3250**

Joseph M. Whalley  
Business Manager and Treasurer

**February 9, 1959**

Opinion re Application for Loan Assistance, Part III of Form H-1000 of the Housing and Home Finance Agency, under Title IV of the Housing Act of 1950.

**JUNIOR COLLEGES****59-3251**

H. Grant Vest  
Commissioner of Education

**February 16, 1959**

Junior colleges as defined by statute provide training not to exceed two years beyond the twelfth grade. It would appear that the definition of secondary schools under the National Defense Education Act intends to include junior colleges that are "public," as defined under our state law, irrespective of the fact they provide training beyond grade twelve.

STATUTES CONSTRUED—123-23-1 and 2, CRS '53.

**CITIES AND TOWNS—HOSPITALS****59-3252**

J. William Wells, Mayor  
Orrell A. Daniel, City Attorney  
Brighton, Colorado

**February 17, 1959**

The City of Brighton could not make a lease with option to purchase a hospital under the provisions of 139-61-1, CRS '53, without complying with the provisions of 139-32-1(31), as amended, including the holding of a general or special election.

STATUTES CONSTRUED—139-61-1 and 139-32-1(31), CRS '53.

**SCHOOL DISTRICTS****59-3253**

H. Grant Vest  
Commissioner of Education

**March 11, 1959**

School district officers hold their respective offices until their respective successors are duly elected or appointed and qualified, irrespective of any attempt that any of them may make to resign. If there are no qualified persons willing to accept the offices at the time of the election, the present board members and officers hold over and continue in office, and if they refuse to perform the duties of their respective offices, an action in mandamus may be brought to compel them to carry out these duties and are liable upon their bonds for failure to do so.

CONSTITUTION CONSTRUED—Art. XII, Sec. 1.

STATUTES CONSTRUED—123-10-18, 33, 4, 51, CRS '53.

**COUNTY COMMISSIONERS**

59-3254

Richard D. Thomas  
 County Attorney  
 Burlington, Colorado  
**March 13, 1959**

County commissioners may purchase equipment for the county without advertising for bids. Statutes requiring competitive bidding are to be construed strictly, and are not to be extended beyond their clear implication.

STATUTES CONSTRUED—36-1-9, 11 and 12, CRS '53.

**SCHOOL DISTRICTS**

59-3255

H. Grant Vest  
 Commissioner of Education  
**April 1, 1959**

Properties and cash of a county high school district under the provisions of "The School District Organization Act of 1957" (Chap. 237, S.L. '57) shall be divided as provided in 123-7-6, unless the plan shall otherwise provide. The planning committee may provide in the plan for such division of the properties and funds as they shall deem best.

STATUTES CONSTRUED — 123-25-29(3) CRS '53, as amended.

**NURSING**

59-3256

Miss Catherine L. Caffrey  
 Executive Secretary  
 Board of Licensed Practical Nurse Examiners  
**April 1, 1959**

The board must accept an application for licensure by examination, but if the applicant does not meet all of the statutory requirements, the board is not required to issue a license to practice as a licensed practical nurse.

STATUTES CONSTRUED—97-3, CRS '53.

**NURSING**

59-3257

Miss Catherine L. Caffrey  
 Executive Secretary  
 Board of Licensed Practical Nurse Examiners  
**April 1, 1959**

The board may revoke a license, if upon hearing and satisfactory proof, said person is guilty of any one or more grounds set forth in 97-3-20, CRS '53.

STATUTES CONSTRUED—97-3-20, CRS '53.



**POLICEMEN'S PENSION**

59-3258

Hon. Tim Armstrong  
State Treasurer

**April 6, 1959**

Female police officers should be included in the local roster submitted by municipalities for distribution of funds under the policemen's pension act.

STATUTES CONSTRUED—139-49-19, CRS '53; 135-1-2, CRS '53.

**LAND BOARD—FEDERAL**

59-3259

Hon. Stephen L. R. McNichols  
Governor of Colorado

**April 9, 1960**

A lessee would not be violating his lease if grazing land is placed in the Soil Bank and payments are received by the lessee, based on a cropland classification by the Federal Government.

The legislature would have power to pass legislation regarding leasing of state land as long as the legislation did not have the effect of preventing the land board from securing "the maximum possible amount therefor."

CONSTITUTION CONSTRUED—Art. IX, Sec. 10, Colo. Const.

**SCHOOL DISTRICTS**

59-3260

H. Grant Vest  
Commissioner of Education

**April 13, 1959**

A reorganized school district may not assume or pay the bonded indebtedness of a former district.

STATUTES CONSTRUED—123-25-31, CRS '53.

**PHARMACY**

59-3261

Ralph E. Kemp  
Executive Secretary  
Colorado State Board of Pharmacy

**April 14, 1959**

(1) By *actual* name is meant the actual, rather than a fictitious or trade-name of the individual owner in the case of a

pharmacy owned by an individual, the actual name of the partnership in the case of a pharmacy owned by a partnership, the actual name of the association in the case of a pharmacy owned by an association, and the actual name of the corporation, rather than the names of its stockholders or directors, in the case of a pharmacy owned by a corporation. Individual names of partners or members of an association are not required to be displayed upon the sign if the provisions of section 141-2-1, CRS '53, are complied with.

(2) The word "premises" refers merely to that part of a building in which a pharmacy business is actually conducted and does not necessarily refer to the entire building nor necessarily mean out-of-doors when the exterior of the premises is wholly contained in a building. *Reliable Wine & Liquor Shop vs. Schimmelman*, 115 N.Y.S. 2d 474.

STATUTES CONSTRUED—48-1-13(1), CRS '53, as amended.

### INHERITANCE TAX

59-3262

Neil Tasher  
Inheritance Tax Commissioner

**April 14, 1959**

A refund of inheritance tax not allowable under the inheritance tax law (138-4-41, CRS '53) because the tax would not have been paid erroneously as defined in the case of *State of Colorado v. Newton* (1956), 134 Colo. 58, 300 P. (2d) 337, could be a lawful refund under the provisions of 130-2-5, CRS '53.

Administrative procedures to be followed by the department of revenue and the inheritance tax division in effecting such a refund.

STATUTES CONSTRUED—138-4-41, CRS '53; 130-2-5, CRS '53.

### TAXATION—NEWSPAPERS

59-3263

Victor P. Crepeau  
Deputy District Attorney  
Montrose, Colorado

**April 22, 1959**

Newsprint shipped from Canada to the Montrose Daily Press in its original package is subject to local assessment and taxation.

**EMPLOYEES RETIREMENT**

59-3264

Jack E. Kennedy, Assistant Secretary  
Public Employees' Retirement  
**April 24, 1959**

The Survivors' Benefits Law takes precedence over the designated beneficiary of a member and the member's child is entitled to benefits under said law in preference to the member's sister, if such child comes within the provisions of 111-8-6, CRS '53.

The mere fact of illegitimacy does not disqualify a child from receiving benefits under the Survivors' Benefits Law.

STATUTES CONSTRUED—111-8-1 et. seq. CRS '53; 43-1-1, CRS '53.

**INDUSTRIAL COMMISSION**

59-3265

Frank G. Van Portfliet, Chairman  
Industrial Commission of Colorado  
**April 29, 1959**

The operations of the John J. Grier Company with respect to the securing of laborers for the railroads falls precisely within the definition of a private employment agency. Even if no fee is charged for this service, this specifically has no bearing upon the application of the statute, and said company must obtain a license as a private employment agency.

STATUTES CONSTRUED—80-18-1 to 80-18-4, CRS '53.

**INSURANCE**

59-3266

Sam N. Beery  
Commissioner of Insurance  
**April 30, 1959**

Section 72-17-1, CRS '53, effective March 27, 1953, does not operate retrospectively and the Insurance Department does not have the right to supervise, examine and audit funds derived from sales of prepaid funeral arrangements or contracts made prior to March 27, 1953, the effective date of said statute.

STATUTES CONSTRUED—72-17-1, CRS '53.

**COUNTY JUDGES—FEES AND SALARIES**

59-3267

County Judges Association  
Attention: Victor B. Grandy, Secretary  
City and County Building  
**April 30, 1959**

The effective date of the salaries provided for county

judges by Sec. 5, Chap. 44, S.L. 1958, Second Regular Session, is January 1, 1959.

STATUTES CONSTRUED—Chap. 44, Sec. 5, S.L. 1958, Second Regular Session, 56-2-18, CRS '53, as amended.

### **PUBLIC WELFARE**

**59-3268**

Guy R. Justis, Director  
State Department of Public Welfare  
**April 30, 1959**

When a deed is placed in escrow with instructions to deliver the deed to the grantee on the death of the grantor, there is no *delivery* until the death of the grantor.

### **ALIENS—OLD AGE PENSIONS**

**59-3269**

Colorado State Department of Public Welfare  
**May 11, 1959**

A woman who comes under the federal provisions of the Immigration Act of June 25, 1936 (29 Stat. 1917), as amended by the Act of July 2, 1940 (54 Stat. 715) must first take the prescribed oath of allegiance before she is eligible for the Colorado Old Age Pension.

### **PUBLIC UTILITIES**

**59-3269A**

Joseph F. Nigro, Chairman  
Public Utilities Commission  
**May 13, 1959**

Under the stated facts, a person engaged in the business of cleaning septic tanks and cesspools would not come under the jurisdiction of the Public Utilities Commission and therefore not required to procure a certificate of public convenience as a motor vehicle common carrier.

STATUTES CONSTRUED—115-9-1(4), CRS '53.

### **SCHOOL DISTRICTS**

**59-3270**

H. Grant Vest  
Commissioner of Education  
**May 14, 1959**

Certain provisions of the School District Organization Act of 1957 (123-25 CRS '53) interpreted as follows:

(a) Registration is required if the district has more than

3,000 population.

(b) Registration is not required if the district has 3,000 or less population.

(c) The population of aggregate districts is immaterial. If none of the districts has more than 3,000 population no registration is required.

STATUTES CONSTRUED—123-25-21(1); 123-25-3(9); 123-10-7, CRS '53.

### INHERITANCE TAX

59-3271

Neil Tasher  
Inheritance Tax Commissioner  
May 19, 1959

Administrative procedures relating to refunds set forth in Opinion 59-3262 further clarified in this opinion.

### PUBLIC WELFARE—CHILDREN

59-3272

Guy R. Justis, Director  
State Department of Welfare  
May 19, 1959

A dependent child who has been receiving Aid to Dependent Children payments in one county of the state may receive Aid to Dependent Children payments in Fremont County after moving thereto, subject, however, to liability of his county of origin for the first six months.

A dependent child who moves to Fremont County and subsequently falls in need of Aid to Dependent Children payments must make application in Fremont County and thereafter payments must be made by Fremont County.

STATUTES CONSTRUED—22-11-4, 6, 11, CRS '53.

### COUNTIES—PUBLIC WELFARE

59-3273

Guy R. Justis, Director  
Department of Public Welfare  
May 22, 1959

A county director who is dismissed on the basis of an unsatisfactory service rating is not entitled to an appeal of such service rating to the appointing authority for the reason that (1) the appeal on service rating would be merged in the appeal on the dismissal, and such county director would have all his rights fully protected by such an appeal of dismissal; (2) an appeal of the service rating of a director to the county

appointing authority would be duplicitious and ineffective in that the county appointing authority would merely be reviewing its own action rather than the action of some other rating officer in the county department of public welfare.

STATUTES CONSTRUED—119-1-11, 12, CRS '53.

### SCHOOL DISTRICTS

59-3274

H. Grant Vest  
Commissioner of Education

May 22, 1959

The board of directors of a second class school district cannot rescind the action of a previous board that adopted teachers' tenure.

STATUTES CONSTRUED—123-18-3, CRS '53.

### LIQUOR

59-3275

George J. Baker  
Secretary of State

May 25, 1959

The local manufacturer and the first wholesaler or retail licensee receiving liquor from outside the state are liable for the liquor tax increase, effective July 1, 1959, under H.B. 436, 42nd G.A. (Chap. 162, S.L. 1959).

The increase applies *only* to stocks of vinous and spirituous liquors manufactured in, or imported into Colorado, on and after July 1, 1959, or to such stocks so manufactured or imported prior to such date as have not had the tax paid on them at the present rate prior to July 1, 1959. It does *not* apply to existing stocks manufactured and located within the *state* prior to July 1, 1959, on which the tax is paid at the present rate prior to said date.

In the case of malt liquor stocks, the increase applies only to stocks manufactured in, or imported into Colorado on and after July 1, 1959, or to such malt liquor stocks so manufactured or imported prior to said date as have not had the tax paid on them at the present rate on or before the 15 days thereafter allowed by 73-2-25(5).

Unless the bottles of liquor are brought into the state before July 1, 1959, the wholesaler will become liable for the difference between the tax paid for such stamps at the present rate and the amount of the tax at the new rate.

STATUTES CONSTRUED—75-2-25(1) CRS '53, as amended by Chapter 162, S.L. 1959.

**LIQUOR**

59-3276

George J. Baker  
Secretary of State

May 25, 1959

The local manufacturer or the first wholesaler receiving the fermented malt beverages from outside of the state are liable for the tax increase on their floor stocks, effective July 1, 1959, under H.B. 437, 42nd G.A. (Chapter 160, S.L. 1959).

The tax increase applies only to stocks of fermented malt beverages manufactured in, or imported into Colorado on and after July 1, 1959, or to such stocks so manufactured or imported prior to said date as have not had the tax paid on them at the present rate on or before the 15 days thereafter allowed by 75-1-10(3). It does not apply to existing stocks manufactured and *located within the state* prior to July 1, 1959, provided the tax has been paid thereon at the present rate on or before the 15 days thereafter allowed.

STATUTES CONSTRUED—75-1-10 (1) CRS '53, as amended by Chap. 160, S.L. 1959.

**BANKING**

59-3277

Frank E. Goldy  
State Bank Commissioner

May 28, 1959

The use of drive-up windows in the manner proposed without connecting tunnels to the bank would be justification for the banking board to find that branch banking was not being conducted within the meaning of the statute.

STATUTES CONSTRUED—14-13-1(1) CRS '53.

**FEDERAL—COUNTIES—CITIES AND TOWNS**

59-3278

Col. C. T. Newton  
District Engineer  
U. S. Army Engineer District  
Los Angeles, California

June 1, 1959

Re: Legality of compliance by counties, municipalities, and flood control conservancy districts with Section 3 of the 1936 Flood Control Act.

Counties and incorporated towns cannot legally comply with the requirements of flood cooperation as specified in Section 3 of the 1936 Flood Control Act (Title 33, Sec. 701c

USC), and in subparagraphs (1), (2), and (3) as set forth. Flood control conservancy districts can so comply.

STATUTES CONSTRUED—Chap. 30, CRS '53.

### ANTI-DISCRIMINATION COMMISSION

59-3279

Mr. Edward Miller  
Chairman, Anti-Discrimination Commission

June 1, 1959

Colorado Fair Housing Act of 1959, H.B. 259, 42nd G.A., appearing as Chap. 148, S.L. 1959.

Since the act does not apply to the transfer, rental or lease by an owner of premises maintained by such owner as the household of his family, the exclusion from said act applies to the agent of such an owner in connection with the transfer, rental or lease of said premises by said agent acting on such owner's behalf.

STATUTES CONSTRUED—Chap. 148, S.L. 1959.

### SAVINGS AND LOAN

59-3280

Guy L. Reed, Commissioner  
Savings and Loan Department

June 3, 1959

A foreign, or out-of-state, savings and loan association's purchase of a real estate secured loan, or a participating interest in such a loan, from a domestic savings and loan association does not constitute a violation of 122-4-1, CRS '53, in view of the fact that this section states that such foreign associations *shall not . . . make new loans in this state.*

STATUTES CONSTRUED—122-4-1 and 122-6-3, CRS '53.

### TAXATION

59-3281

Robert Sanderson  
Deputy District Attorney  
Springfield, Colorado

June 3, 1959

A property owner who tenders payment on May 29, 1959, of his entire ad valorem taxes for the year 1958 on both real estate and personal property, would be penalized one-half of one per cent per month from March 1, 1959, to June 1, 1959, or one and one-half per cent on one-half of the total tax.

STATUTES CONSTRUED—137-9-3 and 4, CRS '53.



**MARRIAGE**

59-3282

Lt. Col. Lawrence S. Albrecht  
Valley Forge Army Hospital  
Phoenixville, Pa.

**June 4, 1959**

Marriage by proxy. The statutes of this state are silent on the question and there are no adjudicated cases decided by our Supreme Court on the subject. However, marriages by proxy have been performed in this state and the Marriage License Clerk in Denver accepts certificates for recording in such cases, if same meet requirements.

**BANKING**

59-3283

Frank E. Goldy  
State Bank Commissioner

**June 4, 1959**

The temporary use of the proposed facilities in the manner intended, on one, or any one of the proposed sites would not constitute *branch banking* within the meaning of 14-13-1(1) CRS '53, as amended, and would not violate said subsection.

STATUTES CONSTRUED—14-13-1(1) CRS '53, as amended.

**PHARMACY**

59-3284

Ralph E. Kemp, Executive Secretary  
State Board of Pharmacy

**June 4, 1959**

The State Board of Pharmacy does not have the power to regulate the prices charged for drugs by licensed pharmacies.

**PHARMACY**

59-3285

Ralph E. Kemp, Executive Secretary  
State Board of Pharmacy

**June 4, 1959**

A licensed drug dealer is not required to obtain a patent medicine dealer's license in order to sell a patent medicine, provided such patent medicine has been designated by the Board of Pharmacy as an emergency drug; but otherwise, yes.

A licensed pharmacy is not required to obtain a patent

medicine dealer's license in order to sell a patent medicine.

STATUTES CONSTRUED—Chap. 48, CRS '53, as amended by Chapter 107, S.L. 1959 (H.B. 190, 42nd G.A.)

### JURIES—FEES

59-3286

Hon. Fred Calhoun  
Judge of the County Court  
June 5, 1959

The City should pay the jury fees, witness fees and mileage for witnesses in a traffic case which was appealed from the Magistrate Court of the City of Delta to the County Court, and the County should pay the other expenses.

STATUTES CONSTRUED—78-7-1, CRS '53, as amended by Chap. 44, Sec. 12, S.L. 1958; 37-6-7, CRS '53; 33-1-12, CRS '53; 56-6-2, CRS '53.

### HEALTH—AGRICULTURE DEPT.

59-3287

Dr. R. L. Cleere  
Executive Director  
Department of Public Health  
June 18, 1959

66-13-5, CRS '53 applies to a mobile truck mounted counter freezer installation in which ice cream is manufactured and sold to the public, but does not specifically require toilet facilities to be built into such mobile unit.

STATUTES CONSTRUED—66-13-5, CRS '53.

### PUBLIC FUNDS—STATE TREASURER

59-3288

Tim Armstrong  
State Treasurer  
June 19, 1959

The State Treasurer has the legal right to sell tax anticipation general obligation warrants (mill levy) based on the facts stated that the proceeds from this sale will be reinvested in investments authorized by the statutes, and also based on the fact that the "antics" are included in the definition of "funds" as used in the statutes.

### SCHOOLS

59-3289

Hon. H. Grant Vest  
Commissioner of Education  
June 22, 1959

Power and duties of county superintendent of schools with

respect to administrative and instructional matters in individual school districts defined.

STATUTES CONSTRUED—123-2-2, CRS '53; 123-1-21, CRS '53; 88-1-5, CRS '53.

CONSTITUTION CONSTRUED—Art. IX, Secs. 6 and 15, State Const.

### HOMES FOR THE AGED

59-3290

Hon. Stephen L. R. McNichols  
Governor of Colorado

June 22, 1959

Under Chap. 236, S.L. 1959 (S.B. 210, 1st Reg. Sess, 42nd G.A.) the Monte Vista Golden Age Center is now under the jurisdiction and control of the State Board of Control for State Homes for the Aged and such jurisdiction and control is vested in the Board of Control at the time the bill became law upon the signature of the Governor.

The first of the seven new homes for the aged, authorized by said Chapter 236, may not be constructed so long as the Golden Age Center is not self-sustaining and requires general fund appropriations.

STATUTES CONSTRUED—133-1-1 and 10, CRS '53, as amended by Chap. 236, S.L. 1959.

### EMPLOYMENT SECURITY

59-3291

Bernard E. Teets  
Executive Director  
Department of Employment

June 22, 1959

Section 82-1-3 (7) (e) (vii) CRS '53, exempting services performed in the employ of certain nonprofit organizations from coverage of the Colorado Employment Security Act, was repealed by Chap. 173, S.L. 1959 (H.B. 497).

Effective July 1, 1959, all such services in the employ of these organizations will be included in the term "employer" for purposes of this act, subject to the exceptions set forth in Section 82-1-3 (7) (e) (xi).

STATUTES CONSTRUED—82-1-3(7) (e) (vii) CRS '53, as amended by Chap. 173, S.L. 1959.

**BINGO****59-3292**

George J. Baker  
Secretary of State  
June 24, 1959

A license to conduct a game of chance should not be issued to a chartered branch or lodge or chapter of a national or state organization unless it has been in existence continuously for a period of five years immediately prior to its application for such a license.

STATUTES CONSTRUED—Chap. 228, S.L. 1959.

**PUBLIC WELFARE—OLD AGE PENSIONS****59-3293**

E. G. Spurlin  
State Controller  
June 24, 1959

The payment of administrative costs of the Old Age Pension Medical Care Program of \$100,000 should properly and legally be paid out of the administrative account of the State Public Welfare Fund. (See Opinion No. 59-3227.)

**TAXATION—SCHOOL DISTRICTS****59-3294**

Howard A. Latting, Commissioner  
Colorado Tax Commission  
June 25, 1959

Under the facts stated the assessed valuation of the former school districts and parts of school districts may be identified as to the reorganized school district and may be subject to tax levy requirements of the reorganized school district.

STATUTES CONSTRUED—137-3-2, CRS '53; 137-12-13, CRS '53, as amended.

**STATE FAIR COMMISSION—WORKMEN'S  
COMPENSATION—EMPLOYEES****59-3295**

A. C. Vitullo  
Assistant Manager  
Colorado State Fair  
June 26, 1959

Persons employed at Camp Tobin of the Colorado State Fair are employees of the State of Colorado, and as such entitled to compensation from the State in case of compensable accidental injury as provided in the Workmen's Compensation Act.

STATUTES CONSTRUED—81-2-6(1) and 7(1), CRS '53.

**ACTIONS—SCHOOLS****59-3296**

Hon. H. Grant Vest  
Commissioner of Education

**June 26, 1959**

Legality of school safety patrols in Colorado and whether liability could attach to school officials or patrol members in the event of injury in connection with the operation of a patrol.

**FEDERAL—PARKS AND RECREATION****59-3297**

Harold W. Lathrop  
Director, State Parks and Recreation

**June 29, 1959**

The State Park and Recreation Board may utilize the services of the Five Star Division, U. S. Coast Guard Auxiliary in controlling boating on Cherry Creek Reservoir.

STATUTES CONSTRUED—112-9-3(1) (6), CRS '53; 112-9-4(5), CRS '53.

**STATE HIGHWAY COMMISSION—MOTOR VEHICLES****59-3298**

J. J. Marsh, Chairman  
State Highway Commission

**July 1, 1959**

Propriety of action by State Highway Commission with reference to the seventy miles per hour speed limit as set out in Chap. 54, S.L. 1959 (S.B. 87).

STATUTES CONSTRUED—13-4-33 (2), CRS '53, as amended by Chap. 54, S.L. 1959.

**SCHOOL DISTRICTS****59-3299**

Hon. H. Grant Vest  
Commissioner of Education

**June 24, 1959**

In addition to an elementary school a school district may establish a high school as authorized by 123-10-25 and 123-10-52, 53, CRS '53. When such high schools are established and a school district thereby operates a school program grades one through twelve it is a school district within the meaning of section 123-25-41 (2). A school district which operates a school program of grades one to eight inclusive but does not operate a high school does not comply with the act even though such school district is a part of a high school district.

STATUTES CONSTRUED—123-25, CRS '53 (Supp) as amended by Chapter 216, Sec. 3, S.L. 1959 (H.B. 272).

**ELECTRICAL BOARD**

59-3300

Harry W. Bottom, Secretary  
Colorado Electrical Board

**July 7, 1959**

The words "electricians' fund" quoted in Section 15, of Chapter 117, S.L. 1959 (H.B. 404), does not constitute an appropriation to the electrical board of the monies so credited to the electricians' fund for the use by the board for the purposes specified in said Section 15.

STATUTES CONSTRUED—Chapter 117, Sec. 15, S.L. 1959 (H.B. 404).

**JUVENILE PAROLE BOARD—CRIMINAL PROCEEDINGS**

59-3301

Dr. E. Ellis Graham, Chairman  
Juvenile Parole Board

**July 7, 1959**

Under Chapter 95, S.L. 1959, the newly created Juvenile Parole Board is given jurisdiction over all children on parole at the time of the effective date of the act. All authority and supervision of paroles was given to the Board on the effective date, July 1, 1959.

STATUTES CONSTRUED—Chapter 39, CRS '53, as amended by the addition of Chapter 95, S.L. 1959, appearing as 39-20-2, CRS '53.

**COLLEGES AND UNIVERSITIES**

59-3302

L. D. Daily  
Executive Assistant to the Governor

**July 9, 1959**

At the request of the Governor's office, certain recommendations were made concerning the rulings of the several state colleges and universities as to determination of out-of-state status of students for tuition purposes. Conclusions reached in accord with previous opinions of this office on the same subject. See Opinions No. 573, 1940; 368, 1941; 426, 1944.

**HOMES FOR THE AGED**

59-3303

Archie G. Maine, Chairman  
Board of Control  
State Homes for the Aged

**July 10, 1959**

The State Board of Control for State Homes for the Aged

does not have authority to suspend temporarily the operation of the Monte Vista Golden Age Center until innumerable problems pertaining to its successful operation can be resolved. Until such express or implied authority is delegated to the Board, this power remains in the General Assembly.

STATUTES CONSTRUED—133-1-2 and 11(1), CRS '53.

### **HISTORICAL SOCIETY GAME AND FISH**

**59-3304**

Maurice Frink, Executive Director  
State Historical Society of Colorado

**July 15, 1959**

The authority to grant or permit access to any state monument, including Pike's Stockade, is vested in the State Historical Society, while the authority for opening and closing areas to hunting and fishing is vested in the Game and Fish Commission.

STATUTES CONSTRUED—62-2-16, CRS '53.

### **TAXATION—WATER**

**59-3305**

John R. Seaman  
Colorado Tax Commission

**July 14, 1959**

Re assessment of a reservoir under provisions of 147-5-22, CRS '53.

The land, the assessed valuation of which shall be reduced, is not to exceed 160 acres owned by the person who has donated the reservoir site or who owns the reservoir site which is contiguous to the reservoir site. The reservoir and the bed thereof is not subject to taxation.

The land irrigated by water from the reservoir is not subject to reduction in value because of the irrigation.

The word "contiguous" refers to land contiguous to the area actually occupied by the reservoir and could or could not include land irrigated by the reservoir depending on actual conditions existing at the site.

STATUTES CONSTRUED—147-5-22, CRS '53.

### **ABSTRACTORS**

**59-3306**

James O. Hickman  
Executive Secretary  
Abstractors' Board of Examiners

**July 17, 1959**

The Denver Abstract Company is required to pay the

annual fee of \$25.00 required by 1-1-4, CRS '53, in order to entitle it to issue certificates to the Public Trustee of Adams County regarding real property located in said county.

STATUTES CONSTRUED—1-1-4, CRS '53.

### PROFESSIONAL ENGINEERS

59-3307

State Board of Registration for Professional Engineers

July 17, 1959

Applications for registration submitted to the Board prior to the effective date, April 29, 1959, of Chap. 119, S.L. 1959 (H.B. 221) should be governed by the law then in effect, and that applications submitted to the Board after the effective date, April 29, 1959, should be governed by the provisions of said Chap. 119, S.L. 1959.

STATUTES CONSTRUED—Chap. 51, Article 1, CRS '53, as amended by Chap. 119, S.L. 1959.

### GAME AND FISH—STATE AUDITOR

59-3308

Hon. Homer F. Bedford  
Auditor of State

July 24, 1959

The word "discretion" appearing in 62-2-5, CRS '53, covering the filing of bonds by special game wardens, is interpreted to mean that the requirement of a bond is discretionary with the commission. This bond, if required by the commission, would be in addition to any other bonds covering the individual appointed.

Bonds executed by other enforcement officials would not comply with the statute relating to the requirements for bonds of special game wardens.

STATUTES CONSTRUED—62-2-5, CRS '53.

### FEDERAL—COURTS

59-3309

Honorable Willard J. Allen  
Judge of the County Court  
Las Animas, Colorado

July 20, 1959

Jurisdiction over John Martin Reservoir site. The Bent County Court has jurisdiction over residents of said area in mental health cases, and over juvenile residents of the site who commit acts of delinquency in Bent County (and outside of said area).

STATUTES CONSTRUED—22-8-3, CRS '53 as amended. 142-1-2 and 3, CRS '53.



**WATER—FEDERAL—RECREATION****59-3310**

Mr. Felix L. Sparks, Director  
Colorado Water Conservation Board

**July 20, 1959**

Recreation of a permanent pool at John Martin Reservoir.

Assuming that the Corps of Engineers of the U. S. Army finds the present conservation capacity of John Martin Reservoir can be increased by 10,000 acre feet without impairing the operation of the reservoir for flood control purposes, and permits such increase, a permanent pool for recreational purposes can be established legally at John Martin Reservoir, the water with which to create and maintain the pool to be purchased and transferred to John Martin Reservoir.

STATUTES CONSTRUED—148-9-1, CRS '53.

**COLLEGES AND UNIVERSITIES****59-3311**

Mr. Thomas Girault, President  
Board of Trustees  
Colorado State College

**July 30, 1959**

Powers of the trustees of the State Colleges to develop a secretariat independent from the governed colleges; appointment; civil service status; compensation.

STATUTES CONSTRUED—124-5-1 and 6, CRS '53.

CONSTITUTION CONSTRUED—Art XII, Sec. 13.

**CRIMINAL PROCEEDINGS—JUVENILE PAROLE  
PUBLIC INSTITUTIONS****59-3312**

Mr. H. Ellis Graham, Chairman  
Juvenile Parole Board

**August 5, 1959**

Neither the superintendent of the State Training School for Girls, nor the Board of Juvenile Parole has the authority for reasons of health to discharge girls committed to such institution. Also, Chap. 95, S.L. 1959, has no bearing upon the transfer of girls committed to the State Training School at Morrison to the State Home and Training School at Ridge or the Colorado State Hospital at Pueblo.

STATUTES CONSTRUED—105-2-25, CRS '53 as amended by Chap. 95, S.L. 1959; 105-2-31, CRS '53 as amended by Chap. 189, S.L. 1959.

**VOCATIONAL EDUCATION—REHABILITATION  
DEPARTMENT—FEDERAL**

59-3313

Mr. Warren Thompson, Director  
Department of Rehabilitation

**August 5, 1959**

Under the provisions of Chapter 272, S.L. 1959, it is not necessary for the State and the Federal Government to negotiate a new contract.

STATUTES CONSTRUED—145-2-6(4), CRS '53, as amended by Chap. 272, S.L. 1959.

**PARKS AND RECREATION—MOTOR VEHICLES**

59-3314

Mr. Harold W. Lathrop, Director  
State Park and Recreation Board

**August 5, 1959**

Boat Licensing Act, Chap. 60, S.L. 1959.

Section 6 of above chapter does not constitute an appropriation and the park and recreation board may only use appropriations made to it by the legislature, if available, to defray the expenses of administering the act and may not expend the five dollar fee authorized to be collected by said section 6 for such purpose.

STATUTES CONSTRUED—112-9-5(1), CRS '53; Chap. 60, S.L. 1959.

**ARCHITECTS**

59-3315

Mr. Casper F. Hegner, Secretary  
State Board of Examiners of Architects

**August 11, 1959**

Submission of two contract documents, pursuant to Section 10 of Chap. 47, S.L. 1959, covering periods of time within the three-year period immediately prior to the effective date of said act, is sufficient evidence to show that the applicant has been continuously engaged in the actual practice of architecture, as a principal means of livelihood, for said three-year period, even though the period of time *actually* covered by the contract documents is less than three years.

STATUTES CONSTRUED—Chap. 47, S.L. 1959.

**CHILDREN—COURTS—CRIMINAL PROCEEDINGS****59-3316**

Matt J. Kikel, Esq.  
 District Attorney, Pueblo

**August 11, 1959**

1. It is mandatory that all persons under the age of eighteen years arrested for a misdemeanor be taken before either the county court or the district court, and a justice of the peace cannot take jurisdiction in such cases of a criminal complaint filed by the district attorney.

2. It is not mandatory that a petition in delinquency be filed but misdemeanor charges may be filed through the district attorney.

3. Chapter 72, S.L. 1959 did not repeal nor amend 22-8-4, CRS '53 which is still in full force and effect and the duties of the district attorney in respect to delinquency proceedings remain as they have been in the past.

STATUTES CONSTRUED—22-8-1(4), CRS '53 as amended by Chap. 72, S.L. 1959.

**CITIES AND TOWNS—TAXATION****59-3317**

Mr. William R. Young  
 State Representative  
 Englewood, Colorado

**August 13, 1959***Metropolitan Recreation Districts*

Tracts or parcels of real estate, together with the buildings, improvements, equipment and machinery thereon situated, owned and operated by companies distributing and generating energy, telephone services, or natural gas, are companies engaged in manufacturing or industrial purposes.

STATUTES CONSTRUED—89-12-8, CRS '53, as amended by Chap. 199, S.L. 1955.

**SOIL CONSERVATION DISTRICTS****59-3318**

Mr. Clarence Svedman, Secretary  
 State Soil Conservation Board

**August 17, 1959**

Each board must keep in mind that only those expenses which are directly connected with a statutory function of a district and which are budgeted and apportioned according to

the special benefits which accrue to specific property, can be included in a proper special assessment against the landowners in the district.

STATUTES CONSTRUED—128-1-9 (2), CRS '53.

### **PUBLIC WELFARE—CHILDREN**

**59-3319**

Mr. Guy R. Justis, Director  
State Department of Public Welfare  
**August 18, 1959**

As stated in our Opinion No. 1162-47, "in absence of a legislative definition or a judicial interpretation of the words 'wherein the applicant resides' the State Board of Public Welfare may adopt a construction for administrative purposes." Therefore, your proposed regulation appearing as Section 422-VII-A and B of the Staff Manual, Vol. IV, pertaining to county chargeability for AB and AND payments under the stated situations, is within the rule making power of the department and is not inconsistent with the statutes governing AND and AB.

Residence for ADC purposes is clearly distinguishable from residence for AND and AB purposes. As pointed out in Opinion 59-3272, physical presence subject to the six months rule is all that is necessary for county chargeability as to ADC. The pertinent statutes which require such a construction are not applicable to AB and AND.

STATUTES CONSTRUED—16-3-5(1) and 119-6-6(2), CRS '53.

### **NATIONAL GUARD**

**59-3320**

Maj. Gen. Robert D. Charlton  
The Adjutant General  
Colorado National Guard  
**August 18, 1959**

The effect of state statutes on efforts to effectuate policy regarding joint utilization of National Guard facilities by reserve forces other than the National Guard, defined.

STATUTES CONSTRUED—94-3-2 and 3, CRS '53; 94-8-3, CRS '53; 94-9-6 (17) (18), CRS '53.

### **MINES**

**59-3321**

Mr. G. A. Franz, Jr.  
Deputy Commissioner  
Bureau of Mines  
**September 1, 1959**

The owner or operator of mining property may not require

the commissioner or inspector to sign a release of liability before admitting them to the property for the purpose of making an examination or inspection as required by law. A refusal to admit the commissioner or inspector is a misdemeanor, punishable by a fine and/or imprisonment.

STATUTES CONSTRUED—92-32-12, CRS '53.

**EMPLOYEES RETIREMENT—EMPLOYMENT SECURITY**

**59-3322**

Mr. A. V. Wilson, Director  
Social Security  
Department of Employment  
and

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

**September 1, 1959**

The Public Employees' Retirement Law does apply to the regular employees of the Moffat Tunnel Improvement District and such employees are not legally eligible for coverage under the provisions of the Public Employees' Social Security Act.

STATUTES CONSTRUED—Chapter 111, Art. 1, CRS '53; Chapter 111, Art. 7, CRS '53.

**PUBLIC RECORDS—COUNTIES**

**59-3323**

Hon. Sherman E. Walrod  
District Attorney, Holyoke

**September 2, 1959**

The present law, 35-4-7, CRS '53, does not provide for counties of less than 100,000 population recording deeds, deeds of trust and other records by microfilming methods. Said law would have to be amended.

STATUTES CONSTRUED—35-4-7, CRS '53.

**AGRICULTURE**

**59-3324**

Mr. Paul W. Swisher, Commissioner  
Colorado Department of Agriculture

**September 3, 1959**

Re: Commercial Fertilizer Law

Registration fees for commercial fertilizers must be paid anew each year.

STATUTES CONSTRUED—6-13-4, CRS '53.

**FEDERAL—WORKMEN'S COMPENSATION ACT****59-3325**

Mr. Frank G. Van Portfliet  
 Chairman, Industrial Commission

**September 4, 1959**

A notice of levy by the U. S. Government for unpaid income tax due is legal, and the Federal Government is not bound by the provisions of 81-13-7, CRS '53, Workmen's Compensation Act.

STATUTES CONSTRUED—81-13-7, CRS '53.

**PLANNING DIVISION—PUBLIC FUNDS—  
 COLORADO STATE UNIVERSITY****59-3326**

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

**September 9, 1959**

Re: Rigden Farm

In view of the nature and objectives of the institution, an expenditure of building mill levy funds for buildings on the grounds known as the Rigden Farm would not be violative of the provisions of 124-10-41, which requires such expenditures to be for buildings to be constructed on the grounds of the University situate "at Ft. Collins." The word "at" defined.

STATUTES CONSTRUED—124-10-41 and 44, CRS '53.

**JUNIOR COLLEGES****59-3327**

Hon. Leo P. Black  
 Assistant Commissioner of Education

**September 9, 1959**

Junior colleges are a part of the public school system and not considered in the category of institutions of higher learning. Therefore, eligible teachers would qualify under the provisions of the Teacher Emeritus Act rather than the provisions of the State Institutions of Higher Learning Emeritus Retirement Pension Act.

STATUTES CONSTRUED—123-19, CRS '53; 124-17, CRS '53 as amended.

**PUBLIC FUNDS—COUNTY CLERKS—  
MOTOR VEHICLES****59-3328**

George L. Strain, Esq.  
Assistant District Attorney

**September 16, 1959**

Amounts paid by the department of revenue to county clerks for motor vehicle registration should not go into the county general fund, but should be used for paying the expense of a county clerk for that purpose with any overage going into the county road fund for highway purposes.

STATUTES CONSTRUED—13-2-11 and 12, CRS '53 as amended by Chap. 30, S.L. 1954.

**PUBLIC WELFARE****59-3329**

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

**September 23, 1959**

The proposed regulations—4208, IV, A, 2 (Definition of Transfer) and 4208, IV, C, 6, in part (Life Estate, How Considered) are in conformity with Article XXIV, Colorado Constitution, as amended, and are consistent with the Old Age Pension Act.

CONSTITUTION CONSTRUED—Article XXIV, State Constitution.

**LIQUOR****59-3330**

Mr. George J. Baker  
Secretary of State

**September 24, 1959**

Under 75-2-12 (9), CRS '53, as amended, an applicant who fitted into one of the categories named in the act at the effective date is entitled to the reissuance of his liquor license even though his establishment lies within 500 feet of a public school. The character of the establishment as a restaurant has remained unchanged and therefore it continued to be exempt from the provisions above referred to.

STATUTES CONSTRUED—75-2-12 (9), CRS '53, as amended.

**ANTICIPATION WARRANTS—COUNTIES****59-3331**

Honorable Sam T. Taylor  
State Senator

**September 28, 1959**

The interest on the proposed issue of anticipation warrants for cost of public improvements to be financed pursuant to Ch. 106, S.L. '53, as amended by Ch. 111, S.L. '57, would not be exempt from state income tax according to the Revenue Department.

Pursuant to 125-1-15 (2), CRS '53, as amended, such anticipation warrants are exempt from the securities law.

STATUTES CONSTRUED—36-20, CRS '53, as amended by Ch. 111, S.L. '57; 125-1-15 (2), CRS '53, as amended.

**CHILDREN—JUVENILE PAROLE BOARD****59-3332**

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

**September 22, 1959**

The district juvenile parole officer is the proper official to supervise juvenile delinquents who are parolees and probationers from other states sent to Colorado pursuant to the Interstate Compact on Juveniles.

The age of the juveniles subject to control and supervision under the Interstate Compact on Juveniles is determined by the laws of the "sending state."

STATUTES CONSTRUED—74-8-1, Art. VII, CRS '53 Supp. Chap. 95, S.L. 1959; Chap. 72, S.L. 1959.

**OPTOMETRY****59-3333**

Mr. Ernest O. Wille, Jr., Sec.-Treas.  
State Board of Optometric Examiners

**October 2, 1959**

The mere failure of an optical company, advertising as an optician, to include in the advertisement the name of an optometrist in its employ does not violate any state law.

The Board of Optometric Examiners may approve a scientific clinic, forum or optometric educational study which does not permit attendance by any and all Colorado licensed optometrists.

STATUTES CONSTRUED—102-1-15(2), CRS '53.



**SCHOOL DISTRICT—TAXATION—COUNTY ASSESSOR**

59-3334

Mr. M. E. H. Smith  
District Attorney

**October 23, 1959**

Under 137-4-1, CRS '53, the county assessor may certify to the county superintendent of schools the assessable valuation of the property within such new districts subsequent to October 1, 1959. The October first date is directive and not mandatory. We suggest that if the assessor is to certify such assessment he do so prior to November 1, 1959.

STATUTES CONSTRUED—137-4-1, CRS '53.

**OPTOMETRY**

59-3335

Hon. Matt J. Kikel  
District Attorney

**October 29, 1959**

A Colorado licensed optometrist who is not engaged in active practice within the state but who thereafter commences the active practice of optometry within the state during the year for which he is licensed is not required under 102-1-15, CRS '53 Supp., as a condition precedent to his lawfully commencing such active practice, to have obtained an annual educational study conducted during the preceding license year and prior to the last previous annual April 1st renewal of his license.

STATUTES CONSTRUED—102-1-15, CRS '53 Supp.

**WAR—CIVIL SERVICE**

59-3336

Michael A. DiNunzio, Commissioner  
State Civil Service Commission

**October 30, 1959**

World War II ended on April 28, 1952, the date of the ratification by the United States Senate of the Treaty of Peace with Japan, which occurred after the termination of the war with Germany. Opinion 2211-52 still adhered to.

STATUTES CONSTRUED—26-3-2, CRS '53.

**WATER—FEDERAL—RECREATION**

59-3337

Mr. Felix L. Sparks, Director  
Colorado Water Conservation Board

**November 4, 1959**

Re: Permanent pool at John Martin Reservoir.

See also opinion 59-3310.

The John Martin Reservoir, being the property of the United States, may be utilized as the Congress sees fit. Since the Arkansas River Compact does not—and could not—deal with the utilization of storage space except for the space for the conservation pool, the Compact does not need to be modified because of a change in the operation of storage space not included within the conservation pool.

### **SCHOOL OF MINES—INCOME TAX—INSURANCE**

**59-3338**

Mr. Gurnett Steinhauer  
Colorado School of Mines

**November 9, 1959**

The College has the power to enter into the specified employment contract and undertake the function of purchasing annuities on behalf of faculty members.

The state department of revenue has no objection to this type of a plan, but the amount expended on behalf of a faculty member for an annuity would be taxable to him as current income.

STATUTES CONSTRUED—124-9-4, CRS '53; 138-1-8(14) and 9(2), CRS '53, as amended.

### **COURT FEES**

**59-3339**

Hon. Anna Patten  
Judge of the County Court  
Cortez, Colorado

**November 10, 1959**

Docket fees payable to the county court in the event of an appeal by a defendant in a criminal case in a justice of the peace court and the procedure to be followed, outlined.

STATUTES CONSTRUED—79-13-2, CRS '53, as amended; 79-15-11, CRS '53; 56-5-5, CRS '53, as amended.

### **PENITENTIARY—COURTS**

**59-3340**

Mr. Carl Jacobson  
Chief Probation Officer  
Brighton, Colorado

**November 13, 1959**

The length of sentences may not be changed, except for error or illegality, after the term of court at which they were

imposed and it is questionable if they may be changed during that term if their execution has commenced.

STATUTES CONSTRUED—105-4-18, CRS '53.

### TAXATION—CITIES AND TOWNS

59-3341

Mr. Donald E. Kelley  
City Attorney  
Denver, Colorado  
November 20, 1959

Tax exemption status of Campbell-Stone Memorial Residence.

Under the facts submitted, there is ample authority and grounds to support a judicial determination favoring exemption of the above property from ad valorem taxation under 137-12-3(8), CRS '53, and Art. X, Sec. 5, State Constitution.

CONSTITUTION CONSTRUED—Art X, Sec. 5.

STATUTES CONSTRUED—137-12-3(8), CRS '53.

### TAXATION—MOTOR VEHICLES—FEDERAL

59-3342

Mr. Robert A. Theobald  
Director of Revenue  
November 23, 1959

Under 13-1-1(10), CRS '53, as amended by Ch. 49, S.L. 1959, the owner of a stationary trailer home, who is serving in the armed forces and a nonresident of Colorado, is required to register and pay specific ownership tax on his mobile home if the trailer is *capable* of being drawn by a motor vehicle.

STATUTES CONSTRUED—13-1-1, CRS '53, as amended by Chap. 49, S.L. 1959.

### COURTS—CHILDREN—CRIMINAL PROCEEDINGS

59-3343

Hon. Eugene Steele  
Judge of the County Court  
Steamboat Springs, Colorado  
November 27, 1959

Disposition of fines imposed upon two minors found guilty of delinquency in the Juvenile Court.

STATUTES CONSTRUED—Chap. 22, Art. 8, CRS '53 as amended.

**CITIES AND TOWNS—LEGISLATION****59-3344**

Rep. Peter H. Dominick  
Legislative Council

**November 30, 1959**

Constitutional amendments necessary to bring about the proposed changes concerning urban renewal legislation.

**EMPLOYMENT SECURITY—LEGISLATURE****59-3345**

Honorable Norman W. Enfield  
State Representative

**December 3, 1959**

Any legislation affecting the amount of contributions under the unemployment compensation statutes must be designated by the Governor before it can properly be considered by the second regular session convening in January 1960.

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

STATUTES CONSTRUED—82-7-1, CRS '53.

**TAXATION—CITIES AND TOWNS****59-3346**

Hon. Donald E. Kelley  
City Attorney  
Denver, Colorado

**December 4, 1959**

Tax exemption status of Campbell-Stone Memorial Residence.

See also Opinion 59-3341.

The meaning of the term "rent" or "other charges in lieu of rent" as appears in 133-3-6, CRS 1957 Cumulative Supplement, defined as same applies to the above property.

STATUTES CONSTRUED—133-3-6, CRS, 1957 Cumulative Supp.

**NATIONAL GUARD****59-3347**

Major General Robert Charlton  
The Adjutant General

**December 9, 1959**

The releases requested by the city of Sterling absolving the city from liability for the use by the Colorado National Guard of city owned land cannot be executed by the Colorado National Guard.

**FORT LEWIS A & M COLLEGE**

59-3348

Dr. Charles Dale Rea  
President, Fort Lewis A & M College

**December 11, 1959**

Opinion re Application for Loan Assistance, Part III of Form H-1000 of the Housing and Home Finance Agency, under Title IV of the Housing Act of 1950. See also Opinion 59-3250.

**SCHOOLS**

59-3349

Mr. J. H. Swenson  
Acting Commissioner of Education

**December 17, 1959**

The posting of a modified version of the Ten Commandments is equivalent to "comment" as it constitutes someone's interpretation of the Ten Commandments. Such posting would be in violation of the constitution and would constitute the teaching of sectarian tenets or doctrines as prohibited by the constitution.

CONSTITUTION CONSTRUED—Art. IX, Sec. 8, State Const.

**TAXATION—MOTOR VEHICLES**

59-3350

Hon. John R. Seaman  
Colorado Tax Commission

**December 18, 1959**

Motor boats and motors, not used for the production of income, are subject to assessment and taxation and cannot be considered as either household goods or personal effects as defined by statute.

CONSTITUTION CONSTRUED—Art. X, Sec. 3, Colo. Const.

STATUTES CONSTRUED—137-12-2, CRS '53.

**PUBLIC FUNDS—COLORADO STATE UNIVERSITY**

59-3351

Mr. S. S. Wheeler, Director  
College of Agriculture and Agricultural Experiment Station  
Colorado State University

**December 23, 1959**

A portion of the funds appropriated by Chap. 2, S.L. 1959, can legally be used as cost-sharing moneys for cooperative work with the U. S. Geological Survey in furtherance of the research program called for in said act.

STATUTES CONSTRUED—Chap. 2, S.L. 1959.

**ELECTIONS****59-3352**

Mrs. Fern Miller  
 State Vice Chairman  
 Democratic State Central Committee  
**December 31, 1959**

The new wording "elected officials of the respective parties" as it now appears in 49-4-24, CRS '53, as amended by Chap. 11, S.L. 1959, interpreted.

**COURTS—CRIMINAL PROCEEDINGS—CHILDREN****60-3353**

Robert F. Sanderson, Esq.  
 Deputy District Attorney  
 Springfield, Colorado  
**January 4, 1960**

A felony charge may be filed in the district court if the person is over the age of ten years, and in that event 22-8-7, CRS '53, as amended, has no application and its provisions may be disregarded. Persons over the age of ten years may be held responsible for crime in criminal proceedings.

STATUTES CONSTRUED—22-8-7, CRS '53, as amended by Chap. 72, S.L. 1959; 40-1-2, 3 and 4, CRS '53.

**LIQUOR—SECRETARY OF STATE****60-3354**

Hon. George J. Baker  
 Secretary of State  
**January 6, 1960**

Under 75-2-6(2), CRS '53, the secretary of state as state licensing authority is not empowered to make a ruling authorizing the issuance of free licenses for the home manufacture of a maximum of 200 gallons of wine per year solely for family use.

STATUTES CONSTRUED—75-2-6(1), (2), 7, 17 and 35, CRS '53.

**PARKS AND RECREATION****60-3355**

Mr. Harold W. Lathrop, Director  
 State Park and Recreation Board  
**January 6, 1960**

The rules and regulations relating to the licensing and

numbering of motorboats, fees charged therefor, and operation thereof, as adopted by the board at their regular meeting held December 10, 1959, are lawful, will be in full force and effect April 1, 1960, and are consistent with Chap. 60, S.L. 1959, entitled "Motorboats."

STATUTES CONSTRUED—Chap. 60, S.L. 1959.

### NATURAL RESOURCES—METAL MINING

60-3356

Mr. Edward L. Clark, Director  
Department of Natural Resources

**January 8, 1960**

The Metal Mining Fund Board cannot provide or donate funds, office space, supplies, or personnel for the support of a trade organization, namely, The Colorado Mining Association, a private nonprofit association.

### ELECTRICAL BOARD

60-3357

Colorado State Electrical Board

**January 11, 1960**

Interpretation of provisions of Chap. 117, S.L. 1959, authorizing inspection of electrical installations and collection of fees therefor.

STATUTES CONSTRUED—Chap. 117, S.L. 1959.

### INITIATIVE AND REFERENDUM—LEGISLATURE

60-3358

Hon. Howard B. Propst  
House of Representatives

**January 12, 1960**

That a referred bill on matters other than raising revenue or making appropriations would have to be designated by the Governor is based on the fact that in making provisions for designation of subjects by the Governor, the people in adopting Art. V, Sec. 7, of the State Constitution, made specific exceptions which specific exceptions do not include referred measures.

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

**LEGISLATION—TAXATION****60-3359**

Hon. Ray H. Black  
State Representative

**January 13, 1960**

Proposed House Bill 18, Local Government, concerning the assessment of property, of the Second Regular Session, 42nd G.A., analyzed and authorities cited.

**INSURANCE—COUNTIES—PUBLIC WELFARE****60-3360**

Mr. Leon H. Snyder  
County Attorney of El Paso County

**January 13, 1960**

The county may legally pay the employer's share on a group life insurance plan from county welfare funds which are derived solely from county revenue sources subject to the provisions of 119-1-14, CRS '53, but the employer's share cannot be paid from any portion of county welfare funds received from the state. 119-1-15, CRS '53.

STATUTES CONSTRUED—119-1-14 and 15, CRS '53.

**INSURANCE—FUNERAL-EMBALMERS BOARD****60-3361**

Mr. Sam N. Beery  
Commissioner of Insurance

**January 14, 1960**

All funds received from a contract or contracts dealing with prepaid or prearranged services or merchandise must be placed in securities or trust companies approved by the insurance department. See also Opinion 58-3220.

STATUTES CONSTRUED—72-17-1, CRS '53.

**CHILDREN—BOARD OF STANDARD CHILD CARE****60-3362**

Mr. Ray S. Harry, Director  
Board of Standards of Child Care

**January 15, 1960**

Organizations operating as "pre-schools" for the care and training of children under the age of 16 years, when not a part of or under the auspices of a private, public, or parochial school, are subject to the supervision of the Board of Standards of Child Care.

STATUTES CONSTRUED—22-12-1(1), CRS '53.



**LEGISLATION****60-3363**

Hon. Roy R. Romer  
State Representative

**January 21, 1960**

Senate Bill 34, 2nd Reg. Sess. 42nd G.A., as proposed, known as the "Uniform Local Option Sales and Use Tax Law" is not a bill for raising revenue within the meaning of Art. V, Sec. 31, State Constitution.

CONSTITUTION CONSTRUED—Art. V, Sec. 31, State Const.

**INHERITANCE AND GIFT TAXES****60-3364**

Mr. Neil Tasher  
Inheritance Tax Commission

**January 20, 1960**

The 1959 amendment to 152-5-44, CRS '53 provides for the filing of disclaimers in testate or intestate estates. If no disclaimer is filed within the six months statutory period, the inheritance tax only is imposed upon the person who ultimately receives the property through the disclaimer. If the disclaimer is not filed within the six months period both an inheritance and gift tax will be imposed.

STATUTES CONSTRUED—152-5-44, CRS '53 (Supp).

**INSURANCE****60-3365**

Mr. Sam N. Beery  
Commissioner of Insurance

**January 21, 1960**

The membership certificate and application for membership forms submitted by Western Home Benevolent Association, an unincorporated organization, which provide death benefits to designated beneficiaries on the assessment plan is insurance and comes under the supervision of the Insurance Department.

STATUTES CONSTRUED—72-1-1(2), CRS '53, and 72-3-26(1), CRS '53.

**OIL INSPECTION****60-3366**

Hon. Stephen L. R. McNichols  
Governor of Colorado

**January 25, 1960**

The Blend-O-Matic pump, insofar as blends are concerned,

does mix gasolines within the meaning of 100-2-20, CRS '53, which makes it unlawful to mix liquid fuels which are sold or offered for sale under any trade mark or trade name in general use.

STATUTES CONSTRUED—100-2-20, CRS '53.

### OIL INSPECTION

60-3367

Mr. Harvey Houston, Director  
Oil Inspection Department

**January 29, 1960**

A vent line or pipe becomes a part of a storage tank if it is screwed or welded to the tank.

The State Oil Inspector has the power to determine if a vent or pipe is placed in an unsafe position, but does not have the power to determine the size of vent lines or pipes.

STATUTES CONSTRUED—100-2-23, CRS '53.

### MARRIAGE

60-3368

Mr. Robert K. Hadjian  
Staff Judge Advocate Section  
Fort Ord, California

**February 8, 1960**

It has been heretofore held that marriages by proxy could not be performed in this state due to the proviso in the statute requiring proof of absence from venereal disease. Since the State Department of Health will now recognize certificates from laboratories outside of the state certifying to proof of absence from venereal disease and all other provisions of the statute are complied with even if one of the parties is outside of the state, it is now held that a marriage by proxy is not invalid in this state.

### LEGISLATION—TAXATION

60-3369

Hon. David Clarke  
State Senator

**February 9, 1960**

Constitutionality of the amendments proposed to 137-6-31, CRS '53 as contained in House Bill 89, relating to taxation, requiring determinations of the state tax commission and state board of equalization to be made by written order, etc., analyzed and authorities cited.

CONSTITUTION CONSTRUED—Art. X, Sec. 15, State Const.

**LEGISLATION—TAXATION****60-3370**

Hon. David Clarke  
State Senator

**February 9, 1960**

Constitutionality of the amendments proposed to various articles of Chapter 137, CRS '53, as contained in House Bill 18, relating to the assessment of property, analyzed and authorities cited.

CONSTITUTION CONSTRUED—Art. X, Sec. 3, State Const.

**COLORADO GENERAL HOSPITAL—FEES****60-3371**

Robert J. Glaser, M.D.  
University of Colorado Medical Center

**February 11, 1960**

Costs of operation such as "secretarial and nursing staffs, cost of billing, etc.," incident to the collection of professional fees and costs of establishing and maintaining the fund in which the professional fees are deposited may not be deducted from said fund.

If these costs are not deducted from the fund, they may not be deducted from the fees collected before they are credited to the fund and the balance placed in the fund. The amount of fees collected must be placed in the subject fund and used *solely* for the purposes for which the fund is established.

STATUTES CONSTRUED—124-4-6(2), CRS '53.

**VITAL STATISTICS—FEES—CITIES AND TOWNS****60-3372**

Mr. H. C. Anderson  
City Attorney for the City of Brush

**February 17, 1960**

Distribution of local registrar's fees.

STATUTES CONSTRUED—66-8-23, CRS '53.

**CRIMINAL PROCEEDINGS—MOTOR VEHICLES  
SCHOOL DISTRICTS****60-3373**

Leo W. Rector, Esq.  
District Attorney  
Colorado Springs, Colorado

**February 17, 1960**

A company transporting school children under contract

with various school districts, while complying with the Motor Vehicle Code but not complying with the specifications of the school bus regulations as adopted by the State Board of Education and the Motor Vehicle Division of the Department of Revenue, does not constitute a misdemeanor justifying the bringing of criminal proceedings.

STATUTES CONSTRUED—13-4-85, CRS '53.

### INSURANCE

60-3374

Mr. Sam N. Beery  
Commissioner of Insurance

**February 17, 1960**

Where a person or company is issuing, soliciting or effectuating contracts of insurance not in conformity with the laws of this state, the Commissioner of Insurance need not and should not approve such an operation and can disapprove such a person or company as a surplus line carrier.

STATUTES CONSTRUED—72-14, CRS '53.

### LEGISLATURE—FEES AND SALARIES

60-3375

Mr. E. G. Spurlin  
State Controller

**March 3, 1960**

Constitutionality and effect of Senate Joint Resolution No. 3, 2nd Regular Session, 42nd G.A., relating to the General Assembly and providing that members thereof shall be paid compensation for their services "together with all actual and necessary travelling expenses" analyzed. Held that said resolution not being a law within the meaning of the constitution cannot effect an increase in compensation for members of future general assemblies.

CONSTITUTION CONSTRUED—Art. V, Secs. 6 and 17, State Const.

### NATIONAL GUARD—FEDERAL—EMPLOYEES WORKMEN'S COMPENSATION

60-3376

Major General R. D. Charlton  
The Adjutant General

**March 3, 1960**

Persons employed pursuant to contract entered into between Adjutant General's office and federal government are employees of the State of Colorado, and as such entitled to compensation from the State in case of compensable accidental

injury as provided in the Workmen's Compensation Act of Colorado.

STATUTES CONSTRUED—81-5-1, CRS '53.

### TRAINING SCHOOL FOR GIRLS

60-3377

Miss Betty Portner, Superintendent  
State Training School for Girls

March 7, 1960

Money belonging to inmates whose whereabouts are unknown cannot be transferred to the Girls' Chapel Fund.

Reward money may not be paid to persons assisting in returning escapees to the school. See Opinions 1746-50 and 2515-53.

STATUTES CONSTRUED—152-14-14, CRS '53.

### COUNTY CLERKS—FEES AND SALARIES

60-3378

Sherwood E. Walrod, Esq.  
District Attorney

March 7, 1960

Fees provided for county clerks by 49-6-27(1), CRS '53 do not belong to the clerk personally in addition to his salary.

CONSTITUTION CONSTRUED—Art. XV, Sec. 15, State Const.

### OATH OF ALLEGIANCE—SCHOOLS—UNIVERSITIES

60-3379

Dean Edward C. King  
School of Law  
University of Colorado

March 15, 1960

Sec. 123-17-14 to 16, CRS '53, requiring teachers to subscribe to an oath or affirmation, cannot be interpreted as excluding citizens of other states and countries, even though they are visitors and have only temporary appointments.

STATUTES CONSTRUED—123-17-14 to 16, CRS '53.

### INSURANCE—SCHOOL DISTRICTS

60-3380

Charles W. Kreager, Esq.  
Attorney at Law

March 28, 1960

Legality of an insurance policy covering school buses, etc.

STATUTES CONSTRUED—24-4-3, CRS '53 Supp. 123-10-67 and 68, CRS '53 Supp.

**TAXATION—MOTOR VEHICLES****60-3381**

Mr. Robert A. Theobald  
 Director of Revenue  
**March 29, 1960**

With further reference to Opinion No. 59-3342, 13-5-1(1), CRS '53, as amended, requires the owner or operator of a trailer coach or mobile home to register it on January 1st, of each calendar year, making no mention that residence is a requisite for such registration, and to pay a registration fee and specific ownership tax thereon. 13-5-1(4), as amended, deals with vehicles registered in other states and does mention residence or gainful employment within this state as a requisite for registration in Colorado. 13-5-3(2), as amended, requires payment of the specific ownership tax at the time of registration.

STATUTES CONSTRUED—13-5-1(1), as amended; 13-5-3(2), as amended; 13-5-1(4), as amended, CRS '53.

**INDUSTRIAL COMMISSION****60-3382**

Mr. Truman C. Hall, Chairman  
 Industrial Commission of Colorado  
**March 30, 1960**

Private employment agency.

A business whose operation is within the statutory definition of a private employment agency but which is located outside the established boundaries of any city or town is not required to obtain a private employment agency license from the Industrial Commission.

STATUTES CONSTRUED—80-18-3, CRS '53.

**CIVIL SERVICE****60-3383**

Hon. William R. Welsh, Jr., President  
 State Civil Service Commission  
**April 1, 1960**

Re: 26-2-3, CRS '53, as amended by Chap. 80, S.L. 1959, Section 1, paragraph (11), Classified Civil Service Salary Law.

The above section does not make it mandatory for the civil service commission to place an employee in a grade which would permit him to receive at least a 5% or \$35.00 increase, whichever is less, in his monthly salary on his anniversary date unless the pay grade established for his position contained steps above the employee's current salary which would permit the increase.

STATUTES CONSTRUED—26-2-3, CRS '53, as amended by Chap. 80, S.L. 1959.

**ELECTIONS****60-3384**

Hon. George J. Baker  
Secretary of State  
**April 5, 1960**

Since 49-5-13, CRS '53, as amended, does not allow time for printing of ballots from the time the Secretary of State certifies his list to the county clerk, to the time when the printed ballots are to be in possession of the county clerks, section 49-9-5, as amended, must be considered a directory provision and not mandatory upon the county clerks, and the printed ballots should be in the hands of the county clerks within such reasonable time as would be a substantial compliance with the statute.

STATUTES CONSTRUED—49-9-5, CRS '53 as amended by Chap. 113, S.L. 1959.

**HIGHWAYS—PLANNING DIVISION****60-3385**

Mr. W. M. Williams, Executive Director  
Colorado State Planning Division  
**March 21, 1960**

Plans, specifications and contracts covering construction projects planned by the highway department, including contracts with an architect for professional services, are not subject to the provisions of 106-1-10, CRS '53, as amended by Chap. 196, S.L. 1957. Section 3-3-3(2) and (5), CRS '53, as amended by Chap. 33, S.L. 1959, does not apply to the construction of the building contemplated by the department of highways.

STATUTES CONSTRUED—106-1-10, CRS '53, as amended by Chap. 196, S.L. 1957; 3-3-3(2) and (5), CRS '53 as amended by Chap. 33, S.L. 1959.

**SAVINGS AND LOAN****60-3386**

Guy L. Reed, Commissioner  
Savings and Loan Commission  
**April 6, 1960**

Savings and loan associations chartered under Colorado law cannot pledge securities to guarantee deposits of public money.

STATUTES CONSTRUED—130-4-6, CRS '53; 139-39-6, CRS '53.

**COURT FEES**

60-3387

Mr. William J. Madden  
 Judicial Department  
**April 7, 1960**

Docket fees to be charged by clerks of district courts in proceedings involving water adjudications, enforcement of support actions under the Reciprocal Support Act and transfer of cases from justices of the peace courts to district courts under Section 79-5-4, CRS '53, enumerated.

STATUTES CONSTRUED—147-9-19(4), CRS '53; 56-5-1, CRS '53; 79-5-4, CRS '53; 56-5-1(4), CRS '53.

**GROUND WATER**

60-3388

Mr. J. E. Whitten  
 State Engineer  
**April 8, 1960**

Ground Water Code—Chapter 147, Article 19, CRS '53.

The state engineer is not under any obligation to notify all known well owners to file statements of use as required by statute.

If a well owner is required to register his use as provided by 147-19-2, but does not do so within the time specified, the state engineer has no authority to receive and file such statement of use.

A well owner, holding a water right under a decree of the district court, is required to register the statement of use of his well as specified in 147-19-2, CRS '53.

STATUTES CONSTRUED—147-19-2, CRS '53.

**CITIES AND TOWNS—STATE BOARD OF AGRICULTURE TAXATION**

60-3389

Mr. C. L. Terrell, Secretary  
 State Board of Agriculture  
**April 12, 1960**

The State Board of Agriculture is not obligated to pay share of special improvement assessments on state-owned land which has been annexed to the City of Fort Collins.

**INSURANCE—NATIONAL GUARD**

60-3390

Mr. Sam N. Beery  
 Commissioner of Insurance  
**April 18, 1960**

Under the terms "employees" and "public employees" as



used in the Colorado statutes, it appears that national guardsmen are not "employees" of the state or any branch of the government and members of the Colorado National Guard Association as distinguished from the Colorado National Guard itself could not qualify for group insurance under 72-6-1, CRS '53, as amended in 1955.

STATUTES CONSTRUED—72-6-1, CRS '53.

**DEPARTMENT OF REVENUE—MOTOR VEHICLE  
PUBLIC FUNDS**

**60-3391**

Mr. Robert A. Theobald  
Director, Department of Revenue  
**April 19, 1960**

Sec. 13-5-30, a new section added to 13-5, CRS '53, in Chap. 206, S.L. 1959, specifically concerns an additional registration fee to be charged for 1960-61 and 62. The General Assembly failed to provide a method of distribution based upon a prior year such as appears in 120-12-7 and 8, as amended, therefore the Department of Revenue has no authority under this section to use 1959 registration certificates for the purpose of allocating the distribution of such fees between counties and municipalities. There would be no legal objection to periodic distributions during the year providing they are based upon actual registrations as reported by the counties.

STATUTES CONSTRUED—13-5, CRS '53, as amended by Chap. 206, S.L. 1959.

**INSURANCE—BANKS**

**60-3392**

Sam N. Beery  
Commissioner of Insurance  
**April 20, 1960**

The term "demand deposit" as used in 72-2-8(5), CRS '53 is one which may be immediately withdrawn upon demand.

The term "time deposit" which must remain in the bank 90 days before being subject to withdrawal is not a "demand deposit."

STATUTES CONSTRUED—72-2-8, CRS '53.

**INSURANCE**

**60-3393**

Sam N. Beery  
Commissioner of Insurance  
**April 25, 1960**

The commissioner of insurance does not have authority to revoke or suspend the certificate of authority of an insurance company which has complied with the specific requirements of the insurance laws but which has failed to make a profit or be "successful."

STATUTES CONSTRUED—72-1-10, 11 and 36, CRS '53.

**INSURANCE****60-3394**

Sam N. Beery  
Commissioner of Insurance

**April 25, 1960**

Sections 72-5-1 to 4, CRS '53, must be complied with before a license may be issued to a mutual protective association to cover losses from damage to crops resulting from hail.

STATUTES CONSTRUED—72-5-1 to 4, CRS '53.

**TAXATION—SCHOOL DISTRICTS****60-3395**

Mr. Charles W. Kreager  
Sterling, Colorado

**April 22, 1960**

State-owned land (or school district land) cannot be assessed by municipal corporations for special improvements in the absence of legislative authority for such assessment. See Opinion 60-3389.

**LEGISLATIVE COUNCIL****60-3396**

Hon. Charles R. Conklin  
Speaker of the House

**April 28, 1960**

A committee appointed by the Legislative Council has the power to "subpoena witnesses, take testimony under oath, and to assemble records and documents, by subpoena duces tecum or otherwise."

STATUTES CONSTRUED—63-5-2 and 6, CRS '53.

**OPERATOR AND CHAUFFEURS LICENSE  
REVENUE DEPARTMENT****60-3397**

Mr. Robert A. Theobald  
Director of Revenue

**May 2, 1960**

The Director of Revenue has authority pursuant to 13-3-16, CRS '53, as amended by Chap. 37, S.L. 1959, to promulgate a regulation affecting the renewal of operator's and chauffeur's licenses where licensees have been convicted of traffic violations resulting in accumulation of three or more points.

STATUTES CONSTRUED—13-3-16, CRS '53, as amended by Chap. 37, S.L. 1959.

**TAXATION****60-3398**

Mr. John R. Seaman, Chairman  
Colorado Tax Commission

**May 5, 1960**

Application of the provisions of Chap. 253, S.L. 1959, relating to the general property tax and providing for the assessment of structures commenced and completed after the official assessment date in any year.

STATUTES CONSTRUED—137-3-3, CRS '53, as amended by Chap. 253, S.L. 1959.

**INSURANCE****60-3399**

Mr. Sam N. Beery  
Commissioner of Insurance

**May 7, 1960**

Re: Membership certificates issued by Federal Auto Club of America, Inc.

The legal protection provisions of the above company constitute doing an insurance business in Colorado without considering the other services involved.

The insurance laws provide a remedy by complaint to the district attorney, and also injunction proceedings may be instituted.

STATUTES CONSTRUED—72-1-1(2), 8 and 16, CRS '53.

**INSURANCE****60-3400**

Mr. Sam N. Beery  
Commissioner of Insurance

**May 9, 1960**

The deposit as set forth in 72-1-6(1), CRS '53, is the one required of mutual benefit associations before the issuance of the certificate of authority may be made.

STATUTES CONSTRUED—72-1-6(1), CRS '53.

**ELECTIONS—COUNTY COMMISSIONERS****60-3401**

Hon. Steve McNichols, Governor

**May 9, 1960**

The Governor is the appointing authority to whom a resignation of a county commissioner should be submitted and by whom it should be accepted.

A person elected or appointed to an office need only be

qualified at the time of his induction into office rather than at the time of appointment or election.

### NURSING

60-3402

Mrs. Madolin M. Dickinson  
Director of Nursing Education and Licensing  
May 10, 1960

Practical nurses and nurses' aides, who are employed for compensation and who administer intravenous fluids and medications that have been prescribed by a licensed physician, are practicing professional nursing in violation of the 1957 act relating to professional nurses.

STATUTES CONSTRUED—97-2-25(1) (c), CRS '53 (Supp).

### SCHOOL DISTRICTS

60-3403

Mr. T. J. Murphy, Superintendent  
Sheridan Union High School  
Englewood, Colorado  
May 10, 1960

Union high school districts as well as school districts of the first and second class may purchase land on deferred payment without submitting the matter to a vote of the qualified electors, provided that no debt is thereby created.

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

STATUTES CONSTRUED—123-14-15, CRS '53 (Supp).

### INDUSTRIAL COMMISSION

60-3404

Mr. Truman C. Hall, Chairman  
Industrial Commission of Colorado  
May 12, 1960

The new mortality table provided by Chap. 45, S.L. 1960, should be applied to all matters coming before the commission for determination of the amount of money due for permanent disability on and after the effective date of the act, which is February 12, 1960, where the commission has not yet determined, in terms of percentage, the extent of general permanent disability the particular accident has caused. The old table should be applied to all such cases where the commission has so determined the extent of general permanent disability prior to the effective date of the act.

STATUTES CONSTRUED—53-1-3, CRS '53, as amended by Chap. 45, S.L. 1960.

**MOTOR VEHICLES  
PARK AND RECREATION****60-3405**

Mr. Harold W. Lathrop, Director  
State Park and Recreation Board

**May 18, 1960**

All sheriffs, their deputies, constables, marshalls, policemen, other peace officers, and boat wardens deputized by the Director of the Park and Recreation Board have the authority to enforce the provisions of the Colorado Boating Act, but not the provisions of the Federal laws, in the respective territories of said officers throughout the state, including navigable waters.

“Peace officers” defined.

STATUTES CONSTRUED—Sec. 2(2), Chap. 60, S.L. 1959, as amended by Chap. 35, S.L. 1960.

**INSURANCE****60-3406**

Mr. Sam N. Beery  
Commissioner of Insurance

**May 19, 1960**

In computing the tax to be paid by companies domiciled in another state and doing business in Colorado the *aggregate* amount of taxes, fees, etc., which a Colorado company doing a similar amount and type of business in the other state should be ascertained. This is the amount the foreign company should pay to Colorado, unless the amount is less than the rate stated in 72-1-14(1), CRS '53, as amended.

STATUTES CONSTRUED—72-1-14(2), CRS '53, as amended.

**AUDITOR****60-3407**

Hon. Homer F. Bedford  
State Auditor

**May 27, 1960**

Chapter 110, CRS '53 applies only to audits of local governments specifically mentioned therein and would not apply to junior colleges, fire protection districts, drainage districts and other local governments.

STATUTES CONSTRUED—110-1-5(1) and 6, CRS '53.

**BUREAU OF MINES—FEDERAL—HIGHWAYS****60-3408**

Mr. G. A. Frantz, Jr.  
Deputy Commissioner  
State Bureau of Mines

**June 1, 1960**

The Bureau of Mines has no jurisdiction over contractors engaging in road construction projects within the boundaries of the Rocky Mountain National Park so as to subject them to inspections relative to the Bureau's safety code.

STATUTES CONSTRUED—Session Laws of 1929, pages 475-476.

**COURT FEES****60-3409**

Mr. Clyde O. Martz  
Judicial Administrator

**June 1, 1960**

One docket fee of \$10.00 should be charged in a criminal case wherein two or more defendants are charged jointly.

Docket fee to be charged for a supplemental proceeding for the issuance of a new title certificate under the Torrens Title Registration Law. See Opinion 60-3387.

STATUTES CONSTRUED—56-5-5, CRS '53; 56-5-1(5), CRS '53; 56-5-1(4), CRS '53, as amended.

**LIQUOR—CITIES AND TOWNS****60-3410**

Mr. Don Shook  
Manitou Springs City Attorney

**June 2, 1960**

The City of Manitou Springs cannot enact an ordinance prohibiting the sale of 3.2 beer to persons under twenty-one years of age.

STATUTES CONSTRUED—75-1-7, CRS '53; 75-1-15, CRS '53.

**LEGISLATION****60-3411**

Hon. Roy H. McVicker  
State Senator

**June 2, 1960**

Amendment No. 2 (1960), House Concurrent Resolution No. 4 provides the same constitutional basis as Amendment No. 3 (1958), House Concurrent Resolution No. 14, regarding setting up of alternate forms of county government, via (1) enabling law by legislature and (2) approval by vote of people in county concerned.

**CORONER—CITIES AND TOWNS  
COLORADO GENERAL HOSPITAL**

60-3412

Mr. Robert L. Denholm, Administrator  
University of Colorado Medical Center  
**June 7, 1960**

Duties and authority of coroners and the relationship between the office of the Coroner of the City and County of Denver and the University of Colorado Medical Center analyzed and defined.

STATUTES CONSTRUED—35-6-2, 6 and 9, CRS '53; 66-8-7, CRS '53.

**GAMBLING AND LOTTERIES**

60-3413

Mr. George J. Baker  
Secretary of State  
**June 14, 1960**

Although the game of SKRAM has some similarities with the game of bingo or lotto, it is not the specific kind of game of chance commonly known as bingo or lotto and does not come within the definition of "game of chance" and its playing may not be licensed under the constitutional amendment and statute.

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

STATUTES CONSTRUED—Chap. 228, S.L. 1959.

**INSURANCE**

60-3414

Mr. Sam N. Beery  
Commissioner of Insurance  
**June 16, 1960**

A mutual insurance company, organized under the Mutual Act of 1921, which has a surplus equal to the capital required of a domestic stock insurance company transacting the same kinds of insurance would be authorized to issue non-assessable policies.

STATUTES CONSTRUED—72-5-10, CRS '53, as amended in 1955.

**ELECTIONS**

60-3415

M. E. H. Smith, Esq.  
District Attorney  
**June 16, 1960**

A vacancy is not filled by the election until the person

elected for the regular term qualifies and takes office which would be on or after the beginning of the new term. The person appointed to fill the vacancy continues to hold the office for the remainder of the unexpired term as provided by statute.

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

CONSTITUTION CONSTRUED—Art. 14, Sec. 9, State Const.

### CITIES AND TOWNS

**60-3416**

O. F. Adams, Esq.  
Court House  
Trinidad, Colorado  
**June 10, 1960**

Proposed ordinance for recall of councilmen of the City of Trinidad as submitted would not be in violation of Art. XXI, Sec. 4 of the State Constitution.

CONSTITUTION CONSTRUED—Art. XXI, Sec. 4, State Const.

### COUNTY COMMISSIONERS—PUBLIC UTILITIES CITIES AND TOWNS

**60-3417**

Mr. Adolph Kuss, Sr.  
Chairman, Board of County Commissioners  
Leadville, Colorado  
**June 15, 1960**

The Board of County Commissioners of Lake County does not have the power to fix rates for the furnishing of water by the Leadville Water Company, a privately owned public utility presently furnishing water to the inhabitants of the City of Leadville and the surrounding area near Leadville, that power being vested in the Public Utilities Commission.

CONSTITUTION CONSTRUED—Art. XVI, Sec. 8, State Const.

### SUPREME COURT

**60-3418**

Mr. George A. Trout  
Clerk of the Supreme Court  
**June 22, 1960**

The Supreme Court loses jurisdiction to grant a stay of execution if it has issued a remittitur and returned a case to the trial court.



**TRAINING SCHOOLS****60-3419**

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

**June 23, 1960**

The State Home and Training School at Wheat Ridge cannot purchase tracts of land and pay for the tracts under the language of the long appropriation bill, and has no authority to condemn property for acquisition by the state if the state's offering price is rejected by the owner.

**ELECTION—CITIES AND TOWNS—COUNTY CLERKS****60-3420**

Hon. George J. Baker  
Secretary of State

**July 12, 1960**

The Denver Election Commission in the City and County of Denver and county clerks in other counties of the state may not deputize qualified electors for the purpose of procuring and filing forms of verified applications for registrations by affidavit under the provisions of 49-6-15, CRS '53 as amended by Chap. 40, Sec. 1, S.L. 1956.

STATUTES CONSTRUED—49-6-15, CRS '53 as amended by Chap. 40, Sec. 1, S.L. 1956.

**CIVIL SERVICE****60-3421**

Mr. William R. Welsh, Jr., President  
State Civil Service Commission

**July 12, 1960**

The Supreme Court decision in *Sterling v. Archambault*, 138 Colo. 222, does not change former opinions which held that a person released on parole is ineligible for civil service employment.

**JURIES—COUNTIES****60-3422**

Mr. Waldo T. Vinger, Chairman  
Board of County Commissioners

**July 14, 1960**

The county should pay the expenses of the grand jury which was empaneled in the October term of the district court and continued its deliberation and investigation into the May 1960 term, the continuation being upon the order of the Judge of the District Court. (Cases cited.)

**SOIL CONSERVATION DISTRICTS****60-3423**

Mr. Clarence M. Svedman, Secretary  
 Colorado State Soil Conservation Board  
**July 15, 1960**

The owners of the land sought to be withdrawn from the district may petition the board of supervisors of the district for withdrawal of the lands from the district.

STATUTES CONSTRUED—128-1-15 (5) (a), CRS '53 as amended in 1959.

**OIL INSPECTION****60-3424**

Mr. Harvey Houston  
 Oil Inspection Director  
**July 15, 1960**

It is unlawful to use a temperature compensator as described in connection with the commercial sale of liquefied petroleum gas.

STATUTES CONSTRUED—151-1-3, 32 (1) (5), CRS '53.

**ANTI-DISCRIMINATION COMMISSION****60-3425**

Mr. Roy M. Chapman, Director  
 Anti-Discrimination Commission  
**July 22, 1960**

The statute does not give the Anti-Discrimination Commission authority to suspend or revoke a license. The grounds for suspending or revoking a license is a matter for each licensing agency to determine.

STATUTES CONSTRUED—80-24, CRS '53 (Supp); 25-3, CRS '53 (Supp); 69-7, CRS '53 (Supp).

**SPECIFIC OWNERSHIP TAX—SCHOOL DISTRICTS****60-3426**

Mr. Carl M. Shinn  
 District Attorney  
 Lamar, Colorado  
**July 28, 1960**

The specific ownership taxes should be distributed to the bond and interest fund of the newly organized school district with reference to the total ad valorem taxes for this fund. The assessed valuation for each bond levy must be considered in determining the amount of specific ownership taxes to be apportioned or distributed to this fund. The county treasurer is not responsible for the payment of school district obligations.

STATUTES CONSTRUED—123-25-28(1), CRS '53; 123-9-5 and 6, CRS '53; 123-11-16, CRS '53; 13-5-9(2), CRS '53.

**PUBLIC FUNDS—STATE TREASURER**

60-3427

Mr. Tim Armstrong  
State Treasurer  
July 29, 1960

State funds may be invested in Federal National Mortgage Short Term Discount Notes in the manner set forth in statement of facts submitted; however, it should be noted that the use of the method of handling such investment could entail certain elements of risk and the treasurer and his surety would be liable under his bond for any loss occasioned thereby.

CONSTITUTION CONSTRUED—Art. X, Sec. 12, State Const.

STATUTES CONSTRUED—83-1-1, CRS '53.

**COURT FEES**

60-3428

Mr. Clyde O. Martz  
Judicial Administrator  
State Capitol, Denver  
August 5, 1960

Fees to be charged by courts of record in the following proceedings:

1. County court, appeals of criminal cases from justice courts and appeals from municipal courts.
2. Where guardianship or conservatorship estate is transformed into a decedent's estate and then into a trust estate.
3. Certification of records, proceedings or papers on file in cases initiated before July 1, 1958.
4. Where venue is changed on a case in district court and the initiating court has paid 30%, or one-third of the fees collected.

STATUTES CONSTRUED—1. 56-5-3, CRS '53, as amended. 79-15-11, CRS '53, as amended.

2. 56-5-2, CRS '53 (1960 Supp).
3. Chap. 44, S.L. 1958.
4. 56-5-1(6), CRS '53.

**INSURANCE—CORPORATIONS**

60-3429

Mr. Sam N. Beery  
Commissioner of Insurance  
August 8, 1960

The Commissioner of Insurance is without authority to require funds of a newly formed insurance company received from the sale of stock to be held in escrow prior to issuing a certificate of authority to engage in the insurance business.

STATUTES CONSTRUED—Chap. 32, Sec. 14, p. 128, S.L. 1958.

**TAXATION****60-3430**

Mr. John R. Seaman, Chairman  
Colorado Tax Commission

**August 2, 1960**

The Mountain States Telephone and Telegraph Company is not entitled to a refund of taxes paid on account of Fruitvale Water and Sanitation District. Interpretation of the words "of which" appearing in Colorado Revised Statutes of 1953 supersedes all other published enactments of the law. (In re Interrogatories, 127 Colo. 100.)

STATUTES CONSTRUED—89-3-3, CRS '53.

**SCHOOL DISTRICTS****60-3431**

Mr. John H. Swenson  
Acting Commissioner of Education

**August 11, 1960**

Payment of attorney fees for contesting the validity of the School District Organization Act of 1957 is authorized by 123-25-36(4), CRS '53 (Supp).

STATUTES CONSTRUED—123-25-36(4), CRS '53 (Supp).

**SCHOOLS****60-3432**

Mr. Joseph T. Callahan  
County Attorney of Yuma County

**August 30, 1960**

The duties of county superintendent and teacher are inconsistent and would not be proper for one person to hold both positions.

STATUTES CONSTRUED—123-2-2 and 4, CRS '53; 123-1-21, CRS '53.

**ACTIONS—SCHOOL DISTRICTS****60-3433**

George R. Armstrong, Esq.  
Cortez, Colorado

**August 30, 1960**

Liability and legality of a school district establishing a student patrol system. The matter of state immunity has been upheld by the Supreme Court on May 31, 1960.

**WATER DISTRICTS****60-3434**

Brookridge Heights Water and Sanitation District  
Littleton, Colorado

**August 31, 1960**

Compensation of board members. The power of the board

to fix salaries, including the increase and reduction thereof, within the statutory maximum, must be exercised by specific affirmative board action.

CONSTITUTION CONSTRUED—Art V, Sec. 30, State Const.

**PUBLIC FUNDS—FEDERAL—GAME AND FISH**

60-3435

Mr. E. G. Spurlin  
State Controller

**September 1, 1960**

Where an expenditure is to be made for capital construction, as defined in Chap. 33, S.L. 1959, the provisions of said chapter must be complied with in all cases where state funds are involved, irrespective of the fact such funds may be supplemented by federal moneys which can be used for such capital construction purposes.

STATUTES CONSTRUED—Chap. 33, Sec. 1(b), S.L. 1959.

**PARKS AND RECREATION—COUNTIES—TAXATION**

60-3436

Mr. E. D. Davis  
County Attorney

**September 1, 1960**

A county may not purchase certain real estate and then convey it to the National Park Service for use as a park headquarters. Powers of county commissioners set forth.

A county may not own and operate television and translator facilities and assess only the property within the area served.

STATUTES CONSTRUED—36-1-1, 3 and 7, CRS '53; Chap. 56, S.L. 1960.

CONSTITUTION CONSTRUED—Art. X, Sec. 3, State Constitution (amended 1956).

**PUBLIC FUNDS—STATE BOARD OF AGRICULTURE**

60-3437

Mr. C. L. Terrell, Secretary  
State Board of Agriculture  
Colorado State University  
Fort Collins, Colorado

**September 1, 1960**

The board is not authorized to spend money received from the sale of land for the purchase of other more desirable land. Money from the sale of land must be deposited with the State

Treasurer as custodian and may be withdrawn only when authorized by legislative action.

STATUTES CONSTRUED—124-11-2, CRS '53; 130-4-2, 3, CRS '53; Chap. 33, Sec. 1, S.L. 1959.

**FIREMEN'S PENSION FUND  
EMPLOYMENT SECURITY**

60-3438

Mr. Bernard E. Teets  
Executive Director  
Department of Employment  
**September 2, 1960**

Firemen of the City of Thornton will not be covered under the Colorado Firemen's Pension Fund until the first monies are distributed to the City of Thornton subsequent to the 1960 census in accordance with the provisions of 139-50-4, CRS '53. (See also Opinion No. 58-3178.)

STATUTES CONSTRUED—139-50-4, CRS '53.

**COURT FEES**

60-3439

Judicial Department  
State Capitol  
Denver, Colorado  
**September 2, 1960**

Relatives and next of kin of mental patients may not be charged with court costs, medical commission fees, guardian ad litem fees, transportation costs and sheriff's fees connected with short-term or long-term involuntary hospitalization commitments with the possible exception that a husband may be so charged where the mental patient is his wife and parents may be so charged where the mental patient is their minor child. A docket fee in such a proceeding may be collected from the first person filing the petition, whether he is a relative or not.

STATUTES CONSTRUED—Chap. 71, Art. 1, CRS '53; 36-10-7, CRS '53.

**CORPORATIONS—SECRETARY OF STATE**

60-3440

Hon. George J. Baker  
Secretary of State  
**September 9, 1960**

It is within the power of the Secretary of State to amend or correct its records by a nunc pro tunc entry in order to reinstate a corporation as of the time on which the annual report and franchise tax were received, thereby avoiding the involuntary dissolution resulting from the law which went into effect on May 18, 1959. (Chap. 83, S.L. 1959.)

STATUTES CONSTRUED—Chap. 83, S.L. 1959.

**EMPLOYEES—POLICE PENSION****60-3441**

Mr. R. R. Harris  
 Police Pension Board  
 Trinidad, Colorado

**September 12, 1960**

Time served as an employee in a sheriff's office cannot be counted in computing the service required to be entitled to benefits under 139-49-15, CRS '53.

STATUTES CONSTRUED—139-49-15, CRS '53.

**ELECTIONS****60-3442**

James M. Shelton  
 Greeley, Colorado

**September 21, 1960**

A nominee by a vacancy committee must qualify as a registered member of the political party for at least one year prior to the date of the party's assembly.

STATUTES CONSTRUED—49-4-24(4), CRS '53.

**CIVIL SERVICE—VETERANS****60-3443**

Mr. Doug. Ulmer  
 Business Agent  
 Colorado State Hospital Employees  
 Pueblo, Colorado

**September 21, 1960**

A person drafted or who enlists at the present time is entitled to be reinstated to the same position and grade as he held at the time he left the employ of the state to enter the service but without any credit for said service or increase in pay grade as a result of said service.

STATUTES CONSTRUED—26-3-1, 2 and 3, CRS '53.

**ELECTIONS—FEDERAL****60-3444**

Honorable George J. Baker  
 Secretary of State

**September 22, 1960**

Eligibility of persons inhabiting and domiciled on premises comprising the area formerly known as Fort Logan to vote in the 1960 General Election prior and after the conveyance of said premises to the State by the Federal Government dated April 1, 1960, defined.

**COLORADO STATE UNIVERSITY**

60-3445

Mr. Joseph M. Whalley  
Business Manager and Treasurer

**October 6, 1960**

Opinion re Application for Loan Assistance for College Housing Program, Supplement No. 3, Legal Data of the Housing and Home Finance Agency, Community Facilities Administration.

**COLLEGES AND UNIVERSITIES**

60-3446

Mr. Thomas L. Girault  
President of the Board of Trustees  
of State Colleges in Colorado  
Greeley, Colorado

**September 30, 1960**

Under 124-1-7, CRS '53, the governing board of a state educational institution may issue a single bond in the full amount of the moneys loaned or advanced and may provide therein that said single bond will be exchanged for coupon bonds in the denomination of \$1,000 within ninety days after the request of the holder of the single bond, such exchange to be at the expense of the borrowing educational institution. The statute does not mention or limit the face amount of bonds issued. It appears to be the legislative intent that the governing board of state educational institutions shall have full power and authority to issue bonds upon such terms and conditions as they deem best, subject only to the limitation that bonds cannot be sold for less than par and accrued interest to the date of delivery and that interest rate cannot exceed 6% per annum.

STATUTES CONSTRUED—124-1-7, CRS '53.

**SOIL CONSERVATION DISTRICT**

60-3447

Mr. Clarence M. Svedman, Secretary  
Colorado Soil Conservation Board

**October 4, 1960**

The consolidated district is liable upon the contract entered into by one of the former districts.

The board of supervisors of the consolidated district is authorized to sign and execute necessary contracts and instru-



ments pursuant to the carrying out of the contract upon which the former district is liable.

STATUTES CONSTRUED—128-1-8(10) and 19(3), CRS '53.

#### ELECTIONS

60-3448

Honorable George J. Baker  
Secretary of State  
October 4, 1960

The name of a woman candidate as shown on the primary ballot should be placed on the general election ballot, even though the candidate has married subsequent to nomination.

#### ELECTIONS

60-3449

Mr. Howard M. Schermerhorn  
Attorney at Law  
Denver, Colorado  
October 5, 1960

Voters may write in and vote for candidates whose names do not appear on the printed ballot even though not provided for in statute.

STATUTES CONSTRUED—89-5-12(3), CRS '53, as amended.

#### ELECTIONS—COUNTY OFFICERS

60-3450

Mr. Thomas F. McBreen  
County Clerk and Recorder  
October 10, 1960

A person may legally serve as an election clerk if that person's name is on the ballot as a candidate for justice of the peace at the same election.

A person who is on parole from the state penitentiary is not eligible to vote at the coming election, as his right to vote is not restored until such time as he receives a final discharge as having satisfactorily served his period of parole.

STATUTES CONSTRUED—49-6-4, CRS '53; 49-3-3, CRS '53.

CONSTITUTION CONSTRUED—Sec. 10, Art. VII, State Constitution.

#### ELECTIONS—COUNTY OFFICERS

60-3451

Mr. A. Allen Brown  
County Attorney  
October 10, 1960

An elective Justice of the Peace can also be elected to

serve as a committeeman for his precinct.

An elective mayor of an incorporated town can be also elected or appointed as a constable or deputy sheriff.

STATUTES CONSTRUED—49-4-5, CRS '53.

### INHERITANCE TAX

60-3452

Mr. Neil Tasher  
Inheritance Tax Commissioner

**October 18, 1960**

The State of Louisiana and the State of Colorado are reciprocal insofar as the taxation of transfers for public, religious, charitable or educational purposes are concerned. Said state should be included within those states considered to be reciprocal, as set forth in Rule 19, heretofore adopted by the Inheritance Tax Division.

STATUTES CONSTRUED—138-4-15, CRS '53.

### SOIL CONSERVATION DISTRICTS

60-3453

Mr. Clarence M. Svedman, Secretary  
State Soil Conservation Board

**October 18, 1960**

A soil conservation district entering into contracts with landowners and operators for conservation purposes is authorized to collect the amount owed the operator and to retain a percentage thereof to defray its actual expenses. The same applies to contracts relating to services performed on land outside the district.

STATUTES CONSTRUED—128-1-8(4) and (10), CRS '53.

### SHERIFFS—FEES

60-3454

Honorable Fred H. Gibson  
Judge of the County Court

**October 19, 1960**

A sheriff may only receive the fee provided for by statute for his attendance at a court of record during such times as said court is in session. The words "court in session" and "attendance" defined.

STATUTES CONSTRUED—56-4-7(16), CRS '53.

**SALARIES—COUNTY COMMISSIONERS****60-3455**

Hon. O. F. Adams  
District Attorney

**October 21, 1960**

Neither the appointing official nor the board of county commissioners has a superior right to determine salaries of assistants and deputies. The official and the board must agree and if they do not, the salary originally fixed for the position applies.

STATUTES CONSTRUED—56-2-10, CRS '53.

**COURTS—FEES****60-3456**

Mrs. Dee Schedlbauer  
Clerk of the District Court

**October 21, 1960**

Where the appearance of a defendant by attorney is entered in a case orally or in formal hearing but no pleadings are filed, a docket fee should be paid.

Where no pleadings are filed by the defendant but a stipulation is entered into in which the defendant has joined and has been represented by counsel, a docket fee should be paid.

The word "appearance" defined.

STATUTES CONSTRUED—56-5-1, CRS '53, as amended.

**RACING COMMISSION****60-3457**

Mr. H. A. Christensen, Executive Secretary  
Colorado Racing Commission

**November 2, 1960**

No statutory provision prohibiting Centennial Turf Club from buying control of Rocky Mountain Quarter Horse Association and operating a quarter horse meet following their two regular horse meets.

STATUTES CONSTRUED—129-2-10(1) and (2), CRS '53, as amended.

**FEDERAL—COLORADO STATE UNIVERSITY****60-3458**

Mr. C. L. Terrell, Secretary  
State Board of Agriculture

**November 25, 1960**

The State Board of Agriculture is not authorized to use federal land obtained under the Morrill Act for carrying on

work of the experimental station or other related activities of the Colorado State University, without being required to pay a reasonable rental to the State, the moneys therefrom to be placed in a perpetual fund.

Since the land was granted by the federal government to the State and not to the University or the State Board of Agriculture, the Board would not have power to make any disposition of the land and cannot exchange this land for other land.

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

### PHARMACY

60-3459

Mr. Ralph E. Kemp, Executive Secretary  
Colorado State Board of Pharmacy

November 17, 1960

Under the laws now in force, registered apprentice pharmacists may not lawfully compound prescriptions under any circumstances, regardless of when they were originally registered as apprentice pharmacists.

The use of multiple assumed names in connection with the operation of a pharmacy business conducted by the same person or persons at one location is unlawful.

STATUTES CONSTRUED—48-1-12, CRS '53.

### PUBLIC FUNDS—FT. LEWIS A & M COLLEGE CONTROLLER

60-3460

Mr. E. G. Spurlin  
State Controller

November 22, 1960

“Enterprise Fund” of Fort Lewis A & M College.

The expenditures from the “Enterprise Fund” in connection with the quarrying of stone used in the construction of the student center and dormitories and the purchase of furnishings and equipment for the new dormitories and student center were not illegal since they were expenditures of state money on state properties; however, said expenditures from the Enterprise Fund should be treated as an advancement of money under the provisions of 124-1-6, CRS '53.

STATUTES CONSTRUED—124-1-6, CRS '53.

**OLD AGE PENSION—FEDERAL****60-3461**

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

**December 14, 1960**

The Social Security Act was amended in 1960, which, in substance, provided that the states would obtain credit in the amount of appropriation to the State for medical care to pensioners. As a result, the appropriation to Colorado was increased about \$3,600,000. Since the increased appropriation is a general appropriation for state old age assistance, all of it must be placed in the Old Age Pension Fund, pursuant to the provisions of Art. XXIV, Sec. 2, Colorado Constitution, and said increase may not be used specifically for the purpose of increasing medical care for old age pensioners.

CONSTITUTION CONSTRUED—Art. XXIV, Secs. 2(d) and 7(c), State Constitution.

**INSURANCE****60-3462**

Mr. Sam Beery  
Commissioner of Insurance

**December 16, 1960**

Medical Savings Plan—Proposed Agreement.

All the elements of an insurance contract are met by the agreement as submitted by the Plan.

STATUTES CONSTRUED—72-1-1 (2), CRS '53.

**SALARIES—CONTROLLER—COLLEGES****60-3463**

Mr. E. G. Spurlin  
State Controller  
and

Mr. Glen C. Turner, Secretary  
Board of Trustees of the State Colleges

**December 22, 1960**

Increased salaries to the College Presidents retroactively to July 1, 1959, are proper, assuming there are monies available from which the payments may be made. If the increase in salaries could be said to be unreasonable or if there wasn't prior agreement that an increase would be paid before July 1, 1959, a different result might obtain.

CONSTITUTION CONSTRUED—Art. V, Sec. 28, State Constitution.

STATUTES CONSTRUED—124-5-4, CRS '53.

**TAXATION****60-3464**

William L. Paddock, Esq.  
Board of County Commissioners

**December 22, 1960**

Frasier Meadows Manor owned by Rocky Mountain Methodist Homes, Inc.—tax exemption status.

There is sufficient similarity in the Frasier Meadows home compared to the Campbell Stone home (see Opinion No. 56-2346) to justify a judicial determination in favor of a tax exemption status.

STATUTES CONSTRUED—137-12-3(8), CRS '53.

CONSTITUTION CONSTRUED—Art. X, Sec. 5, State Constitution.

**TAXATION****60-3465**

William A. Way, Esq.  
Silverton, Colorado

**December 22, 1960**

County procedures covering levying of taxes, tax sales and taking of tax titles, outlined.

**Part II**  
**CASES PENDING AND DISPOSED OF IN**  
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- 458 *Orley William Mathews v. People of the State of Colorado.* No. 11 Misc. Oct. Term 1959. Habeas Corpus. Case closed.
- 459 *Emil Kravarick, et al. v. People of the State of Colorado.* No. 28 Misc. Oct. Term 1959. Certiorari. Case closed.

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- 51 *Harrison Clifford Hunt v. Harry C. Tinsley, Warden State Penitentiary.* No. 688 Misc. Oct. Term 1958. Habeas Corpus. Case closed.
- 57 *Marion Harden Brown, Jr., v. People of the State of Colorado.* Certiorari. Case closed.
- 60 *Dean Amos Cummings v. Harry C. Tinsley, Warden State Penitentiary.* Habeas Corpus. Case closed.
- 61 *Silverio Giron v. Harry C. Tinsley, Warden State Penitentiary.* No. 39 Oct. Term 1959. Certiorari. Case closed.
- 151 *Gilibaldo F. Cardoza v. People of the State of Colorado.* Certiorari. Case closed.
- 319 *Richard Thomas McKenna v. Harry C. Tinsley, Warden State Penitentiary.* No. 722 Misc. Oct. Term 1959. Certiorari. Case closed.
- 325 *James P. Thompson and Eugene Haas v. People of the State of Colorado.* No. 570 Misc. Oct. Term 1959. Certiorari. Case closed.
- 388 *Frank Abel and John G. Grimes v. People of the State of Colorado.* No. 852 Misc. Oct. Term 1959. Certiorari. Case closed.
- 442 *District Court of Montezuma County, et al. v. Clifford Becher Whyte.* No. 924, Oct. Term 1959. Certiorari. Case closed.

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- 52 *G. T. Rummel, et al. v. William E. Musgrave, et al.* No. 303, Oct. Term 1960. Validity of tax paid on U. S. land leased for uranium production. Case closed.
- 56 *Fred Baca v. People of the State of Colorado.* No. 116 Misc. Oct. Term 1960. Certiorari. Case closed.
- 86 *David Francis Early v. People of the State of Colorado.* No. 156, Oct. Term 1959. Certiorari. Case closed.
- 97 *Keith Miller v. People of the State of Colorado.* No. 224, Oct. Term 1960. Certiorari. Case closed.
- 117 *Union Rural Electric Association, Inc. v. Public Utilities Commission, et al.* No. 167. PUC matter.
- 153 *Leland L. Hackett v. Harry C. Tinsley, Warden State Penitentiary.* No. 314 Misc. Oct. Term 1960. Certiorari. Case closed.
- 173 *John Joseph Valverde v. People of the State of Colorado.* Certiorari. Case closed.
- 228 *Toby Manuel Maes v. Harry C. Tinsley, Warden State Penitentiary.* No. 497 Misc. Oct. Term 1960. Certiorari. Case closed.
- 294 *Arthur J. Watson v. People of the State of Colorado.* No. 607 Misc. Oct. Term 1960. Certiorari. Case pending.

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- 352 *In the Matter of the Petition of Albert J. Kostal and Arthur J. Watson.* No. 6292. Habeas Corpus. Case closed.
- 376 *Ellsworth Medberry v. Wayne K. Patterson, Warden State Reformatory, et al.* No. 6306. Habeas Corpus. Case closed.

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- 423 *Leonard B. Blue, et al. v. Department of Highways, et al.* No. 6347. Damages.
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- 4 *James E. Miller, et al. v. David Howard Brazel and Department of Highways.* No. 6376. Damages.
- 24 *In the Matter of Donald Leroy Marshall.* No. 23481. Bankruptcy. Case closed.
- 59 *Harry H. Markley v. Harry C. Tinsley, Warden State Penitentiary.* No. 6458. Habeas Corpus. Case closed.
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- 207 *United States of America v. 160 Acres of Land, more or less, in Weld County, et al.* No. 6583. Condemnation for military purposes.
- 282 *In the Matter of the Application of Coy Litchfield v. Harry C. Tinsley, Warden State Penitentiary.* No. 6461. Habeas Corpus.
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- 4 *Ellsworth Medberry v. Wayne K. Patterson, Warden Colorado State Reformatory, et al.* No. 6789. Habeas Corpus.
- 131 *Department of Highways v. James S. Prosser, et al.* No. 6863. Petition for removal.
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- 172 *United States of America ex rel Dewey William Carson, v. Department of Parole.* No. 6900. To withdraw detainer. Case closed.
- 229 *David Francis Early v. Harry C. Tinsley.* No. 6942. Habeas Corpus. Case closed.
- 240 *United States of America v. Interest in Land in Larimer and Weld Counties, Colorado, et al.* No. 6912. Condemnation of State Board of Agriculture land.
- 286 *Frank Abel and John G. Grimes v. Harry C. Tinsley, Warden State Penitentiary.* No. 6980. Habeas Corpus. Case closed.
- 290 *Trinity Universal Insurance Co. v. Smith and Lucas Construction Co., et al.* No. 6993. Appointment of receiver.
- 300 *Kenneth A. Heron v. City and County of Denver, et al.* No. 6994. Practice of Professional Engineering.

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- 182 *James P. Thompson and Eugene Haas v. Harry Tinsley, Warden.* No. 6513. Habeas Corpus. Case closed.
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- 245 *Dewey William Carson v. Executive Director, Department of Parole, et al.* No. 6642. To withdraw detainer. Case pending.
- 255 *David F. Early v. Harry C. Tinsley, Warden State Penitentiary.* No. 6593. Habeas Corpus. Case closed.

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- 351 *William Flavell v. Department of Welfare, et al.* No. 18914. Demand payment of promissory note. Case closed.
- 357 *Colorado Banking Board, et al., v. David F. Finnigan, et al.* No. 18944. Bank charter. Case closed.
- 359 *Ray Akins v. Harry C. Tinsley, Warden State Penitentiary.* No. 18947. Habeas Corpus. Case closed.
- 360 *Silverio Giron v. Harry C. Tinsley, Warden State Penitentiary.* No. 18948. Habeas Corpus. Case closed.
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- 374 *Henry Johnson v. People of the State of Colorado.* No. 18968. Habeas Corpus. Case closed.
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- 394 *Kenneth G. Mains v. County Court in and for the County of Weld, et al.* No. 18941. Prohibition. Case closed.
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- 11 *People ex rel Duke W. Dunbar, Attorney General, et al. v. Dale A. Fester, et al.* Inheritance Tax matter. No. 19056. Case closed.
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- 163 *In the Matter of the Estate of Daisy C. Todd, Deceased.* El Paso County. No. T-527. Inheritance tax. Case pending.
- 193 *In the Matter of the Estate of William Paden, Deceased.* Rio Grande County. No. 2291. Probate of Will.

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- 49 *In the Matter of the Estate of Grace B. Poulton, Deceased.* City and County of Denver. No. P-11659. Trust fund. Case closed.
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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
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**Docket No. 15**

447	<i>State Highway Department, El Paso County.</i> Grade Separation.
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**APPEALS FROM AWARDS OF THE INDUSTRIAL  
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1111	<i>Game and Fish Department, et al. v. Industrial Commission et al.</i>	19635	Pending
1057	<i>General Plant Protection Corporation v. Industrial Commission, et al.</i>	19280	Pending
1094	<i>Huff, et al. v. Industrial Commission, et al.</i>	19597	Pending
1107	<i>Idarado Mining Company, et al. v. Industrial Commission, et al.</i>	19657	Pending
1053	<i>Industrial Commission, et al. v. Baldwin, et al.</i>	18887	Award Affirmed
1087	<i>Industrial Commission, et al. v. Globe Indemnity Company</i>	19469	Award Affirmed
1054	<i>Industrial Commission, et al. v. Johnson Pontiac, Inc., et al.</i>	18984	Award Affirmed

No.	Title	S. Ct. No.	Disposition
1071	<i>Industrial Commission, et al. v. Klackowski</i>	19326	Pending
1064	<i>Industrial Commission, et al. v. State Compensation Insurance Fund</i>	19336	Award Reversed
1052	<i>Lamirato, et al. v. Industrial Commission, et al.</i>	19225	Award Affirmed
1102	<i>Liberty Mutual Insurance Co., et al. v. Industrial Commission, et al.</i>	19517	Pending
1131	<i>Lindsay v. Industrial Commission, et al.</i>	19703	Pending
1095	<i>Marotte v. Industrial Commission, et al.</i>	19504	Pending
1058	<i>Mathews v. Industrial Commission, et al.</i>	19353	Award Reversed
1092	<i>Realty Development Co. v. Industrial Commission, et al.</i>	....	Closed—No writ 25 days
1069	<i>St. Luke's Hospital v. Industrial Commission, et al.</i>	19150	Award Reversed
1101	<i>Spoos, et al. v. Industrial Commission, et al.</i>	19516	Pending
1066	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	19245	Award Affirmed
1085	<i>Stauss v. Industrial Commission, et al.</i>	19387	Award Affirmed
1083	<i>Stearns Roger, et al. v. Industrial Commission, et al.</i>	19407	Dismissed
1063	<i>Sunnyside Cleaners v. Industrial Commission, et al.</i>	19535	Pending
1068	<i>Wesco Electric, et al. v. Industrial Commission, et al.</i>	19064	Award Affirmed
1062	<i>White v. Industrial Commission, et al.</i>	19018	Award Affirmed

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1084	<i>Ortiz v. Industrial Commission, et al.</i>	3060	Award Affirmed
<b>City and County of Denver</b>			
1098	<i>American Red Ball, et al. v. Industrial Commission, et al.</i>	B-35960	Award Affirmed
1041	<i>American Sanitary Products, et al. v. Industrial Commission, et al.</i>	B-21842	Dismissed
1040	<i>American Sanitary Products, et al. v. Industrial Commission, et al.</i>	B-21843	Dismissed
1075	<i>Arkin v. Industrial Commission, et al.</i>	B-32279	Award Affirmed
1135	<i>Armour and Company v. Industrial Commission, et al.</i>	B-41957	Pending
1129	<i>Associated Gas, et al. v. Industrial Commission, et al.</i>	B-39365	Pending
926	<i>Boulevard Cleaners v. Industrial Commission, et al.</i>	A-89171	No action
1096	<i>Cessa v. Industrial Commission, et al.</i>	B-35801	Award Affirmed
1078	<i>Chambers v. Industrial Commission, et al.</i>	B-16944	Award Affirmed
1144	<i>Colorado Fuel and Iron v. Industrial Commission, et al.</i>	B-42528	Pending
1145	<i>Colorado Fuel and Iron v. Industrial Commission, et al.</i>	B-42527	Pending
1060	<i>Colorado Fuel and Iron v. Industrial Commission, et al.</i>	B-27281	Award Reversed
1148	<i>Continental Casualty, et al. v. Industrial Commission, et al.</i>	B-43431	Pending

No.	Title	S. Ct. No.	Disposition
1109	<i>Continental Casualty, et al. v. Industrial Commission, et al.</i>	B-38474	Award Reversed
1037	<i>Cosmopolitan Realty v. Industrial Commission, et al.</i>	B-20827	Pending
1120	<i>Creacy v. Industrial Commission, et al.</i>	B-40139	Award Affirmed
1100	<i>Denver Board of Water Commissioners, et al. v. Industrial Commission, et al.</i>	B-35893	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	Award Affirmed
1077	<i>Easter v. Industrial Commission, et al.</i>	B-32427	Dismissed
1067	<i>El Paso County Mutual Telephone Company, et al. v. Industrial Commission, et al.</i>	B-28985	Award Affirmed
1105	<i>Employers Casualty Company, et al. v. Industrial Commission, et al.</i>	B-37405	Award Affirmed
1106	<i>Employers Casualty Company, et al. v. Industrial Commission, et al.</i>	B-37805	Pending
1118	<i>Employers Liability Assurance Corporation, Ltd., et al. v. Industrial Commission, et al.</i>	B-39931	Award Affirmed
1089	<i>Employers Mutual Liability Insurance Company, et al. v. Industrial Commission, et al.</i>	B-35344	Award Affirmed
1116	<i>Firemen's Fund Insurance Company, et al. v. Industrial Commission, et al.</i>	B-39721	Pending

No.	Title	Dist. Ct. No.	Disposition
1111	<i>Game and Fish Department, et al. v. Industrial Commission, et al.</i>	B-38959	Award Affirmed
1119	<i>Gates Rubber Company v. Industrial Commission, et al.</i>	B-40003	Pending
927	<i>General Cleaners, et al. v. Industrial Commission, et al.</i>	A-89648	No action— closed
1057	<i>General Plant Protection, et al. v. Industrial Commission, et al.</i>	B-26955	Award Affirmed
1087	<i>Globe Indemnity Company v. Industrial Commission, et al.</i>	B-35191	Award Reversed
1044	<i>Havens v. Industrial Commission, et al.</i>	B-20761	Pending
1112	<i>Hawkeye-Security, et al. v. Industrial Commission, et al.</i>	B-39139	Award Affirmed
985	<i>Hendricks, et al. v. Industrial Commission, et al.</i>	B-8472	Dismissed
1094	<i>Huff, et al. v. Aetna Insurance Company, et al.</i>	B-35613	Award Affirmed
1107	<i>Idarado Mining, et al. v. Industrial Commission, et al.</i>	B-37797	Award Affirmed
1091	<i>Idarado Mining, et al. v. Industrial Commission, et al.</i>	B-35107	Award Affirmed in part
1054	<i>Johnson Pontiac, Inc., et al. v. Industrial Commission, et al.</i>	B-25081	Award Reversed
1130	<i>Jones v. Industrial Commission, et al.</i>	B-40622	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	Award Affirmed
1081	<i>La Salle Mining, et al. v. Industrial Commission, et al.</i>	B-34359	Award Affirmed

No.	Title	Dist. Ct. No.	Disposition
923	<i>Laundry &amp; Dry Cleaning Workers Union No. 304 v. Industrial Commission, et al.</i>	A-89144	No action—closed
1128	<i>Leaf v. Industrial Commission, et al.</i>	B-40495	Pending
1102	<i>Liberty Mutual Insurance, et al v. Industrial Commission, et al.</i>	B-36602	Award Affirmed
1131	<i>Lindsay, et al. v. Industrial Commission, et al.</i>	B-40833	Award Affirmed
1136	<i>Lopez v. Industrial Commission, et al.</i>	B-42025	Pending
1095	<i>Marotte v. Industrial Commission, et al.</i>	B-35819	Award Affirmed
1097	<i>Matherly v. Industrial Commission, et al.</i>	B-35973	Pending
1058	<i>Mathews v. Industrial Commission, et al.</i>	B-27117	Award Affirmed
1113	<i>Monks Excavating and Redi-Mix, et al. v. Industrial Commission, et al.</i>	B-39201	Pending
1117	<i>Mountain States Tel. and Tel. Co. v. Industrial Commission, et al.</i>	B-39788	Pending
1138	<i>Maurice Studios v. Industrial Commission, et al.</i>	B-41986	Pending
1114	<i>National Sugar Manufacturing Company, et al. v. Industrial Commission, et al.</i>	B-39364	Pending
1103	<i>Navajo Freight Lines, Inc., et al. v. Industrial Commission, et al.</i>	B-36801	Pending
1061	<i>The Navigators, Inc., et al. v. Industrial Commission, et al.</i>	B-27802	Award Affirmed

No.	Title	Dist. Ct. No.	Disposition
1104	<i>The New Jersey Zinc Company v. Industrial Commission, et al.</i>	B-37149	Pending
1140	<i>Pacific Employers Insurance Company, et al. v. Industrial Commission, et al.</i>	B-42327	Pending
1141	<i>Leo Parish and Tressie Parish v. Industrial Commission, et al.</i>	B-42567	Pending
1038	<i>Park Lane Operating Co. v. Industrial Commission, et al.</i>	B-20826	Pending
924	<i>Pepper dba Triangle Cleaning v. Industrial Commission, et al.</i>	A-89164	Closed—No action
1110	<i>Peterson, et al. v. Industrial Commission, et al.</i>	B-38725	Award Affirmed
1076	<i>Phillips-Carter-Osborn, Inc., et al. v. Industrial Commission, et al.</i>	B-32258	Award Reversed
1132	<i>Pickens and Burrell, et al. v. Industrial Commission, et al.</i>	B-41078	Pending
1092	<i>Realty Development Company v. Industrial Commission, et al.</i>	B-35525	Award Affirmed
1082	<i>Department of Revenue, et al. v. Industrial Commission, et al.</i>	B-34524	Award Reversed
1146	<i>Saffeels v. Industrial Commission, et al.</i>	B-42903	Pending
1069	<i>St. Luke's Hospital v. Industrial Commission, et al.</i>	B-30167	Award Affirmed
1108	<i>St. Luke's Hospital Ass'n, et al. v. Industrial Commission, et al.</i>	B-37988	Award Affirmed
1121	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-40250	Award Affirmed

No.	Title	Dist. Ct. No.	Disposition
1073	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-31642	Award Affirmed
1122	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-40251	Award Affirmed
1123	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-40252	Award Affirmed
1124	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-40253	Award Affirmed
1125	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-40254	Award Affirmed
1126	<i>Salt Water Dumas, Inc. v. Industrial Commission, et al.</i>	B-40255	Award Affirmed
1048	<i>Short v. Industrial Commission, et al.</i>	B-23560	Dismissed
1101	<i>Spoos, et al. v. Industrial Commission, et al.</i>	B-36035	Award Affirmed
1080	<i>Standard Insurance Co., et al. v. Industrial Commission, et al.</i>	B-33295	Pending
1072	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-30869	Pending
1064	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-28045	Award Reversed
1066	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-28801	Award Affirmed
1139	<i>State Compensation Insurance Fund v. Industrial Commission, et al.</i>	B-42242	Pending
1085	<i>Robert Stauss v. Industrial Commission, et al.</i>	B-35359	Award Affirmed
1083	<i>Stearns Roger Manufacturing Co., et al. v. Industrial Commission, et al.</i>	B-34618	Award Affirmed



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1063	<i>Sunnyside Cleaners &amp; Shirt Laundry v. Industrial Commission, et al.</i>	B-28209	Award Reversed
1070	<i>Truak v. Industrial Commission, et al.</i>	B-27970	Pending
1029	<i>Truck Insurance Exchange, et al. v. Industrial Commission, et al.</i>	B-17661	Dismissed
1079	<i>Truck Insurance Exchange, et al. v. Industrial Commission, et al.</i>	B-33127	Award Reversed
1086	<i>University of Denver, et al. v. Industrial Commission, et al.</i>	B-35268	Award Affirmed
1142	<i>Vigil v. Industrial Commission, et al.</i>	B-42608	Pending
998	<i>Vorhies v. Industrial Commission, et al.</i>	B-10834	Award Affirmed
1068	<i>Wesco Electric, et al. v. Industrial Commission, et al.</i>	B-29149	Award Affirmed
1090	<i>Western Slope Rendering Co., et al. v. Industrial Commission, et al.</i>	B-35426	Award Affirmed
1133	<i>Williams, et al. v. Industrial Commission, et al.</i>	B-41588	Pending

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1065	<i>Golden v. Industrial Commission, et al.</i>	37488	Dismissed
1137	<i>Johnson, et al. v. Industrial Commission, et al.</i>	40156	Pending
1099	<i>Martin v. Industrial Commission, et al.</i>	38913	Award Affirmed
1134	<i>Thorp v. Industrial Commission, et al.</i>	40110	Pending

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<b>Garfield County</b>			
1074	<i>In the Matter of The Industrial Commission, et al. v. Haas Coal Company</i>		Pending
<b>Jefferson County</b>			
1115	<i>In the Matter of the Claim of Ted Cooper v. Industrial Commission, et al.</i>	14723	Pending
<b>Mesa County</b>			
1088	<i>Cole v. Industrial Commission, et al.</i>	11805	Award Affirmed
<b>Montezuma County</b>			
1147	<i>Watson, et al. v. Industrial Commission, et al.</i>	3307	Pending
<b>Pueblo County</b>			
1093	<i>Baros v. Industrial Commission, et al.</i>	42339	Award Affirmed
1071	<i>Klaczkowski v. Industrial Commission, et al.</i>	41597	Award Reversed
<b>Summit County</b>			
1143	<i>Markus v. Industrial Commission, et al.</i>		Pending
<b>Weld County</b>			
1127	<i>Oviatt v. Industrial Commission, et al.</i>	14462	Pending
<b>Yuma County</b>			
994	<i>Armknecht v. Industrial Commission, et al.</i>	4331	Pending
1001	<i>Hammack v. Industrial Commission, et al.</i>	4340	Pending

**PART III**

**SUBJECT INDEX TO OFFICIAL OPINIONS  
OF THE ATTORNEY GENERAL**

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

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