

Biennial Report
of the
ATTORNEY GENERAL
of the
STATE OF COLORADO



Years 1965-1966

DUKE W. DUNBAR
Attorney General

Publication Approved

Printed by Publishers Press, Denver

ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

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

DEPARTMENT OF LAW
PERSONNEL

Office of the Attorney General (Division of Legal Affairs)

DUKE W. DUNBAR, Attorney General
FRANK E. HICKEY, Deputy Attorney General
ANN G. LANDY, Office Manager

Assistant Attorneys General

RICHARD W. BANGERT (resigned 3/12/65)
JOHN E. BUSH
CHAS. H. COWPERTHWAIT (appointed 1/1/66, resigned
4/30/67)
JAMES W. CREAMER, JR. (appointed 1/1/64, resigned
7/31/67)
GEORGE E. DEROOS (appointed 3/15/65)
PETER L. DYE
RICHARD L. EASON (resigned 4/30/65)
CLIFTON A. FLOWERS (resigned 12/31/65)
SAMUEL R. FREEMAN
ROBERT P. FULLERTON (appointed 2/1/65, resigned 10/1/65)
JAMES D. GEISSINGER
DONALD H. HENDERSON (appointed 5/1/65, deceased
12/24/65)
ROBERT L. KESSLER (appointed 10/18/65)
JAMES D. McKEVITT (resigned 7/1/67)
ROBERT C. MILLER (appointed 5/1/65)
JOHN P. MOORE
THOMAS A. NELSON, JR. (appointed Legal Counsel, Welfare
Dept., 8/1/65)
JAMES F. PAMP (appointed 7/1/65)
JOHN W. PATTERSON (appointed on Governor's staff 7/1/67)
JAMES DAVID PENWELL
DONALD B. ROBERTSON
WENDELL P. SAYERS
JACK W. STARK (resigned 5/10/65)
WILLIAM E. TUCKER (appointed 1/17/66)
A. FRANK VICK, JR. (appointed 7/15/65)

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ELEANOR GIACOMOZI
EDITH HEZMALHALCH
HELEN TRECKMAN
DOROTHY SACH
LU M. SHAFFER

Legal Division, Department of Highways

JOHN P. HOLLOWAY, Chief Highway Counsel (resigned
1/31/66)
GEORGE L. ZOLLNER, Deputy (appointed Chief Highway
Counsel 2/1/66, resigned 9/30/66)
JOSEPH M. MONTANO, Deputy (appointed Chief Highway
Counsel 10/1/66)
RICHARD W. PHILLIPS, Assistant (appointed Deputy 10/1/66)

Assistant Attorneys General

LEONARD RIPPS (appointed 2/10/66)
ROBERT P. GRUETER (appointed 10/1/66)
NANCY NAPPE, Principal Clerk Stenographer

Division of Securities

STANLEY R. HAYS, Securities Commissioner
WILLIAM J. ANDERSON, Assistant Securities Commissioner
WILLIAM C. MURRAY, JR., Legal Staff Technician
JAMES C. SHEARON, Legal Staff Technician
FRANK H. WADE, Principal Accountant
RHODA PAGLIANO, Principal Clerk Stenographer

Legislative Reference Office

CLAIR T. SIPPEL, Secretary
JAMES C. WILSON, JR., Assistant Attorney General
ROBERT W. HOLT, Assistant Attorney General (appointed
10/1/66)

Inheritance Tax Department

NEIL TASHER, Assistant Attorney General and Inheritance
Tax Commissioner
CATHERINE H. COURSEY, Deputy Inheritance Tax
Commissioner

Assistant Attorneys General

ROBERT R. IRWIN, JR.
EDWARD J. O'BRIEN, II
JAMES R. RILEY, JR.

Inheritance Tax Analysts

FRED A. ALBI
ROBERT A. BRANDEIS
DAVID CREGER
MELVIN S. GOLDBERG
JOHN T. GRACE
MICHAEL J. O'HARA

Inheritance Tax Appraisers

J. CHALMERS EWING

CHARLES GAST

JAMES W. KNOX

SAMUEL S. TELEP

LENA V. DINSMORE, Administrative Secretary

12 Clerks and Stenographers

HONORABLE JOHN A. LOVE
Governor of Colorado
State Capitol
Denver, Colorado

Dear Governor Love:

Pursuant to law, I herewith submit the Biennial Report of the Attorney General, covering the period beginning January 1, 1965 and ending December 31, 1966.

Respectfully submitted,
DUKE W. DUNBAR
Attorney General

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF COLORADO

REPORT OF INHERITANCE TAX DIVISION

The Inheritance Tax Division of the Department of Law administers the Inheritance and Succession Tax Law and the Gift Tax Law of the State of Colorado. The Department is also responsible for administering the Escheat Law.

From January 1, 1965 to December 31, 1966, the Inheritance Tax Department collected \$16,751,000.25 in inheritance taxes and \$1,148,995 in gift taxes. The inheritance and gift taxes collected are paid into the General Fund of the State of Colorado.

In addition to the above collections, there is a 10% Old Age Pension tax levied against all inheritance taxes collected by the Department. This tax is levied and assessed under the provisions of the Old Age Pension Law, and during the above-mentioned period \$1,355,170 was collected and paid into the Old Age Pension fund.

During this two-year period 22,490 estates were audited by the Department and a fee or tax assessed thereon. A gift tax was assessed and paid by 895 donors during the same period.

REPORT OF CHIEF HIGHWAY COUNSEL

Fiscal years 1965-1966-1967

In addition to the general house counsel type representation rendered to the Colorado Department of Highways and the State Patrol, this division during the indicated period disposed of active lawsuits as follows:

Condemnation cases

Settled	Jury	Commission	Court	Total
110	20	42	1	173

Colorado Supreme Court

Decisions	1
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Colorado Claims Commission

Trials	1
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P.U.C.

Certificates of Convenience and Necessity	12
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Other Miscellaneous Actions

By or against Colorado Department of Highways and Colorado State Patrol	18
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Disposition:

Trials	5
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Settled, Dismissed or Decrees entered....	13
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—
18

Total	205
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Under "Other Miscellaneous Actions," the trials include hearings before the Civil Service Commission, as well as quiet title actions and inverse condemnations brought against the Department in the District Court. Also included under this classification, but not specifically delineated, is the disposition of 69 claims on behalf of the Department for damages to property resulting in a collection of \$4,136. The other 13 cases disposed of included quiet title actions in which the Department was named a defendant, as well as inverse condemnations; all of which were settled or dismissed but not tried.

Condemnation Disposition—Comparison

	63-64	64-65	65-66	66-67
Settled and abandoned.....	133	125	129	110
Tried	40	49	49	63
	—	—	—	—
Total	173	174	178	173

New Cases Filed—Comparison

Condemnations	233	187	172	156
Other cases—state, county and district courts	3	12	42	32
U.S. District Court	1	1	0	1
Colorado Supreme Court	1	1	3	3
P.U.C.	15	5	12	9
Claims Commission	5	5
Total	253	206	234	206

Cases Pending—Comparison

	June 30,			
	1964	1965	1966	1967
Condemnations	226	269	263	246
Other cases—state, county and district courts	22	11	19	33
U.S. District Court	1	1	0	1
Colorado Supreme Court	1	1	2	4
P.U.C.	5	2	6	3
Claims Commission	5	9
Total	255	284	295	296

Resumé

	Cases pending June 30, 1966	New filings	Dispo- sitions	Cases pending June 30, 1967
Condemnations	263	156	173	246
Other	19	32	18	33
U.S. District Court	0	1	0	1
Colorado Supreme Court	2	3	1	4
Claims Commission	5	5	1	9
P.U.C.	6	9	12	3
Total	295	206	205	296

We had 295 cases pending as of June 30, 1966, and 296 pending as of June 30, 1967. It is to be noted that our rate of

disposition over-all has remained relatively constant over the past four years. However, there is a marked difference in the number of cases tried and those settled. The number of cases settled has decreased and the number of cases tried has increased. The cases are getting more difficult to settle and more of them are being tried. This obviously increases the workload in the office, although, disposition-wise, the number of cases remains the same.

For example, in 1965-1966, 129 cases were settled and in 1966-1967, only 110. The cases tried during 1965-1966 were 49 and in 1966-1967, 63. The rate of increase in cases tried over the previous fiscal year was slightly better than 28%.

One of the reasons why there has been an increase in the number of cases tried is because a number of cases have been handled before the Colorado Claims Commission. Though the matters are before the Commission, nonetheless, the time for preparation and actual presentation of the case is almost the same as if the case were presented in the District Court.

Inverse Condemnations: We are continually experiencing increases in the number of cases which we term inverse condemnation suits; i.e., damage actions brought against the Department of Highways by landowners. These are not routine cases and require more time than the standard condemnation actions.

Damage Claims: Another time-consuming area is that of claims wherein we attempt to collect for damage done to highway property as a result of motor vehicle accidents. We are also helping the accounting department which initiates these claims in its preliminary steps. This has proved quite fruitful. The sum of money collected by the Highway Department through the efforts of our office is \$4,136.19 for the fiscal year 1966-1967.

P.U.C.: These are largely mechanical, and except in certain isolated instances do not require other than cursory assistance by this office.

Highway Beautification: Efforts to implement the Highway Beautification Act continues to be another area to which extensive time must be devoted. We now have pending a number of billboard cases, i.e., case brought by the Highway Department in an effort to have billboards removed, and we anticipate that extensive legislation will have to be drafted and presented to the legislature depending, of course, upon the position that is taken by the Federal Government.

JOSEPH M. MONTANO
Chief Highway Counsel
Assistant Attorney General

REPORT OF THE DIVISION OF SECURITIES

January 1, 1965 to December 31, 1966

The Division of Securities is a division of the Department of Law and is delegated authority to administer and enforce the provisions of the Colorado Securities Act, Ch. 125-1-CRS '63 as amended. Its administrative officer is the Securities Commissioner, appointed by the Attorney General pursuant to 3-9-2 CRS '63.

The office receives and processes applications by broker-dealers, issuer-dealers and salesmen, and issues licenses to such persons to engage in the securities business. A written examination is provided for such applicants testing their general knowledge and qualification along with other requirements of training, experience and reputable character. The staff of the Division reviews documents filed, including financial statements, conducts audits and enforces compliance with minimal capital and bond requirements.

The Division examines registration statements of issuers proposing to make offerings of securities to the general public and issues a notice of effectiveness to those companies which have met the statutory requirements and complied with the Rules and Regulations adopted pursuant thereto. It holds conferences with attorneys and applicants and disseminates information and forms regarding the procedures and prerequisites of registration and licensing.

Standards relating to full disclosure, use of an offering circular, sales literature, and the filing of specified exhibits are incidental to registration and limitations are imposed with respect to maximum underwriting or sales commissions and the amounts of promoters' stock and options, which would result in an unreasonable dilution of the public investors' interest. The commissioner may also require that a portion of the proceeds from an offering be impounded under an escrow arrangement so that the purposes of the offering may be accomplished. The commissioner may deny effectiveness of registration where the offering would tend to work a fraud upon purchasers, or where the applicant fails to meet the conditions imposed by statute, rule or order. Filings made with the Division are matters of public record.

During the period approximately 150 exemptions from registration were confirmed, 40 administrative orders issued of record, and 4 legal proceedings were commenced resulting in the entry of injunctions and appointments of receivers in appropriate cases.

The total amounts of securities registered for distribution in Colorado are as follows:

	1965	1966
Coordination	\$363,198,758.50	\$295,021,986.00
Qualification	2,970,550.00	3,602,500.00
Notification	2,655,600.00	3,757,900.00
Mutual Fund Renewals	42,327,779.00	34,988,913.59
	<hr/>	<hr/>
Total	\$411,152,687.50	\$337,371,299.59

A record of the number of licenses issued, registration statements filed, and receipts and disbursements for the period is as follows:

	Jan. 1, 1965 to Dec. 31, 1965		Jan. 1, 1966 to Dec. 31, 1966	
	No.	Amount	No.	Amount
Registration Statements				
By coordination (original)	362	\$35,067.74	369	\$56,224.77
By qualification	7	2,362.50	5	980.05
By notification	2	600.00	4	730.20
Mutual Fund renewals	21	2,000.00	*	*
	<hr/>	<hr/>	<hr/>	<hr/>
Total	392	\$40,030.24	378	\$57,935.02

* Included in coordination.

Dealers' licenses issued

Original	52	\$ 5,200.00	51	\$ 5,100.00
Renewal	147	7,350.00	152	7,600.00
	<hr/>	<hr/>	<hr/>	<hr/>
Total	199	\$12,550.00	203	\$12,700.00

Salesmen's licenses issued

Original	777	\$15,540.00	957	\$19,140.00
Renewal	937	9,370.00	991	9,910.00
	<hr/>	<hr/>	<hr/>	<hr/>
Total	1714	\$24,910.00	1948	\$29,050.00

Miscellaneous Income	\$ 44.81	\$ 271.82
	<hr/>	<hr/>
Total Receipts	\$77,535.05	\$99,956.84
Expenditures	\$62,068.76	\$74,848.32
	<hr/>	<hr/>
Receipts over expenditures	\$15,466.29	\$25,108.52

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. Its permanent staff consists of a Legislative Reference Secretary and at least one Assistant Attorney General, and for sessions of the General Assembly, additional clerical and stenographic personnel plus two Assistant Attorneys General are employed.

The three primary functions of the office are: (1) The drafting of legislative bills, resolutions, and memorials, and amendments and conference committee reports concerning the same; (2) the maintenance of legislative records; and (3) the rendering of legislative reference services.

While the office does approximately 70 to 80 per cent of the actual drafting of bills, resolutions, and memorials introduced in the General Assembly, under a Joint Rule of the Senate and House of Representatives, all bills introduced in the General Assembly must be first submitted to the office for approval as to form. As a result, almost every bill, resolution, and memorial is typed in the office by the staff.

The office maintains complete legislative records on bills, resolutions, and memorials, amendments thereto, and conference committee reports thereon, as well as other legislative actions. A subject index is maintained for all bills introduced in each General Assembly, and a progress report is kept on a daily basis concerning the consideration and passage of each such bill. A copy of each bill introduced is retained by the office for any reference purpose.

The office maintains a legislative information service for members of the General Assembly, state agencies, and the public, concerning proposed and enacted subjects of legislation. Spot research reports and legal memoranda are prepared for members of the General Assembly and for standing and interim committees thereof. The office works closely with the Legislative Council and its committees and with the Revisor of Statutes during and between sessions of the assembly to avoid and eliminate inconsistencies in the laws; and with the Supreme Court Library to eliminate duplication of legislative and law library facilities.

Part I
DIGEST OF OFFICIAL OPINIONS OF THE
ATTORNEY GENERAL

FOR
BIENNIAL PERIOD
1965-1966

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

CIVIL SERVICE — COURTS

Cy J. Burress, Jr., President 65-3845
 State Civil Service Commission
January 5, 1965

Employees of courts of record in Colorado would not be subject to the classified civil service, based on Supreme Court decisions which held these employees not to be state officers.

CONSTITUTION CONSTRUED—Sec. 13, Art. XII.

GAME, FISH AND PARKS

Harry R. Woodward, Director 65-3846
 Department of Game, Fish and Parks
January 4, 1965

Under the 1963 enactment, any member of the present board would be entitled to be reappointed for one term.

STATUTES CONSTRUED—62-2-1(2)(a), CRS '63.

COURTS

James L. Eitemiller, Clerk 65-3847
 Superior Court
 City and County Building
 and
 Charles E. Bennett, Esq.
 Judge-Elect, Superior Court
January 6, 1965

Disposition of certain cases pending in Superior Court.

Upon the effective date of amended Article VI and of Chapter 41, Session Laws 1964, the Superior Court will lose jurisdiction of civil cases not pending upon appeal but originally filed therein where the amount involved is \$500 or less and such civil cases will by operation of law be transferred to the county court in which the amount in controversy does not exceed \$500.

CONSTITUTION CONSTRUED—Amended Article VI.

STATUTES CONSTRUED—Chap. 41, S.L. 1964.

OLD AGE PENSIONS

Thomas G. Bell, Director 65-3848
 State Department of Public Welfare
January 7, 1965

There are two separate categories recognized by the 1961 amendments to the old age pension statute in regard to recov-

eries made due to the payment of assistance to one not entitled thereto because of excess assets. When the overpayment was due solely to *fraud* on the part of the pensioner, the pensioner must return all of the pension payments he received. Where there is no fraud but merely a *mistake* the pensioner is liable only for the amount his assets exceeded the amount allowable for one month only, and the amount of such excess is not totaled from month to month, or the total pension moneys paid to him, whichever is the lesser.

STATUTES CONSTRUED—101-1-6, 15, CRS '63.

EMPLOYEES' RETIREMENT

Jack E. Kennedy, Secretary 65-3849
Public Employes' Retirement Association
January 21, 1965

The mentioned physicians, being employed on a year to year contract basis, would be in the category of temporary employees and as such ineligible for membership in the PERA.

STATUTES CONSTRUED—111-1-1, CRS '63.

COURTS

Hon. Charles E. Bennett 65-3850
Judge of the Superior Court
February 15, 1965

Jurisdiction of adoption cases under amended Art. VI and implemented statutes.

On and after January 12, 1965, the Superior Court would not have jurisdiction over adoption cases and such cases could not be lawfully transferred to it by the County Court or lawfully filed therein by others. The Superior Court would retain jurisdiction of such cases filed before January 12, 1965.

STATUTES CONSTRUED—Secs. 2 and 3, Chap. 39, S.L. 1964; Sec. 1, Chap. 41, S.L. 1964.

CIVIL SERVICE

William J. Hilty 65-3851
Personnel Director
State Civil Service Commission
February 18, 1965

Under the exception proviso in Art. XII, Sec. 13, State Constitution, with reference to positions requiring special training and technical qualifications, competitive tests need not be limited to qualified electors if so determined by the commission.

CONSTITUTION CONSTRUED—Art. XII, Sec. 13.

COURTS

Carl Jacobson
 Chief Probation Officer
 March 4, 1965

65-3852

Jurisdiction of probation cases under amended Art. VI and implemented statutes.

The jurisdiction of cases in justice of peace courts in which probation had been granted automatically comes under the county court. Said defendants remain under the supervision of the Probation Department with the authority in the county court to revoke probation for violation thereof.

STATUTES CONSTRUED—37-7-1, CRS 63 as amended by Sec. 6, Chap. 45, S.L. 1964. 39-16-11, CRS '63 as amended by Sec. 81, Chap. 39, S.L. 1964.

GOVERNOR—FEDERAL

Hon. John A. Love
 Governor
 March 15, 1965

65-3853

The administration of the work-training program under the Economic Opportunity Act, Public Law 88-452, as stated, would not be in violation of Art. IX, Sec. 7, of the State Constitution as no state moneys would be appropriated or used in carrying out the program.

CONSTITUTION CONSTRUED—Art. IX, Sec. 7.

DEPARTMENT OF REHABILITATION—AUDITOR

John P. Proctor
 State Auditor
 March 22, 1965

65-3854

The contracts as submitted and entered into by the Division of Services for the Blind are not properly executed and would not be binding on the Department of Rehabilitation and the State of Colorado since said contracts were not approved by the Department of Rehabilitation which has control and supervision over the Division of Services for the Blind.

The Department of Rehabilitation has the duty to maintain complete and detailed records of the operations of the Division of Services for the Blind and to furnish a financial accounting from the various vending stand operators to the federal government.

STATUTES CONSTRUED—146-2-4, CRS '63; 3-3-2(1), CRS '63.

SCHOOL OF MINES

Business Manager 65-3855
 Colorado School of Mines
March 24, 1965

The earnings or dividends of "restricted funds" of the School of Mines which are deposited in savings and loan associations should be allocated to the fund from which it is derived and used for the same purpose.

STATUTES CONSTRUED—130-4-2(1), CRS '63.

LIQUOR

Byron A. Anderson 65-3856
 Secretary of State
March 24, 1965

A landlord who evicts a tenant licensed to sell alcoholic beverages has the right under Regulation 16B(1) of the State Licensing Authority to apply for his own license at the premises formerly occupied by his tenant. If the landlord qualifies he does not have to post premises or give notice pursuant to statute. The effect of this transaction is that the landlord would have the license for the premises and the tenant would have an unexpired but ineffective license.

STATUTES CONSTRUED—75-2-38 through 75-2-43 and 75-2-10, CRS '63.

NURSES

Mrs. Madolin M. Dickinson 65-3857
 Director of Nursing Education and Licensing
March 25, 1965

Nurses aides in institutions, who administer medications for compensation, are practicing professional nursing in violation of the Professional Nursing Act, unless they are licensed as such.

STATUTES CONSTRUED—97-1-1, CRS '63.

REAL ESTATE

Keith T. Koske 65-3858
 Executive Secretary
 Real Estate Commission
March 29, 1965

Published roster containing names and addresses of real estate salesmen together with their employers as submitted meets requirement of law. Publication of names of inactive licensees without their addresses does not comply with statute.

Statute does not require either Secretary of State or Real Estate Commission to supply interested persons with more information than provided by rosters or to furnish addressograph plates to persons for their own use.

STATUTES CONSTRUED—117-1-18, CRS '63.

CHIROPRACTORS

Leo E. Wunsch II, D.C. 65-3859
 State Board of Chiropractic Examiners
March 31, 1965

Members of the state board of chiropractic examiners are entitled to receive their actual expenses incurred per day for meals and lodging while engaged in the discharge of official board business, not to exceed a maximum amount of \$12 per day in accordance with the provisions of Fiscal Rule No. 24.

STATUTES CONSTRUED—23-1-3(2), CRS '63.

LIQUOR

Byron A. Anderson 65-3860
 Secretary of State
April 1, 1965

The sale or lease of a proposed device for the purpose of cleaning draft beer lines and tap rods by wholesale licensees to retail licensees would not violate the provisions of the Liquor Code of 1935 relating to unlawful financial assistance.

STATUTES CONSTRUED—75-2-15(2), and (4), CRS '63.

COURTS—FEES AND SALARIES

Hon. James C. Flanigan 65-3861
 Judge of the District Court
 City and County Building, Denver
April 6, 1965

No statute providing that witness and attorney fees expended by a county can be recovered from indigent persons charged with crimes in district courts.

STATUTES CONSTRUED—39-7-29 and 39-21-9, CRS '63.

INSURANCE

J. Richard Barnes, CLU 65-3862
 Commissioner of Insurance
April 22, 1965

The phrase "same industry" as defined in the "Standard

Industrial Classification Manual" is not binding and conclusive on your office in determining the phrase "same industry" as used in 72-6-1(4), CRS '63 relating to group insurance.

STATUTES CONSTRUED—72-6-1(4), CRS '63.

GAME, FISH AND PARKS COMMISSION

Harry R. Woodward, Director 65-3863
Game, Fish and Parks Commission

April 26, 1965

No authority whereby the Commission can collect the maximum value of boat use permits that the agent lost or misplaced if proper accounting is made for same.

STATUTES CONSTRUED—Art. 19, Chap. 62, CRS '63.

PENITENTIARY

J. C. Cowperthwaite 65-3864
Business Manager
Colorado State Penitentiary

April 30, 1965

Prison made goods may be sold to an institution located in another state but in order there be no question as to compliance with the statute the sale be made to the State rather than to the specific institution.

STATUTES CONSTRUED—105-5-15 and 105-5-1, CRS '63.

LIQUOR

Byron A. Anderson 65-3865
Secretary of State

May 17, 1965

The sale of intoxicating liquor to persons, including members of a licensed club, who must pay an admission fee to view a performance sponsored by the club, even though the tickets are stamped "guest of the club" would be in violation of the Liquor Code of 1935.

STATUTES CONSTRUED—75-2-23, CRS '63.

LAND BOARD

State Board of Land Commissioners 65-3866
May 18, 1965

The Land Board does not have authority to issue a deed or patent to part of a tract of land sold under contract, prior to payment by the purchaser of the entire balance of the purchase price as set forth in the certificate of purchase, together with lawful interest thereon.

The certificate of purchase may not be cancelled in order that the lands covered thereby may be divided into smaller tracts, and separate certificates issued therefor to the original purchaser. Exception, Veterans' Act.

Attorney General's Opinion No. 45, dated March 1, 1943, to the extent that same is in conflict herewith, is overruled.

STATUTES CONSTRUED—112-5-12, 112-3-25, 26, 27, CRS '63.

CIVIL SERVICE

State Civil Service Commission 65-3867
May 25, 1965

No authority to authorize payment of some portion of retiring employee's unused sick leave. See also Opinion 66-3953.

SCHOOL OF MINES—LEGISLATION

Gurnett Steinhauer 65-3868
 Business Manager
 Colorado School of Mines
May 26, 1965

Subsection 2 of Section 1, Chap. 265, S.L. 1965 (Senate Bill 256) concerning powers of the Board of Trustees, validates the legality of leases now existing with fraternity corporations. Subsection (7) of said chapter should be construed as a prospective law, applicable to cases arising after its enactment.

STATUTES CONSTRUED—Chap. 265, S.L. 1965.

COUNTY COMMISSIONERS—PUBLIC FUNDS

Hon. John A. Love 65-3869
 Governor
May 27, 1965

No authority for county commissioners to allocate funds to a community action group under Economic Opportunity Act of 1964, either in cash or "in kind" such as office space, to supply matching funds for federal grants.

DISTRICT JUDGES—TAXATION

Hon. Robert Sanderson 65-3870
 Judge of the District Court
May 27, 1965

The personally owned professional library of a district judge would not be included in the term "personal effects" and would not be exempt from taxation.

STATUTES CONSTRUED—137-1-3(3) CRS '63.

ENGINEERS

Col. Henry J. Ochs, Jr. **65-3871**
 Executive Secretary
 State Board of Registration for Professional Engineers
May 28, 1965

Applications for registration received by the Board prior to July 1, 1965, must be governed by the old law and not by the provisions of the new law as set forth in Chapter 147, S.L. 1965.

STATUTES CONSTRUED—Chap. 29, S.L. 1964, as amended by Chap. 147, S.L. 1965.

ENGINEERS—SURVEYORS

Col. Henry J. Ochs, Jr. **65-3872**
 Executive Secretary
 State Board of Registration for Professional Engineers
May 28, 1965

After July 1, 1965, effective date of Chap. 147, S.L. 1965, the State Board of Registration for Professional Engineers will still be the regularly authorized body to administer the provisions of Chap. 51, Art. 2, CRS '63, regulating the practice of land surveying.

STATUTES CONSTRUED—51-2-2(3) CRS '63, as amended by Chap. 147, S.L. 1965.

ACCOUNTANTS—UNIVERSITY OF COLORADO

Clayton A. Becker, CPA **65-3873**
 Secretary, State Board of Accountancy
June 7, 1965

An individual does not meet the experience requirements for a license as set forth in the statutes by doing work in the office of the Internal Auditor of the University of Colorado at Boulder.

STATUTES CONSTRUED—2-1-6(1) (2) (3) (a) and (3) (d), CRS '63.

COUNTY JUDGES—JURY COMMISSIONERS

Joseph L. Horgan **65-3874**
 Jury Commissioner
 City and County Building, Denver
June 14, 1965

County court judges of Denver automatically become members of the Appointing Board on Jury Commissioners which selects a jury commissioner for the City and County of Denver.

STATUTES CONSTRUED—78-3-1, CRS '63.

AUDITOR—BOARD OF HEALTH—FEDERAL

John P. Proctor, CPA
Auditor of State

65-3875

June 24, 1965

The State Board of Health, through the Director of the Department of Public Health, is authorized and empowered to accept moneys from the federal government and to spend and disburse the same, in their discretion, for any of the purposes set forth in the statute. State Treasurer is custodian of said moneys and are payable on state warrants.

STATUTES CONSTRUED—66-1-8(8), CRS '63.

COURTS

Bruce Johnson
Deputy District Attorney
11th Judicial District

65-3876

July 7, 1965

The county court lost jurisdiction of all pending criminal appeals from the justice of the peace court upon the effective date of the new amendment Article VI and Chap. 45, S.L. 1964. Such cases were by operation of law transferred to the district court, which court should now have jurisdiction of all such criminal appeals.

STATUTES CONSTRUED—Chap. 45, S.L. 1964.

CONSTITUTION CONSTRUED—New Article VI.

COLLEGES AND UNIVERSITIES

John L. Proctor, CPA
Auditor of State

65-3877

June 25, 1965

Governing boards of colleges and universities have authority to assess student fees in addition to tuition for constructing and maintaining a student union building; may assess and allocate student fees to provide normal operating activities but such funds must be deposited with the state treasurer as custodian thereof. A board resolution earmarking student fees for designated purposes is sufficient to establish "trust funds" or "quasi trust funds" and such earmarkings need not be disclosed to the students.

STATUTES CONSTRUED—130-4-2(1) CRS '63.

FEDERAL—WATER

Major General Joseph C. Moffitt, Coordinator **65-3878**
 Office of the State Natural Disaster Coordinator
June 29, 1965

Eligibility of irrigation ditches, ditch companies, and unincorporated ditches for assistance under Public Law 875, Federal Disaster Act.

From a consideration of constitutional provisions, statutes, and decisions, it is concluded that ditches and other diversion facilities constructed to convey the public waters from the natural streams to the place of beneficial use are public facilities of the conservancy district in which they are located and public facilities of the State of Colorado, under Colorado law, for the purposes of the Federal Disaster Act, Public Law 875, 81st Congress, as amended, and as such qualify for assistance under said law. Cases cited.

COUNTY FEES

Mrs. Marjorie Page, Sec.-Treas. **65-3879**
 Colorado State Association of County Clerk
July 29, 1965

When photographic copies of instruments containing provisions on both sides of one sheet are made, a fee for two photograph sheets should be charged and collected, or two dollars and fifty cents.

STATUTES CONSTRUED—56-4-3(2) (1) CRS '63, as amended by Chap. 151, S.L. 1965.

WATER—FEDERAL

Clarence M. Svedman, Secretary **65-3880**
 Colorado State Soil Conservation Board
July 29, 1965

Eligibility of soil conservation districts for assistance under Federal Disaster Act, Public Law 875, for necessary emergency repairs.

Based upon consideration of Chapter 128, Art. 1, CRS '63, as amended, it is concluded that soil conservation districts are public bodies corporate. Structures built pursuant to federal statutes and operated and maintained by said soil conservation districts are public facilities of those soil conservation districts, under Colorado law, for the purposes of the Federal Disaster Act, Public Law 875, and as such qualify for assistance for necessary emergency repairs under said law if they were damaged or destroyed by the recent floods.

STATUTES CONSTRUED—Chap. 128, Art. 1, CRS '63.

PENITENTIARY

Wayne K. Patterson, Warden
Colorado State Penitentiary
August 3, 1965

65-3881

One Continuous Sentence.

Where a prisoner is serving a sentence at the penitentiary and subsequently receives a sentence to run consecutively thereto, the minimum of the last sentence so received should be added to the remainder of the minimum sentence the prisoner is then serving, and the maximum of the new sentence should be added to the remainder of the maximum of the sentence which the prisoner is then serving so that the result will be one continuous sentence.

STATUTES CONSTRUED—105-4-11 and 18, CRS '63; 40-7-53 CRS '63.

BLIND—EMPLOYEES—FEDERAL

John P. Proctor
State Auditor
July 28, 1965

65-3882

Status of blind persons receiving assistance through employment furnished by the Department of Rehabilitation and in the operation of vending stands.

Disposition of moneys received from the Federal Government to reimburse the State for contributions made by the State in excess of the State's share in providing assistance to the blind.

STATUTES CONSTRUED—Art. 2, Chap. 146, CRS '63.

SCHOOL DISTRICTS—FEDERAL

Dr. Byron W. Hansford
Commissioner of Education
August 9, 1965

65-3883

Powers and duties of school boards under Chapter 260, Session Laws 1965, in carrying out the provisions of Public Law 89-10, Elementary and Secondary Education Act of 1965, which conveys special educational benefits to all educationally deprived children and relating to public, parochial or private schools.

STATUTES CONSTRUED—Chap. 260, S.L. 1965. Public Law 89-10.

GAME, FISH AND PARKS—FEDERAL

Harry R. Woodward, Director 65-3884
 Game, Fish and Parks Department
July 29, 1965

Colorado's participating in the "Land and Water Conservation Fund Act of 1965" under the provisions of Chapter 169, S.L. 1965, relating to financing of outdoor recreation resources.
 STATUTES CONSTRUED—Chap. 169, S.L. 1965.

DEPARTMENT OF EMPLOYMENT—COURT FINES

Bernard E. Teets 65-3885
 Executive Director
 Department of Employment
August 13, 1965

Fines and penalties collected under Chap. 82, CRS '63, shall be deposited in the unemployment compensation fund of the Department of Employment.

STATUTES CONSTRUED—Chap. 82, CRS '63.

INSURANCE—MOTOR VEHICLES

J. Richard Barnes, C.L.U. 65-3886
 Commissioner of Insurance
August 17, 1965

Chap. 91, S.L. 1965—Motor Vehicle Financial Responsibility Act.

If a policy of insurance is issued prior to the effective date of the provisions of Chap. 91 and the term of such contract extends beyond such effective date, such policy is not amended by operation of law on the effective date to include the provisions of said Chap. 91.

The Commissioner of Insurance may not issue a directive or rule requiring that all policies of insurance issued subsequent to the date of the directive or rule, a date prior to the effective date of the provisions of said Chap. 91 comport with the requirement of such act.

STATUTES CONSTRUED—Chap. 91, S.L. 1965.

BLIND EMPLOYEES

Parnell McLaughlin, Director 65-3887
 Department of Rehabilitation
August 18, 1965

Blind employees of the workshop for the blind, who are

paid a salary from state funds, but are not under classified civil service, are not eligible under the State Employees and Officials Health Insurance Act.

TAXATION

Raymond E. Carper, Commissioner 65-3888
Colorado Tax Commission

August 18, 1965

Purchase of state land.

Under 137-5-6 of Chapter 94, Session Laws of 1964, the assessor is directed to assess and value the equity in land purchased from the State under contract in the same manner as though the purchaser owned the equity in the property in fee and not under contract.

STATUTES CONSTRUED—137-5-6 as amended by Chap. 94, S.L. 1964.

INSURANCE

J. Richard Barnes, C.L.U. 65-3889
Commissioner of Insurance

August 19, 1965

The provisions of Chapter 72, Article 6, CRS '63 do not apply to group annuity policies.

STATUTES CONSTRUED—Chap. 72, Art. 6, CRS '63.

GAME, FISH AND PARKS

Harry R. Woodward, Director 65-3890
Game, Fish and Parks Department

August 19, 1965

Specific uses of Internal Improvement Funds under statutory changes.

Said funds cannot be used for salaries. May be used for land acquisition and for maintenance of parks and recreation areas that are improvements of a fixed and permanent nature. May be used for construction of buildings built for parks and recreational purposes only, and for construction of roads to and within the parks and recreational areas.

STATUTES CONSTRUED—Chap. 62, Art. 19, CRS '63 and Enabling Act, Sec. 12.

GAME, FISH AND PARKS

Harry R. Woodward, Director
Game, Fish and Parks Department

65-3891

August 16, 1965

The Commission has no authority to allow the taking of game and fish by members of organized "survival training courses" and to waive requirements for license fees or penalties. The only exception would be hunting and fishing on lands over which the Federal Government has exclusive jurisdiction.

STATUTES CONSTRUED—62-1-1, CRS '63; 62-2-3, CRS '63.

OLD AGE PENSIONS—FEDERAL

Dr. Thomas G. Bell, Director
State Department of Public Welfare

65-3892

August 19, 1965

The recent Federal Social Security legislation which provides a lump sum payment of retroactive Social Security benefits does not require that the State disregard this sum but is permissive only, whereas the Constitution and statutes of Colorado do mandatorily require that said sums be deducted as income from the award of old age pensioners who receive it.

COLORADO CONSTITUTION—Article XXIV, Sec. 6.

STATUTES CONSTRUED—101-1-7, CRS '63.

See Opinions 51-2091 and 58-3181.

DEPARTMENT OF EMPLOYMENT—INSURANCE

Bernard E. Teets
Executive Director
Department of Employment

65-3893

August 20, 1965

1. The Executive Director of the Colorado Department of Employment, with the approval of the Governor, and subject to appropriations being available therefor, is authorized to procure insurance through the State Purchasing Agent, as provided in Chapter 3, Article 4, CRS '63, for the purpose of insuring its officers, employees, and agents, against any liability for injuries or damages resulting from the negligence or other tortious conduct during the course of their service or employment.

2. The Department of Employment would be prohibited from insuring its officers, employees, and agents for medical insurance coverage. No insurance could be extended to the Job Corps candidates or the youth applicants. Insurance coverage for bodily injury liability should not exceed ten thousand dollars for each person, and/or twenty thousand dollars for each accident. Insurance coverage for property damage liability should not exceed five thousand dollars for each accident.

STATUTES CONSTRUED—13-9-1, 13-10-1, 13-10-2, and 72-16-2, CRS '63.

DEPARTMENT OF PUBLIC HEALTH FEDERAL PUBLIC FUNDS

Richard F. Hobbs, Chairman
Legislative Audit Committee

65-3894

August 31, 1965

Certain moneys received from the Federal Government which were remitted to the Department of Public Health as reimbursement for expenses incurred are subject to reversion to the general fund as to any unexpended and unencumbered balances at the end of a fiscal year as required by 130-1-2, CRS '63.

STATUTES CONSTRUED—66-1-8 (8) and 130-1-2, CRS '63.

WATER—FEDERAL

Palmer King
Regional Solicitor
U.S. Department of the Interior
Denver, Colorado

65-3895

September 1, 1965

Flood Disaster

The Holly Drainage District and the Granada Drainage District, and any other district organized under the Act of June 2, 1911, as amended and supplemented, and now codified as Chapter 47, Articles 1 through 11, inclusive, is a public district having governmental powers for the purposes of which it is organized and its drainage works and systems are public facilities under Colorado law for the purposes of Public Law 875, 81st Congress, as amended, and as such qualifies for assistance under said law.

STATUTES CONSTRUED—Chap. 47, Articles 1 through 11, CRS '63.

MARRIAGES

Sherman E. Walrod, Esq. 65-3896
 District Attorney
September 2, 1965

Police magistrates may not perform marriage ceremonies in Colorado.

STATUTES CONSTRUED—90-1-16, CRS '63.

MOTOR VEHICLES

Sue W. Mantle 65-3897
 Clerk and Recorder
September 3, 1965

Encumbrances upon motor vehicles.

Not illegal to accept certificates of titles, if in proper form, showing a mortgage to a bank when the mortgage does not accompany same and records disclose said mortgage has been previously filed with clerk and recorder.

Not illegal to show the mortgagee on the title and to certify the date of filing, if it is previous to the date of application.

STATUTES CONSTRUED—13-6-19, 20 and 21, CRS '63.

COURTS—PUBLIC RECORDS

Hon. Edward M. Yaklich 65-3898
 District Judge
September 3, 1965

Under provisions of 35-1-1(1), CRS '63, the statute is clear that only the parties in interest, or their attorneys, may examine pleadings or other papers, civil or criminal, in any pending case.

Under the Colorado Rules of Civil Procedure, a calendar is required to be kept by the clerk and is subject to public examination as provided in the above statute.

There is no statute obligating the court or the clerk to notify news media of changes on the calendar which are made in the interest of expediting judicial proceedings.

STATUTES CONSTRUED—35-1-1(1), CRS '63. Rules 40 and 79, CRCP.

COLLEGES—FEES

Richard F. Hobbs, Chairman 65-3899
 Legislative Audit Committee
August 31, 1965

Supplemental to Opinion 65-3877.

Administrative procedures of student fees at Colorado State College and Colorado School of Mines.

STATUTES CONSTRUED—Chap. 26, Part XI, Session Laws of 1965, First Regular Session.

DEPARTMENT OF REHABILITATION

Richard F. Hobbs, Chairman 65-3900
Legislative Audit Committee
August 31, 1965

State Cash Fund

If the ownership of said funds can be established as state funds, any unexpended and unencumbered balances remaining at the end of the fiscal year revert to the state general fund.

CITIES AND TOWNS

L. M. Coulter, Esq. 65-3901
City Attorney
September 8, 1965

Adoption of Codes by Reference

A home rule city whose charter contains provisions inconsistent with the provisions of 139-34-1(1) (f), CRS '63 would be excluded from the operation thereof.

STATUTES CONSTRUED—139-34-1 (1) (f) CRS '63. See Opinions 55-2899 and 56-2937.

HIGHWAYS—COMMISSIONER OF MINES

Chas. E. Shumate 65-3902
Chief Engineer
Department of Highways
September 9, 1965

An examination of the provisions of 92-33-28 and 92-32-13, CRS '63, authorizes the Commissioner of Mines to make periodic inspections of tunnels relating only to highway construction.

STATUTES CONSTRUED—92-33-28 and 92-32-13, CRS '63. See Opinion No. 61-3503.

COUNTY HEALTH OFFICER BOARD OF COUNTY COMMISSIONERS

Lyle E. Miller 65-3903
Attorney at Law
September 15, 1965

The Board of County Commissioners by resolution had

authority to designate county health officer as the enforcing authority concerning the licensing and regulation of dogs.

STATUTES CONSTRUED—36-12-1, et seq. CRS '63 as amended by Chapter 116, S.L. 1965.

CITIES AND TOWNS—ELECTIONS

Richard I. Lyles 65-3904
 County Clerk and Recorder
 Pueblo, Colorado
September 24, 1965

Municipal Election Code of 1965, Chap. 146, S.L. 1965

It is the responsibility of the county clerk to submit a registration list to the City of Pueblo.

Action on the part of the county clerk pursuant to the responsibility imposed by Section 17 of said act would only be taken in the event the City of Pueblo, a home rule city, would adopt said Chapter 146 or a part thereof relating to registration.

STATUTES CONSTRUED—Chap. 146, S.L. 1965.

LEGISLATION—WATER

Lyle C. Kyle, Director 65-3905
 Legislative Council
September 15, 1965

Proposed legislation relating to powers of cities and counties for planning and zoning for control of floods and other disasters.

STATUTES CONSTRUED—139-32-1, CRS '63.

CITIES AND TOWNS—ELECTIONS

Orrel A. Daniel, Esq. 65-3906
 City Attorney
September 27, 1965

Municipal Election Code of 1965, Chap. 146, S.L. 1965

Interpretation of the above Code as it concerns the Cities of Brighton, Thornton and Commerce City which are not home rule cities.

STATUTES CONSTRUED—Chap. 146, S.L. 1965.

PUBLIC UTILITIES—FEES—REVENUE DEPARTMENT

John H. Heckers 65-3907
 Director of Revenue
September 29, 1965

Re: Northwest Utility and Western Hills Utility Companies for fee imposed by CRS '63, 115-2-14.

Companies which cease doing utility business prior to the

date the fee is determined by the revenue director are not liable for the fee imposed by above statute for the succeeding fiscal year, which in the above case is the fiscal year ending June 30, 1964.

STATUTES CONSTRUED—115-2-4, CRS '63.

COURT FEES

John H. Heckers 65-3908
 Director of Revenue
October 1, 1965

One dollar tax levy on civil actions.

The general rule is that a state statute levying a tax is not regarded as imposing a tax on its own governmental agencies or instrumentalities and applying said principle the Department of Revenue is not liable for the tax.

STATUTES CONSTRUED—135-4-29, CRS '63.

FEDERAL—WATER

Major General Joseph C. Moffitt, Coordinator 65-3909
 Office of State Natural Disaster Coordinator
October 4, 1965

Flood Disaster

Las Casitas-Sun Valley Homes is a public facility of the Denver Housing Authority, a separately created quasi-municipal corporation, under Colorado law, for the purposes of Public Law 875 and that said Authority qualifies for federal assistance under said law for the repair of such public facility.

STATUTES CONSTRUED—69-3-9, CRS '63; Public Law 875.

COURT FEES

James P. Johnson, Esq. 65-3910
 Deputy District Attorney
October 6, 1965

Expert witness fees are chargeable as costs against a defendant convicted in a court of record in a criminal case and are not chargeable to the county.

STATUTES CONSTRUED—33-2-1 and 39-10-5, 6 and 9, CRS '63.

PROFESSIONAL ENGINEERS

Col. Henry J. Ochs, Jr. 65-3911
 Executive Secretary
 Board of Registration for Professional Engineers
October 7, 1965

The Board should charge applicants who applied for registration prior to July 1, 1965, the sum of \$5.00 for the issuance to them of a certificate of registration as a professional engineer.

STATUTES CONSTRUED—51-1-14(3) (c), CRS '63 as amended by Chapter 147, S.L. 1965.

POLICEMEN'S PENSION FUND

Edward W. Clark 65-3912
 Division of Retirement Coverage
 Department of Employment
October 11, 1965

Under the Policemen's Pension Act, it is mandatory that a Policemen's Pension Fund be established in every municipality in Colorado employing paid policemen, or a marshal or marshals performing police duties.

STATUTES CONSTRUED—139-49-2, 15 and 139-81-1, CRS '63.

SHERIFFS—COURT FEES

George L. Strain, Esq. 65-3913
 District Attorney
October 11, 1965

The serving or arresting sheriff is entitled to the fees stated in Section 56-4-8(1), (22) and (23) (where applicable) and traveling expenses as provided in 56-2-16, all payable by the county out of which the process issues.

STATUTES CONSTRUED—56-4-8(1) (22) and (23) and 56-2-16, CRS '63.

CIVIL RIGHTS

Isaac E. Moore 65-3914
 State Representative
October 14, 1965

Nursery and pre-schools

Under the applicable statute, nursery and pre-schools do not come within the purview of public accommodations statutes.

STATUTES CONSTRUED—25-1-1, 2 and 3, CRS '63.

CITIES AND TOWNS—ELECTIONS

Gary H. Hemminger 65-3915
 Attorney for the City of Sheridan
October 15, 1965

Municipal Election Code of 1965

Registrations with the municipal clerk of a statutory city or town for a municipal election, made prior to July 1, 1965, would be valid registrations for the purposes of municipal elections conducted on or after July 1, 1965. The above would apply also to home rule cities which have adopted the Municipal Election Code of 1965 by charter or ordinance.

STATUTES CONSTRUED—Section 65(1) of Chapter 146, S.L. 1965.

REFORMATORY—COURTS

C. Winston Tanksley, Warden 65-3916
 State Reformatory
November 9, 1965

In case of a felony conviction the Court may fix or limit the maximum duration of a sentence to the state reformatory and in case of a delinquency commitment to the state reformatory the Court may fix or limit the duration of such a commitment to exceed two years, but may not increase the maximum provided by statute.

STATUTES CONSTRUED—39-10-2 and 3, CRS '63. 39-10-1, as amended by Chap. 126, S.L. 1965.

FEDERAL—COURTS

Honorable John A. Love 65-3917
 Governor of Colorado
October 19, 1965

If jurisdiction has not been ceded by the State of Colorado to the Federal Government and accepted by the latter, the State of Colorado has jurisdiction over criminal offenses committed against the laws of the State of Colorado in Pike National Forest which is partly situated in El Paso County.

STATUTES CONSTRUED—Title 16, Sec. 480 USCA and Title 40, Sec. 255, USCA; Chap. 143, CRS '63.

COURTS

Mr. Bruce Johnson 65-3918
 Deputy District Attorney
October 22, 1965

1. The fact alone that a defendant under 21 years of age is sentenced to the reformatory rather than the penitentiary

does not remove his offense from the definition of a felony in Art. XVIII, Sec. 4, State Constitution. Prior to the decision of *Smalley v. People*, 134 Colo. 360, 304 P.2d 902, the sentence statute—39-10-1 CRS '53—required those under 21 years of age to be sentenced to the reformatory. Subsequent to the *Smalley* decision that statute was amended to allow the sentencing court discretion in sentencing offenders to the reformatory or to the penitentiary.

2. Although in habeas corpus proceedings the State or the People thereof are not proper parties respondent but rather the person having custody of the petitioner, the District Attorney is nevertheless the proper person to represent the wardens of the state penitentiary and the state reformatory in such proceedings.

STATUTES CONSTRUED—39-10-1, CRS '53; 45-1-2, CRS '63.

CONSTITUTION CONSTRUED—Art. XVIII, Sec. 4.

LIQUOR

Byron A. Anderson
Secretary of State
October 25, 1965

65-3919

A person who foreclosed on a hotel cannot apply for a new license under Regulation 16 C 3 when the local licensing authority has approved the transfer of location of a license previously issued at said hotel, since under those circumstances the hotel is not a "licensed premises" within the meaning of said regulation.

FEDERAL—OLD AGE PENSIONS

Dr. Thomas G. Bell, Director
State Department of Public Welfare
October 25, 1965

65-3920

1. None of the money being placed by the Federal Government, including \$3.00 deducted monthly from Social Security and Railroad Retirement payments, in the "Federal Supplementary Medical Insurance Fund" (Public Law 89-97-1965) should be charged as income to old age pension, or other assistance, recipients.

2. The State Welfare Department may purchase the so-called "S.M.I.B." benefits for its eligible old age pension recipients by paying the monthly fee of \$3.00 each from the Constitutional Old Age Pension "Medicare" Fund.

3. The aforesaid "S.M.I.B." benefits may also be purchased for eligible recipients of the provisions of the Colorado Medical

Assistance for the Aged Law, subject to the requirements of the Federal Government in regard to the necessity for such persons to be recipients of "money payments."

STATUTE CONSTRUED—Public Law 89-87, Title XIX, 89th Congress.

COLLEGES AND UNIVERSITIES

Hon. Homer F. Bedford 65-3921
State Treasurer
November 3, 1965

Research Building Revolving Funds for University of Colorado and State University, investment of

The State Treasurer cannot cash the registered warrants and hold them as investments until paid.

STATUTES CONSTRUED—Chaps. 77 and 81, S.L. 1964.

FEDERAL—WATER

Regional Solicitor 65-3922
Department of the Interior
November 16, 1965

Flood Disaster

Where counties are bounded in whole or in part by rivers or streams which are designated as part of the boundary, the sudden or violent changing of the course or channel of the river or stream because of a flood does not operate to change the county boundary.

STATUTES CONSTRUED—34-1-1, CRS '63.

CONSTITUTION CONSTRUED—Art. XIV, Sec. 1.

COLLEGES AND UNIVERSITIES

Raphael J. Moses, Esq. 65-3923
Resident Counsel
University of Colorado
November 16, 1965

Classification of Students for Tuition Purposes.

Subdivision (g) as an amendment to 124-18-3, CRS '63 in Chap. 266, Session Laws of 1965, does not apply to wives of male adults.

STATUTES CONSTRUED—Chap. 226, S.L. 1965.

DEPARTMENT OF AGRICULTURE

John P. Orcutt 65-3924
 Commissioner of Agriculture
November 18, 1965

The Fruit and Vegetable Act, Ch. 7, Art. 5, CRS '63, as amended by Chapter 55, Session Laws of Colorado 1965, does not provide a means for reimbursing those lettuce growers from whom fees were collected and deposited in the Lettuce Standardization Fund.

STATUTES CONSTRUED—Ch. 7, Art. 5, CRS '63, as amended by Chap. 55, S.L. 1965.

ELECTIONS

Max Zall, City Attorney 65-3925
 City and County of Denver
November 19, 1965

Colored ballot labels on voting machines to denote the amendment lines and the different political parties cannot be utilized under the Colorado Election Code of 1963, as amended.

STATUTES CONSTRUED—Chap. 49, Articles 1 through 21, CRS '63, as amended.

GAME, FISH AND PARKS

Harry R. Woodward, Director 65-3926
 Game, Fish and Parks Department
November 19, 1965

Department has no authority to enter jointly with a private power company in construction and ownership of a reservoir on the Yampa River.

CONSTITUTION CONSTRUED—Sec. 2, Art. XI.

WATER—FEDERAL

Maj. Gen. Joseph C. Moffitt 65-3928
 State Natural Disaster Coordinator
December 10, 1965

Flood Disaster

Douglas County, Colorado, acting by and through its Board of County Commissioners, is eligible to make application for federal assistance under Public Law 875 for emergency repairs and temporary replacement of the sewage plant and appurtenant facilities of the unincorporated Town of Louviers or the Louviers Mutual Service Company.

STATUTES CONSTRUED—Chap. 31, Art. 20, CRS '63.

WORKMEN'S COMPENSATION

Hon. John A. Love 65-3929
Governor of Colorado
December 17, 1965

Medical Disaster Insurance Fund

A person who suffered an industrial accident or disablement from occupational disease prior to 9:20 AM, on May 6, 1965, the effective time and date of Chap. 212, S.L. 1965, cannot qualify for benefits provided by the Colorado Medical Disaster Insurance Fund Act.

STATUTE CONSTRUED—Chap. 212, S.L. 1965.

JURY DUTY—NATIONAL GUARD

Joseph L. Horgan 65-3930
Jury Commissioner
City and County Building
December 23, 1965

Members of the State Guard would be exempt from jury service only when ordered out for active duty or service.

Active members of the National Guard of Colorado shall be exempt from service as jurors.

STATUTES CONSTRUED—94-2-14 and 94-1-44, CRS '63.

SOIL CONSERVATION DISTRICTS

Clarence M. Svedman, Secretary 65-3931
State Soil Conservation Board
December 29, 1965

Legal procedures defined under the statute for amending any or all by-laws of soil conservation districts.

STATUTES CONSTRUED—128-1-9, CRS '63.

HOSPITALS—HEALTH

Roy L. Cleere, M.D. 65-3932
Director of Public Health
December 30, 1965

Spears Free Clinic and Hospital for Poor Children—licensure of

The State Board of Health does not have the power and authority to adopt a regulation which prohibits a chiropractic health establishment, which is a bona fide chiropractic hospital, from using the term "Chiropractic Hospital."

STATUTES CONSTRUED—66-1-7(13), CRS '63.

LAND BOARD

Wesley E. Woodward, Engineer **65-3933**
 State Board of Land Commissioners
December 30, 1965

Re: Sec. 16, Twp. 6 N. R. 72W., Larimer County, Colorado,
 originally a state school section.

At the time the certificates of purchase on the above tracts were issued, the State Board of Land Commissioners did not have the power or authority to reserve the timber on the above tracts of land and the ownership of said timber passed to the respective purchasers of said tracts of land.

SCHOOLS—CIVIL SERVICE

Marvin B. Woolf **66-3934**
 House of Representatives
January 11, 1966

Under a Supreme Court decision, the Executive Director of the Colorado Commission on Higher Education is an officer of an educational institution, within the meaning of the Civil Service Amendment, and exempt therefrom. 141 Colo. 527.

CONSTITUTION CONSTRUED—Art. XII, Sec. 13.

LEGISLATION—GOVERNOR—HIGHWAYS

Mrs. Mildred H. Cresswell **66-3935**
 Secretary of the Senate
January 20, 1966

Re: **Senate Bill 6**—"A bill for an act to prohibit the erection of advertising devices, etc."

None of the proposed amendments submitted would come within the title of the above bill, nor within 7(a) of the Governor's Call.

LEGISLATION—HIGHWAYS

Floyd Oliver **66-3936**
 State Senator
January 20, 1966

Re: **Senate Bill 6.**

The proposed amendment to the title as submitted does not change the original purpose of said bill.

CONSTITUTION CONSTRUED—Art. V, Sec. 17.

LEGISLATION—WATER POLLUTION

John R. Bermingham **66-3937**
State Senator
January 21, 1966

Water Pollution Act.

To avoid a question of constitutionality of Sec. 8, Chap. 44, S.L. 1966, because of the failure of the legislature to provide sufficient standards for the guidance of the agency created, more definiteness in Section 8 would be desirable.

STATUTES CONSTRUED—44 S.L. 1966.

LEGISLATURE

M. Keith Singer **66-3938**
State Representative
January 26, 1966

Reapportionment.

The proposed constitutional amendment, HCR 1008, providing for subdistricting of Colorado counties, specifically the provisions allowing residents of Denver to vote for five representatives, while residents of single-member districts are allowed to vote for only one representative, is potentially vulnerable to constitutional attack.

TAXATION—REVENUE DEPARTMENT

John H. Heckers **66-3939**
Director of Revenue
January 28, 1966

Food sales tax refund.

A person who has no taxable income for the prior year and files his claim for food sales tax refund after the date required for filing an income tax return for the year for which claim for refund is made, is not subject to a late filing penalty.

STATUTES CONSTRUED—138-1-65, CRS '63; S.L. 1964, p. 780.

INSURANCE

J. Richard Barnes, CLU **66-3940**
Commissioner of Insurance
January 31, 1966

Under the fact situation, a loan secured by real estate which is improved and utilized as a parking lot does not qualify as an investment under the terms of 72-1-38(1) (a) and (b),

CRS '63. It does qualify as an investment or loan under the terms of 72-2-7(3), CRS '63. The insurance company is a first lien holder. The loan documents as defined would support a loan of the type required by the provisions of 72-2-7(3), CRS '63.

STATUTES CONSTRUED—72-2-7(3), 72-1-38(1) (a) and (b), CRS '63.

LEGISLATION—TAXATION

Anthony F. Vollack 66-3941
State Senator
February 3, 1966

Food sales tax credits or refunds.

Senate Bill No. 26, entitled "A Bill for an act repealing the food sales tax credits or refunds, as enacted by Chapter 300, S.L. 1965," is a revenue raising measure and the fact it was introduced in the Senate offends Section 31, Art. V, of the Constitution, which provides such bills must originate in the House of Representatives.

CONSTITUTION CONSTRUED—Art. V, Sec. 31.

REVENUE DEPARTMENT—MOTOR VEHICLES

John H. Heckers, Director 66-3942
Department of Revenue
February 8, 1966

Driver License Compact Act (Chap. 204, S.L. 1965)

The terms of the act are not self-executing and require an execution of a compact with a sister state prior to the undertaking of the procedures provided.

LEGISLATION—ESCHEATS

Floyd K. Haskell 66-3943
House of Representatives
February 10, 1966

Constitutionality of House Bill No. 1006, relating to the disposition of unclaimed and abandoned funds and property.

The basic framework and concept of said act would not violate any provisions of the Colorado Constitution or the Constitution of the United States.

CONSTITUTION CONSTRUED—Art. IX, Sec. 5, Colorado Constitution.

PUBLIC INSTITUTIONS—TRAINING SCHOOLS

David A. Hamil, Director
State Department of Institutions

66-3944

February 11, 1966

Administrative discharge of the mentally ill or deficient.

It is mandatory to issue an administrative discharge to any patient conditionally released or escaped who has not been returned to the institution within one year thereafter and dropping the patient's name from the rolls (books) of the institution is coincidental to the administrative discharge.

STATUTES CONSTRUED—71-1-28(1), as amended by Sec. 7, Chap. 186, S.L. 1965.

LEGISLATION—CITIES AND TOWNS

M. Keith Singer
State Representative

66-3945

February 14, 1966

Minimum requirements for incorporation of certain municipal corporations.

Under the fact situation, the attempt to invalidate present petitions is retrospective and violative of the constitution. Any condition contained in House Bill 1023 which creates new procedures which do not invalidate actions taken prior to the effective date of the bill are not retrospective and not unconstitutional.

STATUTES CONSTRUED—Chap. 27, S.L. 1966.

CONSTITUTION CONSTRUED—Art. II, Sec. 11.

HIGHWAYS—PUBLIC FUNDS

A. Woody Hewett
State Senator

66-3946

February 11, 1966

Highway Users Tax

Highway users tax funds may be used in connection with state expenditures to implement the proposed scenic beautification legislation (Chap. 38, S.L. 1966, rest areas) and Chap. 7, S.L. 1966 (junkyard control), without violating the constitution.

CONSTITUTION CONSTRUED—Art. X, Sec. 18.

STATUTES CONSTRUED—Chaps. 7 and 38, S.L. 1966.

EMPLOYEES RETIREMENT

Jack E. Kennedy, Executive Secretary 66-3947
 Public Employees Retirement Association
February 14, 1966

Under the particular facts, the employee mentioned is entitled to continuous coverage even though she transferred into what would ordinarily be an exempt status.

STATUTES CONSTRUED—111-2-3 and 111-2-3(2) CRS '63.

LEGISLATION—ESCHEATS

Vincent Massari 66-3948
 State Senator
February 16, 1966

House Bill 1006 re unclaimed and abandoned property

A bill which provides for the state taking into protective custody property unclaimed or abandoned for a stated period of time and providing for the use by the state of the funds derived therefrom is not a "bill for raising revenue."

HEALTH OFFICERS—FEES

Roy L. Cleere, Director 66-3949
 State Department of Public Health
February 16, 1966

A public health officer in the State of Colorado does not have the legal authority to charge a fee for signing an International Certificate of Vaccination or Revaccination in his official capacity as a public health officer.

STATUTES CONSTRUED—40-7-44, CRS '63.

COLLEGES AND UNIVERSITIES

Gurnett Steinhauer 66-3950
 Business Manager
 Colorado School of Mines
February 21, 1966

No authority for board of trustees to borrow funds for the purpose of lending the same to fraternity house corporations which have constructed fraternity houses on ground leased to them by the college.

STATUTES CONSTRUED—Chap. 265, S.L. 1965.

JURY SUMMONS

George M. McNamara **66-3951**
Presiding Judge
City and County Building
February 24, 1966

The seal on jury summons must be impressed on the document. The printing of the seal thereon would not be in accordance with the statute.

STATUTES CONSTRUED—37-1-12, 13 and 14, CRS '63.

ELECTRICAL BOARD—COUNTIES

Harry W. Bottom, Director **66-3952**
State Electrical Board
February 25, 1966

When a county adopts a building code applicable to certain zoned areas of that county, which code includes regulations concerning electrical installations, the State Electrical Board is barred from making inspections and collecting the fees therefrom, provided the other requirements set forth in the statute are followed.

STATUTES CONSTRUED—36-15-1, CRS '63; 142-2-1, et seq., as amended by Chap. 311, S.L. 1965.

CIVIL SERVICE

Con F. Shea **66-3953**
State Controller
February 28, 1966

The Civil Service Commission has not exceeded its authority in adopting a rule providing that retiring state employees are to be paid for "accumulated sick leave in excess of 75 days, but not to exceed thirty days." No objection to using available moneys in personal services for sick leave payment irrespective that this item is not specifically mentioned in appropriations.

ELECTRICAL BOARD—COUNTIES

Harry W. Bottom, Director **66-3954**
State Electrical Board
February 25, 1966

Electrical inspectors hired by a county after such county adopts its own electrical code must have the same qualifica-

tions as set forth for state inspectors under the wording of the statute "inspection equal to the minimum standards."

STATUTES CONSTRUED—Chap. 311, S.L. 1965.

COSMETOLOGY

Miss Beryl W. Maus
Executive Secretary
Board of Cosmetology
February 24, 1966

66-3955

A cosmetology operator may teach wig work to other operators in the shop and charge for this teaching and teach wig work at a wig wholesale house and charge for said classes as long as she does not hold herself out to the general public as having special knowledge in the art of wig work by virtue of having a license to practice cosmetology in Colorado. The Board of Cosmetology does not have any control over wig work.

STATUTES CONSTRUED—32-1-2, CRS '63.

PUBLIC WELFARE

Thomas G. Bell, Director
State Department of Public Welfare
March 3, 1966

66-3956

Welfare Organization Act.

1. County treasurers and clerks of the so-called "parent counties" may serve as ex-official treasurers and clerks of the welfare districts authorized by 119-1-9, CRS '63.

2. Payments to welfare recipients may be made by the aforesaid district clerks and treasurers.

3. 56-4-1 et seq. CRS '63 concerning fees of county treasurers is not applicable to the aforesaid *district* treasurers.

4. Such welfare payments, under the plan proposed, would be made upon district warrants drawn by the district clerk upon vouchers drawn by the district director and approved by the district board of public welfare consisting of one or more county commissioners from each county.

STATUTES CONSTRUED—119-1-9 and 56-4-1, et seq., CRS '63.

HEALTH—WATER POLLUTION

Dr. Roy L. Cleere, Secretary
State Board of Health
March 11, 1966

66-3957

Water Pollution

Effect of the provisions of S.B. No. 2 (now appearing as

Chap. 44, S.L. 1966) upon the jurisdiction and authority of the State Board of Health and local boards of health in respect to water pollution prevention, abatement and control, defined.
 STATUTES CONSTRUED—Chap. 44, S.L. 1966.

CIVIL SERVICE—VETERANS

Cy J. Burress, Jr., President 66-3958
 Civil Service Commission
March 28, 1966

Veterans who have served or serve on military duty subsequent to January 31, 1955, irrespective of how desirable it may be, are not eligible for veteran's preference points under that portion of Article XII, Section 14, of the State Constitution. In order to be entitled to claim veteran's preference points there must be a formal declaration of war by the Congress. World War II, as referred to in the statute, ended on April 28, 1952. See Opinions Nos. 2211-52 and 59-3336. The federal statute has no effect on state laws.

STATE CONSTITUTION—Art. XII, Sec. 14.
 STATUTES CONSTRUED—26-2-2, CRS '63.

REAL ESTATE

Keith T. Koske 66-3959
 Executive Secretary
 Real Estate Commission
March 29, 1966

The Real Estate Commission does not have good reason to refuse registration of a corporation as a developer because a stockholder has been convicted of a felony.

STATUTES CONSTRUED—118-16-2, CRS '63.

BRAND INSPECTORS

Earl Brown, Brand Commissioner 66-3960
 State Board of Stock Inspection
March 30, 1966

A brand inspector is not authorized under the statute to issue a summons and complaint for misdemeanor violations of the Colorado Brand Inspection Laws and may not serve a summons and complaint in another state upon a person who is in violation of the law.

STATUTES CONSTRUED—8-3-28 and 8-3-5, CRS '63;
 Chap. 45, S.L. 1964.

STATE BOARD OF AGRICULTURE

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

66-3961

April 8, 1966

The Board has authority to sell land to the Colorado State University Research Foundation.

STATUTES CONSTRUED—124-11-2, CRS '63.

DEPARTMENT OF REHABILITATION

Parnell McLaughlin, Director
 Department of Rehabilitation

66-3962

April 11, 1966

The Department of Rehabilitation has the legal authority to establish and operate a workshop of the type described at the Colorado State Hospital.

STATUTES CONSTRUED—146-2-6, CRS '63.

ELECTIONS—COUNTY SUPERINTENDENTS

Byron W. Hansford
 Commissioner of Education

66-3963

April 12, 1966

The word "Warning" must appear at the top of each page on Petitions for Abolishing the County Superintendent's Office. No statutory prohibition against using both sides of a page for signatures, but it is commonly accepted that the word "page" means only one side of the sheet.

**CITIES AND TOWNS
 HIGHWAY USERS TAX FUND**

James D. Childress
 Attorney at Law
 Durango, Colorado

66-3964

April 18, 1966**City of Bayfield**

Funds which have been paid to a city under its allocation from the highway users tax fund are for a specific purpose and any deviation from the authorized use in any respect is strictly prohibited. No provisions for loaning these funds.

STATUTES CONSTRUED—120-12-8(1); 139-38-1 and 139-40-2, CRS '63.

COSMETOLOGY

Jess C. Hickman, President
State Board of Cosmetology
April 21, 1966

66-3965

A student who has completed only 1650 hours in a licensed cosmetology school, which requires 2000 hours of training in order to receive a diploma, cannot take the State Board's examination for a cosmetologist's license.

REAL ESTATE COMMISSION

Keith T. Koske
Executive Secretary
Real Estate Commission
April 22, 1966

66-3966

Promulgation of Rule "E-12" concerning the conduct of licensed real estate brokers is not a valid exercise of the rule making authority of the Commission, as it would interfere with the private rights of parties to the contract.

WATER CONSERVANCY DISTRICTS

Felix L. Sparks, Director
Water Conservation Board
April 22, 1966

66-3967

A certificate of deposit issued by a bank is not an "investment" as that term is used in the Water Conservancy Act. A certificate of deposit is defined as a "deposit" and not as an "investment."

A purchase of a certificate of deposit with surplus money from the district's treasury would not come within the restrictions mentioned in the Water Conservancy Act, and would not be in violation thereof. See Opinion No. 66-4025.

STATUTES CONSTRUED—150-5-13(12), CRS '63.

DEPARTMENT OF REVENUE—PUBLIC RECORDS

John H. Heckers
Director of Revenue
April 25, 1966

66-3968**Records—Confidential**

The Department of Revenue properly discontinued supplying copies of sales tax license applications to persons requesting them, pursuant to the enactment of Chap. 302, p. 1142, S.L. 1965

with the exception of specific information governing public access to public records.

STATUTES CONSTRUED—138-9-12(2) (a) CRS '63; Chap. 302, p. 1142, S.L. 1965.

DEPARTMENT OF REVENUE—TAXATION

John H. Heckers **66-3969**
 Director of Revenue
April 25, 1966

Funds received by the Department of Revenue from sale for collection of withholding taxes due, which are in excess of the amount due the state, must be paid over to the owner or such person having legal right thereof. In the event no claim is made by one having right thereto and whereabouts is unknown such surplus funds should be paid over to the state treasurer.

STATUTES CONSTRUED—138-9-13(2) (a); 138-9-1, S.L. 65, Chap. 302, Sec. 2; 153-14-14(3) CRS '63.

PROFESSIONAL ENGINEERS

Col. Henry J. Ochs, Jr. **66-3970**
 Executive Secretary
 Board of Registration for Professional Engineers
April 22, 1966

Professional engineers in Colorado would not fall within the purview of the limitations expressed in 10-1-17(1), relating to the practice of architecture.

STATUTES CONSTRUED—Chaps. 10 and 51, CRS '63.

TAXATION

Raymond E. Carper, Commissioner **66-3971**
 Colorado Tax Commission
May 2, 1966

Based on constitutional and statutory provisions, currency and coins held by coin shops for resale are subject to ad valorem taxation.

CONSTITUTION CONSTRUED—Art. X, Secs. 3 and 7.

STATUTES CONSTRUED—137-1-1(4), CRS '63.

TAXATION—COUNTY ASSESSORS

Colorado Tax Commission **66-3972**
May 6, 1966

The provisions of Section 137-2-51 as amended by Chapter 94, S.L. 1964, page 703, are mandatory rather than directory as

to the requirement for mailing the notice therein mentioned, and the failure of the assessor to mail the notice within the time required renders the assessment erroneous or illegal to such an extent that the increase of the tax could be rebated or refunded.

STATUTES CONSTRUED—137-5-2 as amended by Chap. 74, S.L. 1964, page 703.

INDIANS—FEDERAL—COURTS

A. H. Haas 66-3973
 District Attorney
 Sixth Judicial District
 May 9, 1966

Answering the precise question of criminal jurisdiction of an offense committed on an Indian Reservation by a non-Indian against the person or property of an Indian, a federal statute or treaty would preclude state authorities from prosecuting in such a situation unless the state assumes civil and criminal jurisdiction by amending its constitution or statutes or by affirmative legislative action. No action taken by the Colorado legislature to assume such jurisdiction in accordance with the Federal act. Citing Whyte v. District Court, 140 Colo. 334.

FEDERAL STATUTES CONSTRUED—18 USCA, Sec. 1162.

MOTOR FUEL TAX—TAXATION

John H. Heckers 66-3974
 Director of Revenue
 May 2, 1966

Diesel fuel used in a diesel powered vehicle, whether such vehicle is propelled on or off the public highways is subject to the excise tax provided by the Motor Fuel Tax Act.

STATUTES CONSTRUED—138-2-2(3) (a), CRS '63.

CITIES AND TOWNS—MOTOR VEHICLES

Ernest G. Hartwell 66-3975
 Town Attorney, Estes Park
 May 17, 1966

Cities and towns, which are not under home rule, cannot impose both a fine and imprisonment for violation of their traffic ordinances, but only either a fine or imprisonment may be imposed.

STATUTES CONSTRUED—139-33-1, CRS '63.

CONSTITUTION CONSTRUED—Art. XX.

FIRE PROTECTION DISTRICTS

Arthur Carmichael, Secretary **66-3976**
 Montrose Rural Fire Protection District
May 25, 1966

No authority for Fire Protection Districts to assess a "penalty" or charge residents of the district for the service of putting out grass and brush fires.

STATUTES CONSTRUED—35-5-13, CRS '63 as amended by 1965 Session Laws, page 925.

COSMETOLOGY

Miss Beryl W. Maus, Executive Secretary **66-3977**
 State Board of Cosmetology
May 27, 1966

The State Board of Cosmetology cannot declare a moratorium and not issue school licenses during any particular period of time, if an applicant to operate as a cosmetology, cosmetician, hairdressing or beauty shop meets the provisions of the statute and the rules and regulations of the board.

STATUTES CONSTRUED—32-1-12(5), CRS '63.

PROFESSIONAL ENGINEERS

Col. Henry J. Ochs, Jr., Executive Secretary **66-3978**
 State Board of Registration for Professional Engineers
May 24, 1966

The penalty for expired certificates of registration should be computed on the basis of Section 51-1-16, CRS '63 prior to July 1, 1965, and on and after July 1, 1965, the penalty should be computed pursuant to Chapter 147, S.L. 1965.

STATUTES CONSTRUED—51-1-16, CRS '63; 51-1-17 as amended by Chap. 147, S.L. 1965.

LIVESTOCK

Earl Brown, Brand Commissioner **66-3979**
 State Board of Stock Inspection
May 24, 1966

The bond required by the Packers and Stockyards Division of the U.S. Department of Agriculture will not be sufficient to ascertain the financial responsibility of an applicant for a public livestock market license. The State Board of Stock Inspection must require a sworn statement of all assets and liabilities and a bond sufficient to meet the requirements of the statute.

STATUTES CONSTRUED—8-11-1, CRS '63 as amended by Chap. 65, S.L. 1965.

PROFESSIONAL ENGINEERS

Col. Henry J. Ochs, Jr., Executive Secretary **66-3980**
 State Board of Registration for Professional Engineers
June 1, 1966

Under 51-1-2(15) CRS '63, if an applicant states on his application that he has not been convicted of a crime but has been convicted, the board may revoke or suspend his license if such license has been granted; if an applicant states on his application that he has been convicted of a crime, the board, in its discretion, may refuse or grant the registration. The above provisions do not apply to land surveyors. 51-2-4(3) relates to land surveyors and covers good character and reputation.

STATUTES CONSTRUED—51-1-2(15) and 51-2-4(3), CRS '63.

CIVIL SERVICE—VETERANS

R. Y. Batterton, Commissioner **66-3981**
 Civil Service Commission
June 3, 1966

The Commission cannot establish by rule and regulation that veteran's preference credits may be given for service in the armed forces not only for the periods of war mentioned in Article XII, Section 14, of the Constitution, but also for the Korean Conflict, fighting in Vietnam and for any other military action in which the United States may engage.

CONSTITUTION CONSTRUED—Art. XII, Section 14.

CIVIL SERVICE

R. Y. Batterton, Commissioner **66-3982**
 State Civil Service Commission
June 3, 1966

It is within discretion of Commission to provide by rule in what manner seniority is to be made for the purpose of lay-offs.

STATUTES CONSTRUED—26-5-22, CRS '63.

EMPLOYEES—COLLEGES

Con F. Shea **66-3983**
 State Controller
June 8, 1966

Under the factual situation, said employee may be employed and receive compensation from the Lookout Mountain

School for Boys during the summer months and still be entitled to his salary from the School of Mines.

STATUTES CONSTRUED—3-1-5, CRS '63.

VOCATIONAL EDUCATION

Dr. M. G. Linson, Executive Director 66-3984
State Board of Vocational Education

June 15, 1966

Chapter 123, Article 1, CRS '63 as amended by Chapter 315, S.L. 1965, concerning vocational education and providing for its administration, does not violate the provisions of Article IX, Section 1, of the State Constitution.

CONSTITUTION CONSTRUED—Art. IX, Sec. 1.

STATUTES CONSTRUED—Chap. 315, S.L. 1965.

TAXATION

Con F. Shea 66-3985
State Controller

June 14, 1966

Food sales tax credit or refund.

The refund provided by 138-1-18, CRS '63 (Chap. 300, S.L. 1965, Section 8) is a refund of sales tax. The refunds granted by above statute should be deducted from that part of the sales and use tax paid on food and food products consumed off the premises, which is a part of the general fund at the time the refund or credit is granted.

STATUTES CONSTRUED—138-1-18, CRS '63; Chapter 300, Sec. 8, S.L. 1965.

LIVESTOCK

Earl Brown, Brand Commissioner 66-3986
State Board of Stock Inspection

June 16, 1966

Under a Supreme Court decision reported in 138 Colo. 83, a brand inspection officer may be held financially liable by a court if the brand inspector is negligent in ascertaining the true ownership of cattle offered for sale at a licensed livestock auction market. A bill of sale signed by the recorded owner of brands shall be produced by the consignor before any such livestock are offered for sale.

STATUTES CONSTRUED—8-11-12, as amended by Chap. 65, S.L. 1965.

LIVESTOCK

Earl Brown, Brand Commissioner **66-3987**
 State Board of Stock Inspection
June 16, 1966

An applicant for a livestock market license must furnish a sworn statement showing legal description of property and its exact location and ownership of existing facilities or control by lease of the necessary pens, alleys and sheds as provided by statute.

STATUTES CONSTRUED—8-11-1, as amended by Chapter 65, S.L. 1965.

LEGISLATION—OLD AGE PENSION FUND

Joseph Gollob, Chairman **66-3988**
 Committee on Welfare, Legislative Council
June 16, 1966

Sec. 1, Art. XXIV of the Constitution creates the Old Age Pension Fund. Section 4 thereof provides that the agency authorized by law to administer Old Age Pensions "shall cause all monies deposited in the Old Age Pension fund to be paid out as directed by this Article and as required by statutory provisions not inconsistent with the provisions hereof after defraying the expense of administering the said fund."

Legislation could be enacted changing the present procedure for distributing the Old Age Pension Fund.

CONSTITUTION CONSTRUED—Secs. 1 and 4, Article XXIV.

COSMETOLOGY—HOSPITALS

Miss Beryl W. Maus, Executive Secretary **66-3989**
 State Board of Cosmetology
June 16, 1966

No statutory prohibition preventing the State Board of Cosmetology from licensing a mobile beauty salon to be used to give beauty service to patients of hospitals so long as said salon complies with facility requirements and services are performed by qualified personnel.

STATUTES CONSTRUED—32-1, CRS '63.

FEDERAL—WELFARE

Miss Charline Birkins, Director **66-3990**
 State Department of Public Welfare
June 17, 1966

Applicability of Child Care Act to "Head Start Programs."
 Head Start Programs are essentially instrumentalities of

the Federal Government and are but the final means and form of implementing the intent and purposes of the Federal Government. The law is clear that a state may not regulate such federal activity and no authority in regard to them under the Child Care Act.

STATUTES CONSTRUED—Art. 12, Chap. 22, CRS '63.
FEDERAL STATUTES—42 U.S.C.A. 2701, et seq.

AUDITOR—CITIES AND TOWNS

John P. Proctor **66-3991**
State Auditor
June 22, 1966

Colorado Local Government Audit Law applies to home rule cities as well as to the local government units.

STATUTES CONSTRUED—Chap. 217, S.L. 1965.

MOTOR VEHICLES—HIGHWAYS

James D. Childress **66-3992**
Assistant District Attorney, Durango
June 23, 1966

The word "elsewhere" as it appears in 13-5-1(c) CRS '63 is defined to mean extending jurisdiction to any property in the state, public or private, where the provisions of 13-5-17 to 13-5-32, CRS '63 are applicable.

STATUTES CONSTRUED—13-5-1(c) and 13-5-17 to 32, CRS '63.

AUDITOR—ACCOUNTANTS

John P. Proctor **66-3993**
State Auditor
June 22, 1966

The Auditor of State and his office representatives or the employees of independent certified public accounting firms engaged by the Auditor are legal representatives of the state for the purpose of reviewing individual tax returns and related or similar reports filed with the Revenue Department in the performance of their services.

This authority is found in the present law and is also contained in Chapter 302, S.L. 1965, under the heading 138-9-12—Reports and return confidential.

STATUTES CONSTRUED—138-9-12 as amended by Chap. 302, S.L. 1965.

EMPLOYEES—NATIONAL GUARD

Joe C. Moffitt, Major General **66-3994**
The Adjutant General
June 30, 1966

An employee of the City of Pueblo, who volunteered for military duty, is entitled to be paid while on military duty by the City of Pueblo, a home rule city.

STATUTES CONSTRUED—94-1-33, CRS '63.

ELECTIONS

Phillip Massari **66-3995**
State Representative
July 11, 1966

Any candidate who fails to be designated by assembly may have his name placed on the primary election ballot by petition pursuant to 49-6-7, CRS '63. There is no limitation on the earliest date a petition for designation of a party candidate may be circulated.

STATUTES CONSTRUED—49-6-7 CRS '63 as amended by Sec. 13, Chap. 145, S.L. 1965.

HIGHWAYS

Chas. E. Shumate, Chief Engineer **66-3996**
Department of Highways
July 1, 1966

Chapter 248, S.L. 1965, granting the State Highway Commission power to order relocation of certain utility facilities, etc., constitutional.

STATUTES CONSTRUED—Chap. 248, S.L. 1965.

HUMANE SOCIETY

Andy Lucas **66-3997**
State Senator
July 15, 1966

The Colorado Humane Society being constituted a state bureau of animal protection with authority to enforce the laws respecting cruelty to animals is an agency of the State of Colorado. Any changes in the statute would require legislative action.

STATUTES CONSTRUED—19-1-1 and 40-20-6, et seq. CRS '63.

COURTS—CHILDREN

Hon. Dale E. Shannon 66-3998
 District Judge of Larimer County
July 20, 1966

Juveniles

District attorneys may file information against minors for misdemeanors in the district court but not in county courts. A district judge has no authority to order a misdemeanor charge to be filed against a minor instead of a petition in juvenile delinquency.

STATUTES CONSTRUED—Chapters 39 and 45, S.L. 1964.

EMPLOYEES RETIREMENT—HIGHWAY PATROL

Jack E. Kennedy, Secretary 66-3999
 Public Employees Retirement Association
July 21, 1966

The provisions of 111-1-1, CRS '63 do not apply to officers of the State Highway Patrol. Sec. 111-1-14 is a special provision respecting retirement annuity of the highway patrol.

STATUTES CONSTRUED—111-1-14, CRS '63.

SCHOOL DISTRICTS

W. L. McDivitt, President 66-4000
 Otero Junior College
July 21, 1966

A school district may not sell and convey property which it may not need and then lease it as a lessor for certain purposes.

STATUTES CONSTRUED—Chap. 73, S.L. 1964.

ELECTRICAL BOARD—CITIES AND TOWNS

Harry W. Bottom, Director 66-4001
 State Electrical Board
August 3, 1966

The same rule applicable to counties would apply to incorporated towns, cities or cities and counties, which adopt their own electrical code. See Opinion No. 66-3954.

HEALTH—WATER POLLUTION

John R. Bermingham 66-4002
 State Senator
August 5, 1966

The Water Pollution Control Commission has no power to prescribe requirements for discharges of wastes into waters

where no violation of water quality standards. A valid cease and desist order may be issued only after adoption by said commission of water quality standards and only if there is a violation.

STATUTES CONSTRUED—Chap. 44, S.L. 1966.

POLITICAL PARTIES—ELECTIONS

Elbert Murphy, Vice Chairman 66-4003
Democratic Central Committee

August 15, 1966

Procedure set out where a member of a political party who was properly designated for nomination for office at an assembly of such party, fails to sign and file his acceptance can subsequently be nominated as an independent candidate for such office at the same election.

STATUTES CONSTRUED—49-7-1, 49-8-10 and 49-6-4(3) CRS '63.

SAVINGS AND LOAN

Hon. John A. Love 66-4004
Governor

August 18, 1966

The Colorado Savings and Loan Association Law (Chap. 122, CRS '63) does not grant authority to the State Commissioner to approve any type of loans to members of state chartered associations which loans are not secured by first lien trust deeds or mortgages upon improved real estate or secured by shares of the association. The phrase "and in any other loans to its members as the commissioner may approve" appearing in 122-2-14(b) CRS '63 cannot be interpreted as granting authority to approve *any* type of loan.

STATUTES CONSTRUED—Chap. 122, CRS '63.

COSMETOLOGY

Miss Beryl W. Maus, Executive Secretary 66-4005
State Board of Cosmetology

August 19, 1966

If an inspector or board member is of the opinion that a licensed cosmetologist is addicted to the use of intoxicating liquor as set out in the statute, then it would be necessary to

hold a hearing and prove that such addiction rendered the individual unfit to practice cosmetology.

STATUTES CONSTRUED—32-1-18(1) and (2), CRS '63.

COSMETOLOGY—TRADING STAMPS

Miss Beryl W. Maus, Executive Secretary **66-4006**
State Board of Cosmetology

August 19, 1966

The giving of trading stamps in a registered beauty salon would not be held by the courts to violate 32-2-9, CRS '63.

STATUTES CONSTRUED—32-2-9, CRS '63.

STATE AUDITOR—EMPLOYMENT SECURITY

John P. Proctor **66-4007**
State Auditor

August 22, 1966

Re Auditor of State's report on an examination of the Department of Employment from the period July 1, 1963 to June 30, 1965.

The Auditor's comments, which are objected to by the Executive Director of the Department of Employment, may be properly made by the Auditor under his constitutional and statutory authority.

STATUTES CONSTRUED—3-8-1 CRS '63 and Chap. 49, S.L. 1965.

TAXATION—MOTOR VEHICLES

Freda R. McIntosh **66-4008**
County Treasurer, Boulder County

August 12, 1966

Distribution of specific ownership tax—mobile homes.

The specific ownership tax must be apportioned in accordance with the situs of the trailer or mobile home. See also Opinion No. 61-3563, dated October 20, 1961.

STATUTES CONSTRUED—13-3-9(2) as amended by Chap. 34, S.L. 1964.

BASIC SCIENCES

Mrs. Esther B. Starks, Secretary **66-4009**
State Board of Examiners in Basic Sciences

September 1, 1966

Under the factual situation, said doctor would not be entitled to be granted a Basic Science Certificate by waiver.

STATUTES CONSTRUED—91-5-9 and 91-5-17, CRS '63.

COSMETOLOGY

Miss Beryl W. Maus, Executive Secretary **66-4010**
 State Board of Cosmetology
September 1, 1966

State Board of Cosmetology is not required to (a) furnish copy of results of the practical examination to interested individuals; (b) furnish copies of examiner's notes and grades to interested individuals and (c) furnish information indicating examiners' names and how many times they have conducted examinations.

STATUTES CONSTRUED—32-1-10, CRS '63.

ELECTIONS POLITICAL PARTIES

Mrs. Marjorie Page **66-4011**
 Secretary-Treasurer
 Colorado Association of County Clerks
September 12, 1966

Procedures to be followed by political parties to fill vacancy occurring after a primary election; municipal clerks authority to register qualified electors; married woman's name should appear on ballot as it appears on registration book.

STATUTES CONSTRUED—49-6-11(2) and (1); 49-25-16; 59-8-10, CRS '63.

See Opinion No. 65-3906.

WATER POLLUTION

John R. Bermingham **66-4012**
 State Senator
September 13, 1966

The Colorado Water Pollution Control Commission has authority to adopt stream quality standards and not effluent standards.

STATUTES CONSTRUED—Chap. 44, S.L. 1966; 66-1-7(20) CRS '63.

COLLEGES—MOTOR VEHICLES

J. V. Hopper, President **66-4013**
 Southern Colorado State College
September 15, 1966

The College has authority to make reasonable regulations respecting the parking of vehicles on its campus and provide in such regulations that vehicles parked contrary thereto may

be removed from the campus at the owner's expense; however, proper notice should be given by appropriate signs erected on the campus. The College has a sovereign immunity from liability for its actions in removing such vehicles.

INSURANCE—BANKING

J. Richard Barnes, CLU
Commissioner of Insurance

66-4014

September 7, 1966

Examination of Pre-Need Funeral Plans.

1. Where a previous examination is on record as having been conducted by the Banking Commission, the examination conducted by the Commissioner of Insurance should commence as of the effective date of the Act, May 28, 1965.

2. Where there is no examination record in the file as having ever been conducted by the Banking Department, the examination conducted by the Commissioner of Insurance should commence as of May 28, 1965.

3. Under 14-19-7, CRS '63, the Commissioner of Insurance may, by rule, establish a reporting period other than April 30th. Such rule should be adopted in accordance with the Administrative Code.

STATUTES CONSTRUED—14-19-1, et seq., as amended by Chap. 100, S.L. 1965.

GAME, FISH AND PARKS

Harry R. Woodward, Director
Game, Fish and Parks Department

66-4015

September 12, 1966

Liability of the State for damage done to livestock by bear and mountain lion.

STATUTES CONSTRUED—62-2-34 and 62-1-5, CRS '63.

LEGISLATURE

Lyle C. Kyle, Director
Legislative Council

66-4016

September 26, 1966

If the Legislature were to adopt a practice of automatically printing all bills at the time of their introduction, it would not be necessary to continue the practice of having the Services Committees reporting and make entries in the Journals that each bill has been printed but it would be desirable.

A majority of the members elected to each house would be sufficient under the U.S. Constitution to ratify proposed amendments to the United States Constitution.

CONSTITUTION CONSTRUED—Art. V, Sec. 20, Colorado Constitution.

PROFESSIONAL ENGINEERS

Col. Henry J. Ochs, Jr. 66-4017
 Executive Secretary
 State Board of Registration for Professional Engineers
September 29, 1966

The Board cannot register an eminent well qualified engineer, without an examination, who is not a resident of the State of Colorado and who obtained his registration as a professional engineer in another state without an examination.

STATUTES CONSTRUED—51-1-22 and 51-1-12, CRS '63 (1965 Cum. Supp.)

SCHOOLS—VOCATIONAL EDUCATION

Dr. M. G. Linson, Executive Director 66-4018
 State Board for Vocational Education
October 13, 1966

Proprietary School Act of 1966

Although Sec. 13(1) of Chap. 39, S.L. 1966 provides that a proprietary school shall have until October 1, 1966 to apply for a certificate of approval and the board shall grant or deny such certificate of approval prior to April 1, 1967, there is no provision in the Proprietary School Act of 1966 for the board to accept a letter of intent from a bonding company in regard to the surety bond.

STATUTES CONSTRUED—Chap. 139, S.L. 1966.

COLLEGES—PUBLIC RECORDS

Gurnett Steinhauer 66-4019
 Business Manager
 Colorado School of Mines
November 2, 1966

No statute which provides that a student's academic record and standing in class is a public record and information concerning same should not be released without prior approval of the student involved.

VOCATIONAL EDUCATION

Dr. M. G. Linson, Executive Secretary 66-4020
 State Board for Vocational Education
November 16, 1966

The forms provided by the State Board are to be used in submitting the information required by the State Board and it is not necessary to list the forms in promulgating the rules and regulations.

STATUTES CONSTRUED—Chap. 39, Sec. 5(2), S.L. 1966.

ARCHITECTS

Mrs. Alice M. Parkin, Executive Secretary **66-4021**
 State Board of Examiners of Architects

November 17, 1966

The building of a church does not come within the exemptions set out in the architectural law and an engineer could not replace an architect on the construction of a church building.

STATUTES CONSTRUED—10-1-17 and 18, CRS '63.

INSURANCE

J. Richard Barnes, CLU **66-4022**
 Commissioner of Insurance

November 15, 1966

The leasehold improvements as reported on the annual statement of the domestic insurance company in connection with office space rented by the insurance company under a 15-year lease do not constitute a qualified or admitted asset under the terms of the statute.

STATUTES CONSTRUED—72-1-37(1) (a) and (b), CRS 63.

GAME, FISH AND PARKS

Harry R. Woodward, Director **66-4023**
 Game, Fish and Parks Department

November 21, 1966

No statutory authority granting preferences to landowners for limited hunter permits.

WATER POLLUTION

Frank Rozich, Technical Secretary **66-4024**
 Water Pollution Control Commission

November 29, 1966

Authority of Water Pollution Control Commission to regulate septic tank systems, sewage treatment facilities, disposal of solid wastes, location of feed lots and mine tailings defined under Water Pollution Control Act.

STATUTES CONSTRUED—Chap. 44, S.L. 1966.

WATER CONSERVANCY DISTRICTS

Felix L. Sparks, Director **66-4025**
 Colorado Water Conservation Board

November 30, 1966

Supplemental to Opinion 66-3967, dated April 22, 1966, concerning purchase of certificates of deposit from banks by water conservancy districts.

STATUTES CONSTRUED—83-1-3, CRS '63.

HEALTH—HOSPITALS

Dr. Roy L. Cleere, Director
State Department of Public Health
December 1, 1966

66-4026

If an institution is, *in fact*, of like nature to the specific categories named in Sec. 66-1-7(13) (a) CRS '63. (1965 Supp.), the State Department of Health has authority to license and establish standards for such health facilities.

STATUTES CONSTRUED—66-1-7(13) (a) CRS '63.

STATE CONTROLLER—LEGISLATURE

Con F. Shea
State Controller
December 6, 1966

66-4027

Release of Planning Funds appropriated to Division of Accounts and Control.

Approval of a standing committee of the General Assembly need not be obtained to authorize proposed expenditures from an appropriation made, in addition to the other approvals required by law.

The Joint Budget Committee, when acting on approvals, in our opinion, is attempting to act as administrative officers and is acting contrary to Art. III and Art. V, Sec. 8 of the Constitution.

CONSTITUTION CONSTRUED—Articles III and V, State Constitution.

LAND BOARD—GAME, FISH AND PARKS

Wesley E. Woodward
State Board of Land Commissioners
December 6, 1966

66-4028

The Land Board cannot give the Game, Fish and Parks Department a license on state forest land to develop the area as a state park; cannot transfer its responsibility for fire protection in the state forests; cannot enter into an agreement with Denver Water Department giving it authority to issue a grazing lease with income to go to the Land Board on a right of way which the Denver Water Department has from the Land Board. Can enter into an agreement with the Denver Water Department to use a right of way for public recreational purposes which they have from the State.

STATUTES CONSTRUED—112-3-18; 112-7-10 and 112-7-4, CRS '63.

VOCATIONAL EDUCATION—SCHOOLS

M. G. Linson, Executive Director **66-4029**
 State Board for Vocational Education
December 15, 1966

Agent's Permit for out-of-state proprietary correspondence school.

When Vocational Board does not have authority to deny initial issuance of an Agent's Permit. Public hearing not necessary prior to initial denial of an application. May deny initial issuance of an Agent's Permit if said courses for sale in Colorado do not comply with statute.

STATUTES CONSTRUED—Chap. 39, Sec. 4, S.L. 1966.

CIVIL RIGHTS

James F. Reynolds, Coordinator **66-4030**
 Colorado Civil Rights Commission
December 19, 1966

A member of the staff of the Commission can conduct an investigation of a complaint filed with the Commission and where he feels it necessary, need not reveal his identity to those with whom he comes in contact in an attempt to gather information on an alleged act of discrimination. Should such evidence be available, the respondent cannot thereafter raise the defense of entrapment to its subsequent use in a proceeding against him. Cases cited.

NURSING

D. L. Simmons, Executive Secretary **66-4031**
 Colorado State Board of Pharmacy
December 19, 1966

A professional nurse is not authorized to compound or dispense drugs.

STATUTES CONSTRUED—48-1-13(3), CRS '63.

UNIVERSITY OF COLORADO

President J. R. Smiley **66-4032**
 University of Colorado
December 21, 1966

From the facts submitted, the present pattern of operation of the Denver Center is not in violation of the Constitution. The activities presently conducted by the University at its Denver Center are different from those which were involved upon which Opinion No. 63-3681 was issued concerning the CU Branch in Denver. Cases cited.

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

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