

**State of Iowa**  
**1932**

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**NINETEENTH BIENNIAL REPORT**

of the

**ATTORNEY GENERAL**

for the

**BIENNIAL PERIOD ENDING DECEMBER 31, 1932**

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**JOHN FLETCHER**  
Attorney General

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## ATTORNEY GENERAL'S DEPARTMENT

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JOHN FLETCHER .....	Attorney General
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NEILL GARRETT .....	Assistant Attorney General
EARL F. WISDOM.....	Assistant Attorney General
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## REPORT OF THE ATTORNEY GENERAL

To HONORABLE DAN W. TURNER,

December 29, 1932.

*Governor of Iowa,*

My dear Governor Turner:

I submit herewith the detailed report of the Department of Justice for the years 1931-32.

The administrative work of the Department in dealing with the various state departments, boards and commissions, has been exceptionally heavy during the biennium.

### CIVIL CASES

During the two-year period the Department has itself handled and disposed of approximately 400 civil cases in the District Courts of the State. These cases involve mostly large sums of money and property and questions of importance relative to the police power of the State. Among the cases which might be mentioned as involving not only the validity of state laws but considerable sum of money is the case of Mona Motor Oil Company, of Council Bluffs, wherein the company seeks to enjoin the collection of gas tax, alleging the unconstitutionality of the law, and also seeks to recover the tax already paid. Upon the outcome of this case, which is still pending, depends the state's right to collect between sixty and seventy million dollars for the improvement of the roads of the state. It is important that this litigation be taken care of as promptly and speedily as possible and that a decision be had before the adjournment of the 45th General Assembly so that the status of the state can be determined and if legislation is necessary it can be had. This is one of the more important cases pending in the Department at the conclusion of this biennium.

### STATE SUPREME COURT

Some 50 Civil cases have been tried in the Supreme Court during the biennium. It is impossible to review the history of these cases in this report. The list of such cases is set out in detail in the report.

One case worthy of special mention is the case of State vs. Norman Baker, charged with violation of the medical practice act, where the District Court denied an injunction against Baker and on appeal to the Supreme Court enjoined him from practicing.

In Davidson Building Company vs. Mulock, et al., the question of the constitutionality of the law creating the State Board of Assessment and Review was determined.

In the case of *Andrew vs. First Trust & Savings Bank*, Sioux City, the Supreme Court held that the receiver, with the approval of the District Court, had authority to borrow money for the purpose of paying dividends in a closed bank. This decision was important to the depositors of all closed banks as the receiver is now able to borrow from the Reconstruction Finance Corporation for the purpose of paying dividends and anticipating collections.

The case of *Lineburger vs. Johnson*, an action to enjoin the state treasurer from collecting gas tax on naphtha and where the collection was enjoined, led to the amendment by the legislature of the gas tax law, placing the tax on motor fuel rather than on gasoline.

In the case of *Peck vs. Olsen Construction Company*, the rights of the State as to its waters were determined, and important property rights bordering upon state waters were adjudicated.

#### SUPREME COURT OF THE UNITED STATES

Several cases have been disposed of by the Department in the Supreme Court of the United States. A case to be especially mentioned is the case of *Iowa National Bank vs. Stewart, et al.*, which involved the constitutionality of the state tax on bank stock. The state system of taxation was held constitutional by the Supreme Court of this state but reversed by the Supreme Court of the United States. There is now being made an effort in Congress to change the Federal statute to avoid conflict between the assessment of national banks and state banks.

There is also the case of *Loftus vs. Thornburg*, involving the question of the constitutionality of the Bovine Tuberculosis eradication statute. The constitutionality of the act was sustained by the state Supreme Court and on appeal to the Supreme Court of the United States it was dismissed by reason of the fact that it involved no substantial Federal question.

The case of the *Woodbine Savings Bank vs. Shriver*, tried in the District Court and Supreme Court of this State and appealed to the Supreme Court of the United States, which involved the constitutionality of our statute providing for a bank stock assessment to repair impaired capital, and maintain solvency of a bank, was sustained. This case was of vital importance to depositors in banks.

#### LEGISLATIVE WORK

As has been customary in this Department, there was a vast amount of work done by the Department in the 44th General As-



sembly by way of assisting legislators in the drafting of bills, furnishing opinions on legal questions, and advising the Committees, in addition to presenting all claims that had been approved by this Department to the Claims Committee of the General Assembly. Since the adjournment of the legislature a member of this Department has been assigned to assist the Legislative Tax Revision Committee, designed to work out a plan for reduction of governmental expenditures, the work of this Department simply being to aid the Committee in the planning of desired legislation, and advising them on legal questions, leaving the question of policy entirely to the Committee.

#### UNIVERSITY INVESTIGATION

While special counsel was employed in behalf of the University and in behalf of the Legislative Committee much of the detail work of the investigation devolved upon this Department, and assistance was rendered in making the investigation. This, of course, was a part of the work connected with the work of the 44th General Assembly.

#### LONG INVESTIGATION

At the instance of the Governor, this Department assisted in an investigation of the charges made against J. W. Long, as Auditor of State, and a member of this Department presented the evidence before the Committee appointed by the Governor to hear and determine the questions therein involved. The work of this Committee is being published in pamphlet form for the use of the Legislature.

#### BUREAU OF INVESTIGATION

For the past two years the Bureau of Investigation, which is under the direct supervision of the Attorney General, has been making a strenuous fight against the attempted inroad of the gangster and racketeer in this state. During the last biennium many bank robberies were committed in the state but the number of bank robberies has decreased, in my judgment, due largely to the fact that a persistent effort was made by the Bureau to hunt down the perpetrators of the crimes, and the efforts of the Bureau met with signal success in this respect as most of the robberies committed in the past two years have been solved and the men who committed them convicted and sent to the penitentiary, most of them for life.

During the years that I have been privileged to represent the people as their Attorney General, a consistent effort has been made to obtain close cooperation between the Bureau of Investigation

and local peace officers. Each year a School of Instruction has been held for county attorneys and sheriffs and these meetings have brought a closer union between the local officer and state government and have been very beneficial to the people of the State.

The 44th General Assembly authorized the holding of local schools of instruction for peace officers. The Department assigned Mr. Nebergall to act for the Department in organizing and holding these schools and in many of the counties of the state very successful schools of instruction have been held.

The 44th General Assembly made a small appropriation to enable the state to avail itself of the services of a police radio system, which was installed by the Iowa State Bankers Association. This radio station was installed in the spring of 1932. Extensive tests were conducted to determine its practicability. We discovered that we had an unfavorable wave length assigned and the matter was taken up with the Radio Commission with the result that about September 1st of this year we obtained a new wave length assignment. Again we made tests to determine its efficiency and because of the constant improvement of police radio receiving sets the matter of the purchase of the proper set was delayed and that is a matter which should be taken care of early in the beginning of the next biennium.

The Bureau has made wonderful progress in its fingerprint and ballistic work and I believe that it is fair to say that Iowa has now one of the most complete Bureaus of Identification in the country that is operated by a state.

Modern methods are being constantly put into use by those engaged in the commission of crime. Organized crime is a business and it is necessary, if government is to cope with crime successfully, to be constantly on the alert to work out the most modern methods that are obtainable to make punishment for crime as certain as possible. When punishment is sure to follow any criminal act, crime will not be so frequently committed. If our form of government is to continue to exist it must be capable of enforcing its laws and the legislature should see to it that the state is properly equipped to cope with crime.

In submitting this report I want, in this public way, to express my appreciation of the splendid cooperation that the Department has always received from all public officials, both local and state. I also want to express my appreciation to those who have labored with me in the Department and to thank them for the loyal services they have rendered to the people of the state.

Respectfully submitted,

JOHN FLETCHER, *Attorney General.*

SCHEDULE "A," CRIMINAL CASES, SUPREME COURT OF IOWA  
JANUARY TERM, 1931

Title of Case	County	Decision	Nature of Action
State vs. Bascom .....	Linn .....	Affirmed .....	Bootlegging.
State vs. Bird .....	Henry .....	Dismissed .....	Illegal possession of intoxicating liquor.
State vs. Burke .....	Linn .....	Affirmed .....	Uttering a forged instrument.
State vs. Butters .....	Linn .....	Affirmed .....	Maintaining a liquor nuisance.
State vs. Cavanaugh .....	Polk .....	Affirmed .....	Embezzlement by Bailee.
State vs. Davis (Floyd) .....	Clarke .....	Affirmed .....	Concealing stolen property.
State vs. Davis (James) (Indicted under name of James Nelson).....	Page .....	Affirmed .....	Entering bank with intent to rob.
State vs. Glazer .....	Marshall .....	Affirmed .....	Conspiracy to commit a felony.
State vs. Madden .....	Union .....	Affirmed .....	Illegal possession of liquor.
State vs. Mann .....	Linn .....	Dismissed .....	Operating motor vehicle while intoxicated.
State vs. Milburn (D. C.).....	Linn .....	Affirmed .....	Operating motor vehicle while intoxicated.
State vs. Millburn (Russell) .....	Linn .....	Dismissed .....	Maintaining liquor nuisance.
State vs. Sheil .....	Ringgold .....	Affirmed .....	Breaking and entering.
State vs. Vosmek .....	Linn .....	Dismissed .....	Operating motor vehicle while intoxicated.

MAY TERM, 1931

State vs. Arensdorf .....	Woodbury .....	Dismissed .....	Robbery with aggravation.
State, ex rel. John Fletcher, Atty. Gen., and Otto J. Eckey, Co. Atty. of Jef- ferson Co., Petitioner, vs. The Dis- trict Court of Jefferson Co., Iowa, R. W. Smith, Judge of the District Court of Jefferson Co.....	Jefferson .....	Writ sustained; or- ders annulled; causes remanded..	Writ of certiorari. Change of venue.
State vs. Nettie and Forrest Edwards..	Decatur .....	Affirmed .....	Breaking and entering.
State vs. Fiji .....	Buchanan .....	Affirmed .....	Larceny.
State vs. Franks .....	Linn .....	Affirmed .....	Operating motor vehicle while intoxicated.

MAY TERM, 1931—Continued

Title of Case	County	Decision	Nature of Action
State vs. Grimm	Butler	Affirmed	Rape.
State vs. Gulick	Linn	Affirmed	Rape.
State vs. Heffelfinger	Crawford	Reversed	Larceny of a motor vehicle.
State vs. Jensen	Dubuque	Affirmed	Sodomy.
State vs. Johnson (Alfred)	Jones	Affirmed	Escape.
State vs. Lowman	Mahaska	Affirmed	Illegal possession of intoxicating liquor.
State vs. Mullenix	Appanoose	Affirmed	Entering bank with intent to rob.
State vs. Ross	Dubuque	Affirmed	Uttering a forged instrument.
State vs. Whisler	Wapello	Affirmed	Larceny.

SEPTEMBER TERM, 1931

State vs. Blazovich	Appanoose	Dismissed. Governor commuted sentence	Conspiracy, assault and battery.
State vs. Boysen	Plymouth	Affirmed	Receiving deposits when bank is insolvent.
State vs. Byers	Polk	Affirmed	Assault with intent to inflict great bodily injury.
State vs. Campbell	Polk	Affirmed	Murder.
State vs. Ceranak	Audubon	Dismissed	Larceny.
State vs. Davis (Wm. H.)	Mahaska	Affirmed	Larceny of domestic fowls.
State vs. Friend (Bert)	Floyd	Affirmed	Rape.
State vs. Foster	Polk	Affirmed	Murder, first degree.
State vs. Gustoff	Greene	Reversed	Rape.
State vs. Haas	Pottawattamie	Dismissed	Receiving stolen property.
State vs. Harness	Lee	Affirmed	Murder in the first degree.
State vs. Hawks	Mills	Affirmed	Larceny of property.
State vs. Kinseth	Humboldt	Dismissed	Illegal possession of intoxicating liquor.
State vs. Lowenberg	Polk	Affirmed	Obtaining property by false and fraudulent representation.
State vs. Messer	Henry	Affirmed	Assault with intent to commit murder.
State vs. Mickelson	Woodbury	Affirmed	Possession of lottery tickets with intent to sell.

State vs. Milburn (A)	Linn	Dismissed	Maintaining liquor nuisance.
State vs. Miley	Lucas	Affirmed	Lewd and lascivious conduct upon a child.
State vs. Miner	Jones	Reversed	Murder, first degree.
State vs. Noel	Monroe	Affirmed	Obtaining property by false pretenses.
State vs. Overland	Story	Affirmed	Intoxication.
State vs. Rayburn	Poweshiek	Affirmed	Operating motor vehicle while intoxicated.
State vs. Rice	Allamakee	Affirmed	Assault with intent to commit rape.
State vs. Richardson	Ida	Affirmed	Manslaughter.
State vs. Smith (Hassel A.)	Linn	Dismissed	Operating motor vehicle while intoxicated.
State vs. Taylor (Cal)	Fremont	Affirmed	Selling intoxicating liquor.
State vs. Taylor (Wm.)	Lee	Reversed	Burglary.
State vs. Tibbetts	Cerro Gordo	Dismissed	Embezzlement.
State vs. Trimble	Monroe	Affirmed	Breaking and entering.
State vs. Voelpel	Clinton	Reversed	Manslaughter.
State vs. Walker	Wapello	Dismissed	Larceny of a hog.

JANUARY TERM, 1932

State vs. Abernathy	Monroe	Affirmed	Maintaining a liquor nuisance.
State vs. Buckland	Woodbury	Affirmed	Maintaining a nuisance.
State vs. Casanova	Lee	Affirmed	Escape from penitentiary.
State vs. Curtis	Lee	Affirmed	Entering bank with intent to rob.
State vs. Davis (Geo.)	Polk	Reversed	Larceny of a motor vehicle.
State vs. Green (41386)	Ida	Affirmed	Breaking jail.
State vs. Green (41387)	Ida	Affirmed	Breaking jail.
State vs. Grogan	Woodbury	Affirmed	Operating motor vehicle while intoxicated.
State vs. Harlan	Page	Affirmed	Assault with intent to commit manslaughter.
State vs. Harms, et al.	Woodbury	Affirmed	Larceny from the person.
State vs. Hartman (John)	Pocahontas	Dismissed	Conspiracy.
State vs. Johnson (Geo.)	Linn	Affirmed	Operating motor vehicle while intoxicated.
State vs. Kilberger	Linn	Affirmed	Operating motor vehicle while intoxicated.
State vs. Lowman	Monroe	Affirmed	Illegal transportation of intoxicating liquor.
State vs. Mack	Lee	Affirmed	Burglary.

JANUARY TERM, 1932—Continued

Title of Case	County	Decision	Nature of Action
State vs. Phelan	Plymouth	Affirmed	Driving motor vehicle while intoxicated.
State vs. Rarey	Johnson	Affirmed	Nuisance.
State vs. Shute	Wapello	Dismissed	Transportation of intoxicating liquor.
State vs. Smith (Jos.)	Chickasaw	Affirmed	Illegal possession of intoxicating liquor.
State vs. Smith (O. J.)	Linn	Affirmed	Illegal transportation of intoxicating liquor.
State vs. Solberg	Cedar	Affirmed	Forgery.
State vs. Taylor (Robert Roy)	Dallas	Affirmed	Murder in first degree.
State vs. Williams	Linn	Affirmed	Maintaining a liquor nuisance.

MAY TERM, 1932

State vs. Bell	Jasper	Dismissed	Wife desertion.
State vs. Berg	Lucas	Affirmed	Breaking and entering.
State vs. Blackledge	Polk	Affirmed	Conspiracy.
State vs. Goodman (41352)	Pottawattamie	Affirmed	Receiving stolen property.
State vs. Goodman (41353)	Pottawattamie	Affirmed	Receiving stolen property.
State vs. Goodman (41354)	Pottawattamie	Affirmed	Receiving stolen property.
State vs. Grogan	Woodbury	Affirmed	Operating motor vehicle while intoxicated.
State vs. Henderson	Cass	Affirmed	Breaking and entering in the night time.
State vs. Henricksen	Decatur	Affirmed	Arson.
State vs. Hoepner	Cherokee	Affirmed	Larceny of domestic fowls.
State vs. Mutch	Black Hawk	Affirmed	Perjury.
State vs. Near	Des Moines	Affirmed	Illegal transportation of intoxicating liquor.
State vs. Shannon	Black Hawk	Reversed	Murder.
State vs. Shoning	Woodbury	Affirmed	Adultery.
State vs. Smith (C. C.)	Woodbury	Affirmed	Assault with intent to inflict great bodily injury.
State vs. Stevenson	Union	Affirmed	Operating motor vehicle while intoxicated.
State vs. Tucker	Polk	Affirmed	Putting out high explosives.

SEPTEMBER TERM, 1932

State vs. Brown, Kelso, Furlong. (Furlong appeal) .....	Wapello .....	Affirmed .....	Possession of burglary tools and imple- ments.
State vs. Brown (Paul) .....	Cerro Gordo .....	Affirmed .....	Rape.
State vs. Chamberlain .....	Polk .....	Reversed .....	Larceny.
State vs. Dediel .....	Worth .....	Affirmed .....	Illegal possession of intoxicating liquor.
State vs. Ellingson .....	Worth .....	Affirmed .....	Maintaining a liquor nuisance.
State vs. Gouge .....	Wright .....	Affirmed .....	Illegal possession of intoxicating liquor.
State vs. Johnson (Walter) .....	Pottawattamie .....	Affirmed .....	Murder, first degree.
State vs. Long .....	Polk .....	Affirmed .....	Manslaughter.
State vs. Madison .....	Union .....	Affirmed .....	Bootlegging.
State vs. Sharpshair .....	Hardin .....	Affirmed .....	Operating motor vehicle while intoxicated.
State vs. Smith (Tine) .....	Keokuk .....	Affirmed .....	Assault with intent to commit murder.
State vs. Swolley .....	Woodbury .....	Reversed .....	Rape.
State vs. Wetzler .....	Black Hawk .....	Affirmed .....	Operating motor vehicle while intoxicated.
State vs. Williams .....	Black Hawk .....	Affirmed .....	Assault with intent to commit murder.
State vs. Xanders .....	Hamilton .....	Affirmed .....	Robbery with aggravation.
State vs. Anderson .....	Boone .....	Pending*	Illegal transportation of intoxicating liquor.
State vs. Blackledge .....	Polk .....	Rehearing pending*	Conspiracy.
State vs. Brown, Marvin and Kelso (Kelso appeal) .....	Wapello .....	Pending*	Possession of burglary tools and imple- ments.
State vs. Bruggeman .....	Van Buren .....	Pending*	Nuisance.
State vs. Campbell .....	Johnson .....	Pending*	Murder.
State vs. Christofferson .....	Pottawattamie .....	Pending*	Breaking and entering a railroad car.
State vs. Christofferson and Arnold Rolan (Rolan appeal) .....	Pottawattamie .....	Pending*	Breaking and entering a railroad car.
State vs. Clark, Leftwich (Leftwich appeal) .....	Woodbury .....	Pending*	Robbery with aggravation.
State vs. Cooley .....	Polk .....	Pending*	Murder.
State vs. Engler (41573) .....	Polk .....	Pending*	Possession of burglary tools.
State vs. Engler (41541) .....	Polk .....	Pending*	Entering bank with intent to rob.
State vs. Essex .....	Polk .....	Pending*	Making malicious threats to extort money.

SEPTEMBER TERM, 1932—Continued

Title of Case	County	Decision	Nature of Action
State vs. Grimes	Woodbury	Pending*	Adultery.
State vs. Hamm	Page	Pending*	Larceny of domestic fowls.
State vs. Harper (2 appeals consolidated)	Buena Vista	Pending*	Murder, first degree.
State vs. Henderson	Dickinson	Pending*	Change of venue.
State vs. Huckins	Linn	Pending*	False pretenses.
State vs. Huff	Harrison	Pending*	Embezzlement.
State vs. Kelly	Union	Pending*	Maintaining a nuisance.
State vs. Lenker	Cedar	Pending*	Conspiracy.
State vs. Madison	Union	Rehearing pending*	Bootlegging.
State vs. Mitchem	Polk	Pending*	Murder, first degree.
State vs. Moore	Cedar	Pending*	Conspiracy.
State vs. Mutch	Black Hawk	Rehearing pending*	Perjury.
State vs. Rentz	Sioux	Pending*	Entering bank with intent to rob.
State vs. Richardson	Ida	Resubmission pending	Manlaughter.
State vs. Rounds	Fayette	Pending*	Lascivious acts with children.
State vs. Rowley	Polk	Pending*	Murder.
State vs. Severino	Woodbury	Pending*	Murder.
State vs. Shafer	Pottawattamie	Pending*	Maintaining a liquor nuisance.
State vs. Skipper	Pottawattamie	Pending*	Maintaining a liquor nuisance.
State vs. Soeder	Fayette	Pending*	Selling securities without being registered as a dealer.
State vs. Swolley	Woodbury	Rehearing pending*	Rape.
State vs. Watson	Carrroll	Pending*	Robbery with aggravation.
State vs. Welch	Dallas	Pending*	Procuring intoxicating liquor for minor.
State vs. Wheelock	Polk	Pending*	Operating motor vehicle while intoxicated.
State vs. Williams	Story	Pending*	Rape.
State vs. Dobry	Scott	Pending	Conviction in district court for sale of securities without license.

\*Not submitted to court.



**SCHEDULE "B," CIVIL CASES—SUPREME COURT OF IOWA**

Case	County	Notation
Iowa National Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al.....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Peoples Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.
Central State Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al.....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.
Central Trust Company, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al. ....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.
Valley National Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.
Valley Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al.....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.
Home Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.
Des Moines Savings Bank & Trust Co., Appellants, vs. Fred H. Hunter, Members of Board of Supervisors .....	Polk.....	Constitutionality of the law in reference to the taxation of state and national banks denied on rehearing.

SCHEDULE "B"—Continued

Case	County	Notation
State of Iowa and Iowa State Highway Commission vs. Central States Electric Company, Appellant .....	Kossuth.....	Petition for rehearing denied. Right of Highway Commission to designate the location of poles of transmission lines on the public highways sustained; however, all of structure must be in highway.
Central States Electric Company, Appellant, vs. Pocahontas County, Iowa, and Board of Supervisors .....	Pocahontas.....	Petition for rehearing denied. Right of Highway Commission to designate the location of poles of transmission lines on the public highways sustained; however, all of structure must be in highway.
Iowa Railway & Light Corporation, Appellant, vs. Lindsey, Engineer of Greene County, et al.....	Greene.....	Petition for rehearing denied. Right of Highway Commission to designate the location of poles of transmission lines on the public highways sustained; however, all of structure must be in highway.
State vs. Norman Baker.....	Muscatine.....	Pending. Contempt action.
State vs. Wm. Frank Brown.....	Lee.....	Reversed and remanded. Petition for rehearing denied. Action to revoke license to practice medicine on grounds of unprofessional conduct. Action in mandamus.
State and R. E. Johnson vs. Des Moines Asphalt Paving Company .....	Polk.....	Action in mandamus.
Employment Agency of Des Moines vs. Employment Bureau of Des Moines.....	Polk.....	Affirmed. Injunction action to enjoin defendant from practicing medicine without license.
State vs. G. E. Fray.....	Keokuk.....	Pending. Action to restrain defendant from practicing medicine without license.
State vs. G. B. Groves .....	Black Hawk.....	Pending. Action to restrain defendant from practicing medicine without license.
In the matter of the Estate of Cora B. Hillis vs. the State University of Iowa, et al.....	Polk.....	Pending. Construction of will.

State vs. Banner Howard.....	Linn.....	Reversed. Injunction ordered to restrain defendant from practicing medicine without license.
State vs. Kindy Optical Company.....	Polk.....	Pending. Injunction action to restrain defendant from practicing optometry without license.
J. F. Lineberger vs. R. E. Johnson.....	Polk.....	Injunction granted. Action to enjoin Treasurer of State from collecting gasoline license tax.
State vs. George C. Logsdon.....	Henry.....	Pending. Injunction action to restrain defendant from practicing as an itinerant vendor of drugs.
State vs. W. P. McPheeters.....	Polk.....	Pending. Injunction action to restrain defendant from practicing medicine without license.
State vs. Royal Miller.....	Cerro Gordo.....	Pending. Injunction action to restrain defendant from practicing medicine without license.
State vs. Genevieve Stoddard.....	Allamakee.....	Affirmed. Injunction action to restrain defendant from practicing medicine without license. Petition for rehearing overruled.
L. A. Andrew, Supt. of Banking of Iowa vs. Farmers State Bank of Grand River, et al.—In re Claim of J. O. Jones.....	Decatur.....	Affirmed.
L. A. Andrew, Receiver of Helmer & Gortner Bank vs. Moffit.....	Cedar.....	Appealed by defendant.
J. F. Lineberger v. R. E. Johnson.....	Polk.....	Reversed.
State ex rel. John Fletcher vs. Northwestern Bell Telephone Co. ....	Wayne.....	Reversed. Petition for rehearing overruled.
State ex rel. John Fletcher vs. Naumann.....	Des Moines.....	Affirmed.
A. L. Peck vs. Olsen Const. Co.—Board of Conservation .....	Dickinson.....	Affirmed. Affirmed on rehearing. Second petition for rehearing pending.
In Re application for Disbarment of A. M. Cloud.. In the matter of the Application for Disbarment of S. K. Stevenson .....	Delaware.....	Pending, not submitted to court. Disbarment.
Devotie vs. Iowa State Fair Board.....	Johnson.....	Dropped for want of argument. Disbarment.
	Polk.....	Involves question of liability of State Fair Board for damages sustained by reason of death of guest at State Fair.
Field vs. Samuelson, Appellant.....	Polk.....	Involves jurisdiction Superintendent of Public Instruction on appeal from county superintendent's denying consent to attend school in adjoining school district. Reversed.
Davidson Building Co. vs. City of Des Moines....	Polk.....	Constitutionality of State Board of Assessment and Review statute sustained.

SCHEDULE "B"—Continued

Case	County	Notation
Andrew, Supt. vs. Sanford.....	Van Buren.....	Suit on stock assessment where stock had been sold in good faith but not transferred on the books of the bank. Assessment denied.
Boyd vs. Johnson, Treasurer.....	Lee.....	Constitutionality of state sinking fund sustained as to tax payer and school district.
Gallarno vs. Long, et al.....	Polk.....	Legislative expense account held unconstitutional.
Peverill, et al. vs. Department of Agriculture.....	Black Hawk.....	Held that Department of Agriculture may test cattle for bovine tuberculosis without appraisal before test and without bond by veterinarian.
Andrew, Supt. vs. First Trust and Savings Bank..	Woodbury.....	Application for authority to make loan from Reconstruction Finance Corporation. Authority granted. Affirmed.
Andrew, Supt. vs. State Bank of Swea City.....	Kossuth.....	Reversed. Held that claim for stock assessment cannot be sold.
Kemmerer vs. Highway Commission .....	Boone.....	Appeal from condemnation affirmed.
Cory vs. Highway Commission .....	Dickinson.....	Appeal from condemnation affirmed.
Welton vs. Highway Commission, Appellant.....	Mahaska.....	Appeal from condemnation reversed.
Shivvers vs. Highway Commission.....	Marion.....	Appeal from condemnation.
Himes vs. Highway Commission.....	Marion.....	Appeal from condemnation.
Dean vs. Highway Commission .....	Story.....	Appeal from condemnation.
Duggan vs. Highway Commission .....	Tama.....	Appeal from condemnation.
Caplan vs. Highway Commission.....	Webster.....	Appeal from condemnation.
Harding vs. Board of Supervisors and Highway Commission .....	Osceola.....	Suit to enjoin use of bond fund for relocated highway.
Southern Surety Co. vs. Jenner Bros.....	Warren.....	.....
Wormhoudt Lumber Co. vs. Hyatt and Highway Commission .....	Wapello.....	Pending.
Central States Electric Co. vs. Kossuth County and Highway Commission .....	Kossuth.....	Pending.

NOTE: In addition to the above cases fifteen suits to enjoin the enforcement of the bovine tuberculosis statutes were brought, motions to dismiss sustained and appeals to the Supreme Court dismissed following the decision of the Supreme Court of the United States in the case of Loftus vs. Department of Agriculture.

SCHEDULE "C," CIVIL CASES—SUPREME COURT OF UNITED STATES

Case	County	Notation
Iowa National Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al.....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Central State Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al.....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Central Trust Company, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Peoples Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Valley National Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Valley Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Home Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors, et al.....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.

SCHEDULE "C"—Continued

Case	County	Notation
Des Moines Savings Bank & Trust Co., Appellants, vs. Fred H. Hunter, Members of Board of Supervisors .....	Polk.....	Reversed. Constitutionality of the law in reference to the taxation of state and national banks denied.
Woodbine Savings Bank vs. Shriver .....	Iowa.....	Affirmed. Constitutionality of bank stock assessment to repair impaired capital sustained.
Loftus, et al. vs. Department of Agriculture, et al..	Mitchell.....	Dismissed for want of jurisdiction. Constitutionality bovine tuberculosis eradication statutes sustained.

SCHEDULE "D," INHERITANCE TAX CASES—DISTRICT COURT

Title of Case	County	Decision	Notation
In re Estate of Cecelia Anderson.....	Marshall .....	Decree and order for State .....	Court held money of a resident decedent on deposit in bank in Sweden was taxable in Iowa.
In re Estate of John Barry.....	Benton .....	Decree against State	Court held that State was not entitled to any tax.
In re Estate of D. C. Bradley.....	Appanoose .....	Compromise .....	Action to collect tax settled by compromise.
In re Estate of Robert O. Burghardt....	Boone .....	Appraisal set aside.	Objection to appraisal.
In re Estate of Charles Charlson.....	Winnebago .....	Pending .....	Action to collect tax for State.
In re Estate of Lucy A. Charter.....	Linn .....	Decree against State	Court held estate not subject to inheritance tax.
In re Estate of John M. Galbreath.....	Polk .....	Pending .....	Action to collect tax.
In re Estate of John H. Hinkey.....	O'Brien .....	Pending .....	Objection to appraisement.

In re Estate of Minnie Huber.....	Harrison .....	Pending .....	Objection to appraisement.
In re Estate of Clara Raines.....	Mills .....	Pending .....	Appraisal aside and new one made.
In re Estate of Nettie Schaad.....	Linn .....	Decree for State...	Action to subject certain trust property to the imposition of an inheritance tax. To have the will construed and set aside a purported transfer. Court held property subject to tax; ordered an appraisal of the property for inheritance tax purposes.
In re Estate of Jesse Straight.....	Harrison .....	Decree for State...	District court held in favor of State and appeal has been taken.

NOTE: In addition to the above cases there were numerous petitions filed in the district courts for the purpose of forcing the filing of reports, or to collect taxes, which petitions were dismissed upon compliance with the statute. Also there were 52 compromise settlements made with the approval of the court, the Attorney General having investigated and advised settlement. Total value of compromises, \$25,117.60.

**SCHEDULE "E," OTHER CIVIL CASES IN DISTRICT COURT**

Case	County	Notation
State vs. American Beet Sugar Company.....	Cerro Gordo .....	Pending. Injunction action.
State vs. Sidney Amiss .....	Muscatine .....	Pending. Conspiracy to violate medical practice act.
State vs. H. U. Baker.....	Johnson .....	Pending. Injunction action to restrain defendant from practicing medicine without license.
State vs. Norman Baker .....	Muscatine .....	Pending. Conspiracy to violate medical practice act.
State vs. Fred E. Bebout .....	Black Hawk .....	Injunction issued. Action to enjoin defendant from practicing podiatry without license.
State vs. Wm. Browne .....	Ringgold .....	Pending. Injunction action to restrain defendant from practicing medicine without license.
State vs. John Brouhard .....	Story .....	Injunction granted. Action to restrain defendant from practicing pharmacy without license.

SCHEDULE "E"—Continued

Case	County	Notation
State vs. Abe Carlson .....	Audubon .....	Injunction issued. Action to enjoin defendant from practicing medicine without license.
Chesire vs. Iowa State Reformatory .....	Jones .....	Pending. Workman's compensation.
State vs. Ross Dyar .....	Boone .....	Injunction granted. Action to restrain defendant from practicing medicine without license.
State vs. L. M. Fenberg .....	Polk .....	Injunction granted. Action to restrain defendant from practicing optometry without license.
State vs. Karl D. Fisk .....	Allamakee .....	Defendant convicted. Action to restrain from practicing as itinerant optometrist.
State ex rel., Fletcher vs. Glazer Cloak Shop...	Pottawattamie .....	Dismissed at defendant's cost. Action to recover penalty for doing business in state without license.
State vs. Globe Department Store .....	Polk .....	Defendant enjoined. Action to restrain from practicing pharmacy without a license.
State vs. Harmer .....	Des Moines .....	Pending. Action to restrain from practicing medicine without license.
State vs. Harmon .....	Page .....	Injunction granted. Action to restrain from practicing as itinerant vendor of drugs without license.
State vs. Daniel and Mary Heckman .....	Wapello .....	Injunction granted. Action to restrain from practicing chiropractic without license.
State vs. Hook .....	Harrison .....	Injunction granted. Action to restrain from practicing medicine without license.
State vs. Hoyt .....	Webster .....	Pending. Action to restrain from practicing medicine without license.
State vs. Hughes .....	Buena Vista .....	Pending. Action to restrain from practicing medicine without license.
State vs. Ingram .....	Linn .....	Injunction granted. Action to restrain from practicing medicine without license.
State vs. Johnson .....	Marshall .....	Pending. Action to restrain from practicing cosmetology without license.



State vs. Kane .....	Polk .....	Defendant enjoined. Action to restrain from practicing medicine without license.
State vs. Kielhorn .....	Crawford .....	Pending. Action to restrain from practicing medicine without license.
State vs. Knutson .....	Cerro Gordo .....	Pending. Action to restrain from operating as itinerant vendor of drugs without license.
State vs. Lloyd .....	Marshall .....	Pending. Action to restrain from practicing cosmetology without license.
State vs. Mavrelis .....	Black Hawk .....	Injunction to restrain from practicing medicine without license. Dismissed.
State vs. McMichael .....	Butler .....	Pending. Action to restrain from practicing medicine without license.
State vs. National Chemical Co., Inc.....	Des Moines .....	Pending. Action to restrain corporation from practicing pharmacy.
State vs. Nichols .....	Marshall .....	Pending. Action to revoke license to practice medicine on grounds of being an habitual user of drugs and intoxicating liquors.
State vs. Quigley .....	Decatur .....	Jail sentence imposed for ninety days. Action for violation of injunction to practice medicine.
State ex rel., Fletcher vs. Reed's Homemade Ice Cream Co. ....	Polk .....	Dismissed at plaintiff's costs. Action to collect penalty for carrying on business in state without valid permit.
State vs. Reynan .....	Woodbury .....	Injunction granted. Action to restrain from practicing medicine and surgery without license.
State vs. Rice .....	Wapello .....	Injunction issued. Action to restrain from practicing cosmetology without license.
State vs. Robinson .....	Hamilton .....	Pending. Action to restrain from practicing medicine without license.
State vs. Siegel .....	Scott .....	Pending. Action to restrain from practicing optometry without license.
State vs. Glen Smith Fuel Co.....	Pottawattamie .....	Pending. Action to restrain from doing business in state without valid permit.
State vs. Sylvan Home and Mintie Stanard.....	Woodbury .....	Injunction granted. Action to restrain from operating a maternity home.
Sweet et al. vs. State of Iowa et al.....	Washington .....	Pending. Workmen's compensation.

SCHEDULE "E"—Continued

Case	County	Notation
State vs. Swift .....	Clinton .....	Pending. Action to restrain from practicing cosmetology without license.
State vs. Swihart .....	Polk .....	License revoked to practice pharmacy.
State ex rel. John Fletcher vs. Van Dyke Studios, Inc. ....	Woodbury .....	Pending. Action to collect penalty for carrying on business in state without valid permit.
State vs. Veatch .....	Polk .....	Conviction had. Action to revoke license to practice pharmacy.
State vs. Watkins .....	Des Moines .....	Pending. Action to restrain from practicing pharmacy without license.
State and R. E. Johnson vs. Atlantic, Pacific & Gulf Oil Company .....	Polk .....	Dismissed. Action to collect gasoline license tax.
State and R. E. Johnson vs. Audubon Motor Company .....	Audubon .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Bushar & Son .....	Woodbury .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Consumers Oil Company .....	Linn .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Des Moines Independent Oil Company .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Galt Cooperative Grain Company .....	Wright .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Hawkeye Paper Stock Company & Kaplan Coal & Oil Company .....	Woodbury .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Heller .....	Webster .....	Dismissed. Gas tax paid.
State and R. E. Johnson vs. Imperial Oil Company .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Iowa Southern Oil Company .....	Wapello .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Lavalleur Oil Company .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Levin Oil Company .....	Woodbury .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Luke Oil Company ..	Clarke .....	Gas tax paid. Action to collect gasoline license tax.

State and R. E. Johnson vs. McCurnin Oil Company .....	Polk .....	Dismissed. Action to collect gasoline license tax.
State and R. E. Johnson vs. McCurnin Oil Company .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. S. L. Miller, operating under trade name of Miller Oil Company .....	Woodbury .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Northwestern Oil Company .....	Linn .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Pilicer Petroleum ..	Linn .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Roark Oil Company ..	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Simmer Oil Corporation .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. A. W. Snook .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Spencer & Perry Oil Company .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Superior Oil Company .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Superior Oil Corporation .....	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. The Petroleum Products Company .....	Black Hawk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Waukee Oil Company ..	Polk .....	Pending. Action to collect gasoline license tax.
State and R. E. Johnson vs. Western Oil & Refining Company .....	Scott .....	Pending. Action to collect gasoline license tax.
Iowa State Board of Education et al. vs. Helen I. Farnsworth .....	Kossuth .....	Decree for state.
State Board of Education et al. vs. Patrick Donohoe et al. ....	Iowa .....	Decree for state.
State Board of Education et al. vs. Wagner .....	Iowa .....	Pending.
The State Board of Education et al. vs. Edward F. McCabe et al. ....	Johnson .....	Pending.
State Board of Education et al. vs. Phillip J. Maher et al. ....	Johnson .....	Pending.
The State Board of Education et al. vs. Edward F. Borschel et al. ....	Johnson .....	Pending.
State Board of Education et al. vs. Wm. D. Loney ..	Johnson .....	Pending.
State Board of Education vs. Butler .....	Johnson .....	Pending.

SCHEDULE "E"—Continued

Case	County	Notation
State of Iowa et al. vs. Frank J. Floerchinger.....	Johnson .....	Pending.
Rosa Corso et al. vs. State et al.....	Johnson .....	Appeal from condemnation award. Pending.
Nelson Glider vs. State et al.....	Johnson .....	Appeal from condemnation award. Pending.
Melvin Fitzgerald vs. State et al.....	Johnson .....	Appeal from condemnation award. Pending.
Joseph Corso et al. vs. State et al.....	Johnson .....	Appeal from condemnation award. Pending.
Wm. Medders et al. vs. State et al.....	Johnson .....	Appeal from condemnation award. Pending.
State vs. Stanton .....	Dickinson .....	Pending.
State vs. Clear Lake Amusement Corporation....	Cerro Gordo .....	Pending.
State vs. A. W. McKinney.....	Dickinson .....	Settled.
State vs. Mack Groves .....	Emmet .....	Pending.
L. A. Andrew, Supt. of Banking of Iowa, vs. Farmers State Bank of Grand River et al., in re Claim of J. O. Jones.....	Decatur .....	Judgment for claimant.
L. A. Andrew, Receiver Helmer & Gortner Bank, vs. Moffit .....	Cedar .....	Judgment for plaintiff.
L. A. Andrew, Receiver Helmer & Gortner Bank, vs. Moffit .....	Cedar .....	Judgment for plaintiff.
J. F. Lineberger vs. R. E. Johnson, Treasurer of State .....	Polk .....	Judgment for treasurer of state.
State of Iowa ex rel. John Fletcher vs. North- western Bell Telephone Co.....	Wayne .....	Judgment for state.
State of Iowa ex rel. John Fletcher vs. Naumann. A. L. Peck vs. Olsen Construction Company, Board of Conservation et al.....	Des Moines .....	Judgment for defendant.
State of Iowa vs. Brouillette.....	Dickinson .....	Judgment for defendants.
State of Iowa vs. The Prudential Insurance Com- pany of America.....	Woodbury .....	Dismissed.
State of Iowa vs. Neal Neilson et al.....	Woodbury .....	Pending.
State of Iowa and Board of Control vs. Salant & Salant, Inc., et al.....	Clay .....	Judgment for state.
	Lee .....	Settled.

May Dyas et al vs. State of Iowa and State Conservation Board .....	Jackson .....	Appeal from condemnation award. Dismissed by authority of Board of Conservation.
In re Estate of Henry Aschermann.....	Scott .....	Under Sec. 12025, Code of 1931, court held that if there are heirs of one of the parents that the whole estate passes to them. (Escheat estate matter.)
Beyer vs. State Board of Education.....	Hardin .....	Involves question of right of the widow of a professor or dean of state schools to compensation.
Henkle, Van Ginkel vs. Greenwalt.....	Polk .....	Involves question of right to a renewal dealer's license where original dealer's bond was drawn to cover original license or any renewal thereof. The surety company refusing to continue for the renewal period. Held dealer was not entitled to renewal license.
State of Iowa vs. Federal Surety Company of Davenport, Iowa .....	Scott .....	Application for receiver. Receiver appointed and corporation dissolved.
State of Iowa vs. Northern States Life Insurance Co. ....	Polk .....	Application for ancillary receiver. Receiver appointed.
State of Iowa vs. Security Life Insurance Company .....	Polk .....	Application for ancillary receiver. Receiver appointed.
State of Iowa vs. Southern Surety Company of New York .....	Polk .....	Application for ancillary receiver. Receiver appointed.
Buser, County Treasurer, vs. Ransom Estate....	Des Moines .....	Involves tax on omitted property of decedent. Pending.
Theis vs. Thornburg, Secretary, et al.....	Sac .....	Injunction to restrain prosecution of plaintiff for operating rendering plant without license. Suit dismissed.
Chicago Joint Stock Land Bank vs. Boyer and Board of Conservation.....	Van Burén .....	Mortgage foreclosure. Dismissed as to Board of Conservation.

SCHEDULE "E"—Continued

Case	County	Notation
Iowa State Board of Education vs. Hoyt et al.....	Delaware .....	Mortgage foreclosure. Decree for plaintiff.
City of Fort Dodge vs. Johnson, Treasurer of State .....	Webster .....	Appeal from ruling of Treasurer of State denying allowance of police pension fund against sinking fund. Pending.
Independent School District of Sioux City vs. Johnson, Treasurer of State.....	Woodbury .....	Involves appeal from denial of allowance of deposit of secretary of school board against state sinking fund. Pending.
State ex rel. vs. Treloar.....	Polk .....	Action to restrain defendant from operating truck and trailer in excess of 45 feet in length. Involves constitutionality of statute. Pending.
State vs. LaForge .....	Webster .....	Action to restrain operation of rendering plant without a license. Motion to dismiss overruled. Pending.
State ex rel. McCrary vs. Johnson et al.....	Polk .....	Action to recover expenses paid members Forty-third General Assembly. Pending.
Thede et al. vs. Cedar County.....	Cedar .....	Suit to restrain county from paying farm aid appropriation. Injunction denied.
Rovane and City of Keokuk vs. Johnson, Treasurer, et al.....	Lee .....	Constitutionality of state sinking fund statute sustained as to tax payer and city.
Nissen vs. Reed et al.....	Humboldt .....	Action to restrain prosecution of plaintiff for operating rendering plant without license. Held for defendants.
State Board of Education vs. Paine et al.....	Kossuth .....	Mortgage foreclosure. Decree for plaintiff.
Long vs. Greenwalt, Secretary of State.....	Polk .....	Appeal from revocation of driver's license by Secretary of State. Affirmed.
Johnson, Treasurer of State, vs. Independent School District of George.....	Lyon .....	Action to recover money paid from state sinking fund. Payment made and case dismissed.

State ex rel. vs. Lenker et al.....	Cedar .....	Suit to enjoin interference with administration of bovine tuberculosis statutes. Injunction granted. Pending.
Andrew, Superintendent, vs. Little Sioux Savings Bank and R. E. Johnson.....	Harrison .....	Appeal from denial of claim against sinking fund. Affirmed.
Beyer vs. State of Iowa and Iowa State College..	Polk .....	Appeal from denial of workmen's compensation claim. Pending.
State vs. Baptist Orphanage and Home for Aged..	Polk .....	Petition for receiver of defendant. Pending.
In re Estate of Pricilla Brydon, State Intervenor.	Union .....	Petition of intervention against claim; escheat estate. Pending.
Johnson County vs. First National Bank and R. E. Johnson, Treasurer.....	Johnson .....	Suit to establish deposit against sinking fund. Pending.
Henkle et al. vs. Andrew, Superintendent et al...	Polk .....	Suit on sale of assets of closed bank. Dismissed as to Andrew.
State ex rel. vs. Citizens State Bank of Decorah..	Winneshiek .....	Suit to dissolve bank charter. Charter cancelled by default.
Andrew, Superintendent, vs. Baird.....	Davis .....	Suit to set aside compromise settlement. Pending.
Andrew, Superintendent, vs. Iowa Trust and Savings Bank, City of Des Moines, Intervenor.....	Polk .....	Involves denial of police pension fund against state sinking fund for public deposits. Pending.
Spencer & Perry Oil Co. vs. R. E. Johnson, Treasurer, et al.....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Superior Oil Co. vs. R. E. Johnson, Treasurer, et al. ....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Snook vs. R. E. Johnson, Treasurer, et al.....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.

SCHEDULE "E"—Continued

Case	County	Notation
Simmer Oil Corporation vs. R. E. Johnson, Treasurer, et al.....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Roark Oil Co. vs. R. E. Johnson, Treasurer, et al..	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
McCurnin Oil Co. vs. R. E. Johnson, Treasurer, et al. ....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Imperial Oil Co. vs. R. E. Johnson, et al.....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Lavalleur & Son Oil Co. vs. R. E. Johnson, Treasurer, et al. ....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Waukee Oil Co. vs. R. E. Johnson, et al.....	Polk .....	Action to restrain state treasurer from collecting gas tax and alleging unconstitutionality of act. Pending.
Miller vs. O. L. Mead, Agent of State of Iowa....	Minnehaha County, S. D.....	Petition for writ of habeas corpus. Involving constitutionality of gas tax.
State vs. Mona Motor Oil Co.....	Pottawattamie .....	Action to collect gas tax. Pending.
State and R. E. Johnson vs. Mona Motor Oil Co., Council Bluffs .....	Pottawattamie .....	Action to collect gas tax.
State and R. E. Johnson vs. Tomis Service Co. et al., Council Bluffs.....	Pottawattamie .....	Action to collect gas tax.
State and R. E. Johnson vs. Des Moines Independent Oil Co. et al.....	Polk .....	Action to collect gas tax.



State and R. E. Johnson vs. E. G. Roark Oil Co.	Polk .....	Action to collect gas tax.
State and R. E. Johnson vs. Western Oil Co., et al.	Clinton .....	Action to collect gas tax.
State and R. E. Johnson vs. Wittman Oil Co., et al.	Humboldt .....	Action to collect gas tax.
State and R. E. Johnson vs. Farmers Community Oil Co. et al.....	Boone .....	Action to collect gas tax.
State and R. E. Johnson vs. Yegge Oil Co. et al...	Clinton .....	Action to collect gas tax.
State and R. E. Johnson vs. Northwestern Oil Co. et al. ....	Linn .....	Action to collect gas tax.
State and R. E. Johnson vs. L. L. Lavelleur & Son et al. ....	Madison .....	Action to collect gas tax.
State and R. E. Johnson vs. Waukee Oil Co. et al.	Dallas .....	Action to collect gas tax.
State and R. E. Johnson vs. Ames Grain & Coal Co. ....	Story .....	Action to collect gas tax.
State and R. E. Johnson vs. Wapello Oil Co. et al.	Wapello .....	Action to collect gas tax.

**SCHEDULE "F," CIVIL CASES—DISTRICT COURT OF UNITED STATES**

Case	District	Notation
Matter of Fred Illg, Bankrupt.....	Northern .....	Bankruptcy closed.
Salant & Salant vs. A. M. McColl et al.....	Southern .....	Settled.
MonaMotor Oil Co. vs. Johnson et al.....	Southern .....	Involves constitutionality of gas tax statutes.
Coryell Oil Co. vs. Johnson et al.....	Southern .....	Involves constitutionality of gas tax statutes.

NOTE: In addition to the foregoing cases in the District Court of the State of Iowa, the department prosecuted or defended 120 cases involving appeals from awards of condemnation juries growing out of establishment of primary highways of the state, 23 foreclosure proceedings, 7 guardianship cases, 14 injunction suits, 12 damage cases, 3 garnishment proceedings, 2 suits involving the establishment of railroad grade crossings, and 20 cases arising out of contracts made by the Highway Commission.

These cases were handled under the direction of the Attorney General by the Special Assistant Attorney General assigned to the work of the Iowa State Highway Commission. Owing to the large number of cases thus handled, the names thereof were omitted from this report.

## SCHEDULE "G," REPORT OF BUREAU OF INVESTIGATION

James E. Ridsen, Chief

The agents of this bureau, including the Identification Division have assisted local authorities in the investigation of law violations and suspected law violations, which, together with other data in connection with the bureau, is set out in the following schedules:—

### IDENTIFICATION DIVISION

#### STATISTICAL TABULATION FOR 1931

No. of fingerprint records received from Iowa Sheriffs.....	5,482
No. of fingerprint records received from Iowa Police.....	3,254
No. of fingerprint records received from Iowa Penal Institutions.	1,482
No. of fingerprint records received from Iowa State Bureau.....	23
No. of fingerprint records received from other states.....	1,671
Total number of fingerprint records received in 1931.....	11,912
Total number of fingerprint records filed by formula.....	9,125
Total number of fingerprint records refiled by formula.....	2,575
Total number of index cards filed alphabetically.....	10,130
Total number of index cards refiled alphabetically.....	9,916
Total number of criminal records filed numerically.....	6,838
Total number of criminal records refiled numerically.....	11,516
Total number of photographs filed.....	4,999
Total number of identifications made alphabetically.....	3,039
Total number of identifications made by fingerprint formula....	307
Total number of latent print cases investigated.....	173
Total number of identifications made by latent prints.....	21
Total number of handwriting cases investigated.....	26
Total number of ballistic cases investigated.....	17
Total number of identifications made of unknown dead.....	1
Total number of records furnished cooperators.....	2,078
Total number of circulars issued for fugitives.....	10
Total number of fugitives apprehended by circulars.....	8
Total number of federal records furnished.....	3,013

#### CASES SUBMITTED

	Photos	No Photos	Total
White .....	{ Male ..... 32,585	9,841	42,426
	{ Female ..... 2,540	1,111	3,651
Negro .....	{ Male ..... 3,000	516	3,516
	{ Female ..... 566	126	692
Mexican .....	{ Male ..... 492	115	607
	{ Female ..... 21	7	28
Indian .....	{ Male ..... 87	10	97
	{ Female ..... 17	2	19
Chinese .....	{ Male ..... 16	0	16
	{ Female ..... 0	0	0
Filipino .....	{ Male ..... 6	2	8
	{ Female ..... 0	0	0
Hawaiian .....	{ Male ..... 3	0	3
	{ Female ..... 0	0	0
Cuban .....	{ Male ..... 3	0	3
	{ Female ..... 0	0	0
	<hr/>		
	39,336	11,730	51,066

STATISTICAL TABULATION TO DECEMBER 1, 1932 ONLY  
TABLE A

Number of fingerprint records received from Iowa Sheriffs.....	4,058
Number of fingerprint records received from Iowa Police.....	3,177
Number of fingerprint records received from Iowa Penal Institutions .....	1,233
Number of fingerprint records received from Iowa State Bureau..	31
Number of fingerprint records received from other states.....	2,916
Total number of fingerprint records received in 1932.....	11,415
Total number of fingerprint records filed by formula.....	8,268
Total number of fingerprint records refiled by formula.....	2,000
Total number of index cards filed alphabetically .....	10,006
Total number of index cards refiled alphabetically .....	8,471
Total number of criminal records filed numerically .....	5,671
Total number of criminal records refiled numerically .....	10,182
Total number of photographs filed .....	4,227
Total number of identifications made alphabetically .....	2,479
Total number of identifications made by fingerprint formula ..	261
Total number of latent print cases investigated .....	157
Total number of identifications made by latent prints .....	22
Total number of handwriting cases investigated .....	*12
Total number of identifications made by handwriting .....	**8
Total number of ballistic cases investigated .....	16
Total number of identifications made by ballistics .....	7
Total number of identifications made of unknown dead .....	1
Total number of records furnished cooperators .....	1,899
Total number of circulars issued for fugitives .....	3
Total number of fugitives apprehended by circulars .....	2
Total number of federal records furnished .....	4,718
Total number of analysis of tool and die marks on storage battery	1
Total number of same identified .....	1
Total number of analysis of knife and severed rubber hose.....	1
Total number of same identified .....	1

This Division includes the Criminal Photographic Department and I wish to report that thousands of copies of criminal photographs and criminal finger prints have been made. Also hundreds of photostatic copies made of criminal evidence.

\* Includes 2 typewriting cases.

\*\* Includes 1 typewriting case.

CASES SUBMITTED

	Photos	No Photos	Total
White .....	{ Male .....	10,879	47,087
	{ Female .....	1,231	4,044
Negro .....	{ Male .....	552	3,793
	{ Female .....	134	742
Mexican .....	{ Male .....	129	661
	{ Female .....	7	28
Indian .....	{ Male .....	12	105
	{ Female .....	2	20
Chinese .....	{ Male .....	0	16
	{ Female .....	0	0
Filipino .....	{ Male .....	2	9
	{ Female .....	0	0
Hawaiian .....	{ Male .....	0	3
	{ Female .....	0	0
Cubañ .....	{ Male .....	0	3
	{ Female .....	0	0
	<u>43,563</u>	<u>12,948</u>	<u>56,511</u>

## SUMMARY JULY 15, 1921, TO DECEMBER 1, 1932

TABLE B

Number of fingerprint records received from Iowa Sheriffs.....	31,915
Number of fingerprint records received from Iowa Police.....	25,841
Number of fingerprint records received from Iowa Penal Institutions .....	16,767
Number of fingerprint records received from Iowa State Bureau .....	338
Number of fingerprint records received from outside of Iowa...	21,650
Total number of fingerprint records received.....	96,511
Total number of fingerprint records filed by formula.....	81,660
Total number of index records filed alphabetically.....	94,328
Total number of criminal records filed numerically (See Table C) .....	56,737
Total number of photographs filed .....	43,563
Total number of identifications made alphabetically .....	16,901
Total number of identifications made by fingerprint formula ..	3,339
Total number of identifications made by latent prints .....	97
Total number of identifications made by handwriting .....	8*
Total number of identifications made by ballistics .....	7
Total number of identifications made of unknown dead .....	8
Total number of circulars issued for fugitives:	
Nos. 1 to 80 inclusive.....	80
Without numbers .....	9
	89
Total number of fugitives apprehended as circularized.....	57
*Includes one typewriting case.	

## REPORT OF CORONERS OF THE VARIOUS COUNTIES OF STATE TO THE BUREAU OF INVESTIGATION FOR 1931 AND 1932.

County	1931				1932			
	Accidents	Suicides	Murders	Justifiable homicides	Accidents	Suicides	Murders	Justifiable homicides
Adair.....								
Adams.....	2	1			2	4		1
Allamakee.....								
Appanoose.....					1	1		
Audubon.....	5	1			4	4		
Benton.....	9	4			20	5	1	
Black Hawk.....	22	13	5	1	24	7	1	
Boone.....					6			
Bremer.....	1	31			5	2		
Buchanan.....	7	2	1		5	6		
Buena Vista.....					1	3		
Butler.....	3	1						
Calhoun.....					7	2		
Carroll.....					2	2		
Cass.....	4	6			6	3		
Cedar.....					1			
Cerro Gordo.....	15	5	1		3	3		
Cherokee.....					6	2		
Chickasaw.....								
Clarke.....	8				6	1		
Clay.....					3	1		
Clayton.....	5	2		1	2	2	1	
Clinton.....	17	11	2		16	2		
Crawford.....								
Dallas.....	7	2	1		3	5	1	
Davis.....					1	1		
Decatur.....	1	1	3		2			
Delaware.....					5	1		
Des Moines.....	13	10						
Dickinson.....								
Dubuque.....	27	16			23	14		
Emmet.....					1	2		

REPORT OF CORONERS—Continued

County	1931				1932			
	Accidents	Suicides	Murders	Justifiable homicides	Accidents	Suicides	Murders	Justifiable homicides
Fayette					1			
Floyd		1				2	1	
Franklin	14	7			5	3		
Fremont					4	1		
Greene					4	1		
Grundy					1	2	4	
Guthrie	3	3			3	1		
Hamilton	3	2	1		3	3		
Hancock								
Hardin					1	1		
Harrison								
Henry					5	2	1	
Howard					1			
Humboldt								
Ida	31	2						
Iowa	6	2			2	6	1	
Jackson	10	2			1	5		
Jasper					15	6		
Jefferson	3	1			4	2		
Johnson					1			
Jones								
Keokuk								
Kossuth								
Lee	4							
Linn								
Louisa					3	3	1	
Lucas					1	2	1	
Lyon	5	2			3	1	1	
Madison	1				2	2		
Mahaska	3	1			7		1	
Marion	8	7	1		3	6	1	
Marshall					3	1		
Mills						1		
Mitchell	1				4	1		
Monona					1			
Monroe	9	2			11			
Montgomery	4	3			8	5	1	
Muscatine	7				11	2		
O'Brien	7	1			4	3		
Osceola	3	1						
Page	2	3	2		2	4		
Palo Alto	5	3						
Plymouth	2	1			4	7		
Pocahontas	2	1			2	2		
Polk	91	33	7	1	78	38	6	
Pottawattamic					22	11		
Poweshiek	5	4			5	3		1
Ringgold					2	3		
Sac					1	1	1	
Scott	41	28	1		36	33	1	3
Shelby					1	5		
Sioux								
Story		1			5	2		
Tama	16	4	1		11	11		
Taylor						3	1	
Union	3				3	1		
Van Buren					1	3		
Wapello					2	3	1	
Warren					3	2		
Washington	4	4			1	4		
Wayne	3	1			3	1		
Webster					2			
Winnebago					2			
Winneshiek					2	1		
Woodbury	36	24	9	2	31	15	3	1
Worth								
Wright					2	2		
Totals	478	250	35	5	486	290	32	6

LIST OF PERSONS COMMITTED TO FORT MADISON FOR MURDER  
IN 1931 AND 1932

Name	Degree	County	Date
Kile, Wain F. ....	1st	Cedar .....	Jan. 8, 1932
Vanni, Domenic .....	2nd	Dallas .....	Jan. 27, 1931
Albrusky, Edward .....	2nd	Johnson .....	Feb. 28, 1931
Foster, William B. ....	2nd	Polk .....	Mar. 3, 1931
Ives, Chester .....	1st	Polk .....	Mar. 21, 1931
Shannon, Dell .....	2nd	Black Hawk .....	April 2, 1931
Brown, Mark .....	2nd	Woodbury .....	April 4, 1931
Anderson, George .....	1st	Union .....	Sept. 25, 1931
Mitchem, John .....	1st	Polk .....	Oct. 13, 1931
Taylor, Robert Ray .....	1st	Dallas .....	Oct. 19, 1931
Smith, Tine .....	1st	Keokuk .....	Nov. 1, 1931
Furgison, Garry .....	2nd	Marion .....	Nov. 14, 1931
Cooley, Ed. W. ....	1st	Polk .....	Dec. 4, 1931
Bunkley, James .....	2nd	Woodbury .....	Dec. 11, 1931
Kull, Gus .....	2nd	Woodbury .....	Dec. 11, 1931
Pinkerton, Lynus .....	1st	Tama .....	Jan. 9, 1932
Campbell, James S. ....	2nd	Johnson .....	April 4, 1932
Dade, Lewis .....	2nd	Lee .....	April 25, 1932
Hockenberry, Russell .....	2nd	Scott .....	May 11, 1932
Webster, Wm. ....	2nd	Webster .....	July 2, 1932
Cozad, Fred .....	2nd	Mills .....	Sept. 9, 1932

LIST OF PERSONS COMMITTED TO FORT MADISON FOR MAN-  
SLAUGHTER FOR YEARS 1931 AND 1932

Name	County	Date
Davis, Theophilis .....	Lee .....	Jan. 1, 1931
Kirk, Burl .....	Mills .....	Sept. 21, 1931
Porter, Leo H. ....	Pottawattamie .....	Oct. 7, 1932
Harness, Charles .....	Lee .....	Oct. 26, 1931
Stricklin, Glen .....	Dubuque .....	Dec. 4, 1931
Hanson, Ray .....	Jefferson .....	Dec. 29, 1931
Campbell, Clarence .....	Polk .....	Mar. 9, 1932
Collins, Willie .....	Webster .....	Mar. 14, 1932
Povich, Phillip .....	Louisa .....	Sept. 12, 1932
Latimer, Bert .....	Polk .....	Oct. 3, 1932

LIST OF PERSONS COMMITTED TO ANAMOSA FOR MURDER IN  
1931 AND 1932

Name	Degree	County	Date
May, Austin B. ....	1st	Fayette .....	Jan. 23, 1932
Olson, Clarence .....	2nd	Dubuque .....	Jan. 23, 1932
Boyd, William H. ....	1st	Polk .....	Jan. 23, 1932
Sheets, Floyd .....	1st	Scott .....	Aug. 24, 1932
Jones, Elza .....	1st	Taylor .....	Sept. 6, 1932

LIST COMMITTED TO ANAMOSA FOR MANSLAUGHTER IN 1931  
AND 1932

Name	County	Date
Hammersly, Lee .....	Wapello .....	May 15, 1931
Beers, Charles .....	Webster .....	Dec. 12, 1931

LIST OF PERSONS COMMITTED TO ROCKWELL CITY FOR MURDER IN 1931 AND 1932

None

LIST OF PERSONS COMMITTED TO ROCKWELL CITY FOR MANSLAUGHTER IN 1931 AND 1932

Name	County	Date
Silva, Julia .....	Kossuth .....	Aug. 23, 1931
League, Augusta A. ....	Clinton .....	Mar. 12, 1932

CONVICTIONS AND COMMITMENTS FOR FELONY—FORT MADISON, 1931

Adultery .....	2
Assault with intent to kill .....	1
Assault with intent to commit murder .....	1
Assault with intent to commit rape .....	5
Assault with intent to do great bodily injury .....	15
Assault with intent to maim .....	2
Assault with intent to rob .....	5
Assisting to commit rape .....	2
Attempt of arson .....	2
Attempt to break and enter .....	6
Bigamy .....	1
Breaking and entering .....	61
Break and escape jail .....	2
Breaking and entering railroad car .....	5
Breaking jail .....	1
Burglary .....	10
Carrying concealed weapons .....	6
Concealing stolen property .....	1
Conspiracy .....	4
Desertion .....	15
Embezzlement .....	7
Entering bank with intent to rob .....	5
Embezzlement mortgaged property .....	1
Escape .....	6
Extortion .....	2
Failure to give aid after auto accident .....	2
False drawing of check .....	1
False Pretenses .....	5
Forgery .....	34
Illegal possession of liquor .....	2
Illegal transportation liquor .....	2
Incest .....	1
Larceny .....	38
Larceny at night time .....	5
Larceny by embezzlement .....	2
Larceny of domestic animals .....	4
Larceny of domestic fowls .....	7
Larceny of motor vehicle .....	26
Grand larceny .....	1
Lascivious acts .....	4
Maintaining liquor nuisance .....	7
Manslaughter .....	8

Murder .....	9
Murder second degree .....	5
Malicious mischief .....	1
Larceny from person .....	1
Injury to motor vehicle .....	1
Child stealing .....	1
Mayhem .....	1
Obtaining money by false pretenses .....	4
Obtaining money by uttering false instruments .....	0
Operating motor vehicle while intoxicated .....	17
Operating motor vehicle without owner's consent .....	2
Rape .....	11
Receiving stolen property .....	9
Receiving deposit while bank was insolvent .....	1
Returned by order of court .....	2
Returned from escape .....	17
Returned for violation of parole .....	17
Robbery .....	16
Robbery with aggravation .....	5
Prostitution .....	1
Seduction .....	0
Sodomy .....	4
Swindling .....	3
Possession of Burglary tools .....	3
Possession forged papers .....	1
Transportation liquor .....	1
Transferred from Anamosa .....	1
Uttering forged instruments .....	14
Violation of parole .....	3
Total .....	468

## ANAMOSA, 1931

Arson .....	1
Assault to felony .....	1
Assault to murder .....	1
Assault to manslaughter .....	1
Assault with intent to commit rape .....	4
Assault with intent to do great bodily injury .....	3
Assault with intent to rob .....	11
Attempt to break and enter .....	4
Bigamy .....	2
Bootlegging .....	0
Breaking and entering .....	91
Breaking and entering car .....	5
Burglary .....	11
Carrying concealed weapons .....	11
Conspiracy .....	7
Carnal knowledge of imbecile .....	1
Desertion .....	17
Displaying false motor vehicle plates .....	1
Embezzlement .....	2
Embezzlement by bailee .....	1
Entering bank to rob .....	1
Embezzlement of mortgaged property .....	2
Escape .....	32
Extortion .....	1
False pretenses .....	2
Failure to report accident .....	1
Forgery .....	33
Great bodily injury .....	4
Incest .....	1
Insane .....	5



Illegal transportation of liquor .....	1
Larceny .....	49
Larceny at night time .....	9
Larceny from person .....	3
Larceny by embezzlement .....	0
Larceny of domestic animals .....	15
Larceny of motor vehicle .....	38
Larceny of poultry .....	24
Lascivious acts .....	2
Lascivious acts with child .....	3
Liquor nuisance .....	1
Manslaughter .....	2
Malicious injury to railroad.....	1
Operating motor vehicle while intoxicated .....	6
Operating motor vehicle without owner's consent .....	14
Perjury .....	1
Passing counterfeit papers .....	1
Operating house of ill fame .....	2
Rape .....	15
Receiving stolen property .....	4
Returned for violation of parole .....	18
Returned from escape .....	8
Robbery .....	24
Robbery with aggravation .....	28
Seduction .....	1
Sodomy .....	2
Uttering forged instrument .....	14
Violating motor vehicle laws .....	2
Violation of parole .....	16
Total.....	<u>561</u>

ROCKWELL CITY, 1931

Assault with intent to do great bodily injury .....	1
Assault with intent to commit manslaughter .....	1
Adultery .....	1
Bigamy .....	2
Bootlegging .....	3
Breaking and entering .....	1
Burglary .....	1
Contempt of court .....	1
Cheating by false pretenses .....	2
Counterfeiting .....	1
Forgery .....	2
Illegal transportation of liquor .....	3
Illegal possession of liquor .....	2
Larceny of poultry .....	4
Larceny from building in day time .....	2
Larceny .....	3
Larceny as bailee .....	1
Lewdness .....	4
Maintaining liquor nuisance .....	14
Malicious mischief .....	1
Manslaughter .....	1
Operating motor vehicle while intoxicated .....	2
Prostitution .....	6
Returned from parole .....	1
Receiving stolen property .....	2
Robbery .....	2
Uttering forged instruments .....	4
Vagrancy by being common prostitute .....	2
Violation section 2308 .....	1
Total.....	<u>71</u>

Anamosa, total for year .....	561
Fort Madison, total for year .....	468
Rockwell City, total for year .....	71

Grand Total for 1931.....1,100

## FORT MADISON, 1932

Adultery .....	7
Arson .....	4
Assault with intent to commit great bodily injury.....	8
Assault with intent to commit manslaughter .....	1
Assault with intent to commit murder .....	5
Attempted arson .....	1
Assault to maim .....	1
Attempted abortion .....	1
Assault with intent to commit felony.....	3
Attempted breaking and entering .....	2
Affixing fictitious signature to check .....	1
Assault to rape .....	1
Breaking and entering .....	32
Breaking and entering railroad car .....	6
Attempted breaking and entering .....	3
Breaking jail .....	3
Burglary explosives .....	1
Bootlegging .....	1
Conspiracy .....	5
Cheating by false pretenses .....	3
Carrying concealed weapons .....	7
Concealing stolen property .....	1
Desertion .....	7
Embezzlement .....	8
Embezzlement by bailee .....	1
Entering bank with intent to rob.....	3
Escape .....	5
Extortion .....	3
Forgery .....	27
Fraudulent banking .....	1
Habitual criminal .....	1
Incest .....	7
Illegal possession of narcotics .....	1
Larceny .....	24
Larceny at night time .....	2
Larceny of domestic animals .....	2
Larceny by embezzlement .....	1
Larceny of motor vehicle .....	8
Larceny of poultry .....	14
Liquor nuisance .....	4
Lascivious acts with child .....	5
Manslaughter .....	4
Murder .....	1
Murder, second degree .....	6
Malicious mischief .....	1
Malicious injury .....	1
Malicious injury to building .....	1
Obtaining money under false pretenses .....	4
Operating motor vehicle while intoxicated .....	8
Operating motor vehicle without owner's consent .....	1
Possession of forged check .....	1
Possession of intoxicating liquor .....	6
Possession burglary tools .....	3
Possession of counterfeit papers .....	2
Rape .....	4
Receiving stolen goods .....	6

Returned from escape .....	6
Robbery .....	8
Robbery with aggravation .....	9
Returned by order of court .....	8
Return for violation of parole .....	17
Return from insane ward .....	1
Seduction .....	1
Selling securities without being registered .....	1
Sodomy .....	2
Transportation of intoxicating liquor.....	4
Transfer from Anamosa .....	5
Uttering forged instruments .....	15
Uttering counterfeit securities .....	1
Total.....	348

ANAMOSA, 1932

Arson .....	2
Arson, attempted .....	1
Assault with intent to commit felony .....	5
Assault to maim .....	1
Assault to manslaughter .....	4
Assault to commit murder .....	3
Assault with intent to commit rape .....	2
Assault with intent to rob .....	3
Attempted breaking and entering .....	7
Breaking and entering .....	54
Breaking and entering a car .....	6
Burglary tools .....	6
Carrying concealed weapons .....	6
Conspiracy .....	3
Desertion .....	8
Embezzlement .....	2
Embezzlement of mortgaged property .....	1
Entering bank with intent to rob.....	4
Escape .....	8
Failure to report auto accident .....	1
False pretenses .....	2
Forgery .....	24
Great bodily injury .....	6
Incest .....	1
Illegal possession of narcotics .....	1
Jail breaking .....	4
Larceny .....	42
Larceny from person .....	2
Larceny in night time .....	2
Liquor, possession of .....	1
Larceny of domestic animals .....	3
Larceny of motor vehicle .....	42
Larceny of poultry .....	28
Lascivious acts with child .....	2
Liquor nuisance .....	1
Malicious mischief .....	1
Murder, first degree .....	4
Murder, second degree .....	2
Operating motor vehicle while intoxicated .....	2
Operating motor vehicle without owner's consent .....	13
Operating auto with improper plates .....	1
Possession counterfeit notes .....	1
Putting out explosives .....	1
Rape .....	6
Receiving stolen property .....	7
Returned from escape .....	6

Returned violation of parole .....	29
Returned by order of court .....	1
Robbery .....	17
Robbery with aggravation .....	26
Safe keeping .....	2
Sodomy .....	1
Uttering forged instrument .....	7
<b>Total</b> .....	<b>410</b>

ROCKWELL CITY, 1932

Adultery .....	3
Arson .....	1
Assault with intent to commit great bodily injury.....	1
Carrying concealed weapons .....	1
Child desertion .....	1
Cheating by false pretenses .....	1
Contempt of court .....	2
Embezzlement .....	1
Larceny .....	4
Larceny of poultry .....	1
Larceny from building .....	2
Larceny of motor vehicle .....	1
Lewdness .....	2
Maintaining liquor nuisance .....	16
Obtaining money by false pretenses.....	1
Larceny in night time .....	1
Manslaughter .....	1
Perjury .....	1
Putting out explosives .....	1
Prostitution .....	9
Returned from escape on parole .....	1
Robbery with aggravation .....	1
Returned from transfer .....	1
Receiving stolen property .....	1
Transporting venereal disease .....	2
Resisting execution of process .....	1
Uttering forged instruments .....	4
Operating motor vehicle while intoxicated .....	1
Soliciting .....	2
Vagrancy .....	2
<b>Total number</b> .....	<b>67</b>
<b>Total for year at Anamosa</b> .....	<b>410</b>
<b>Total for year at Fort Madison</b> .....	<b>348</b>
<b>Total for year at Rockwell City</b> .....	<b>67</b>

Total prisoners received in 1932..... 825

CONVICTIONS AND PENALTIES FOR VIOLATION OF LIQUOR LAWS  
1931

Bootlegging .....	287
Contempt .....	12
Illegal possession .....	2
Injunctions .....	173
Liquor nuisance .....	239
Operating motor vehicle intoxicated .....	219
Transportation .....	151
Violation intoxicating liquor laws.....	22
<b>Total</b> .....	<b>1,105</b>
Amount of fines assessed .....	\$222,632.43
Amount of fines suspended.....	2,950.00

Number of sentences suspended .....	75
1932	
Bootlegging .....	341
Contempt .....	11
Equity-bootlegging injunction .....	1
Liquor nuisance .....	356
Illegal possession .....	99
Liquor not properly labeled .....	1
Operating motor vehicle intoxicated .....	239
Transportation .....	128
Violation of injunction .....	1
Violation liquor laws .....	8
Operating motor vehicle without owners consent .....	2
<hr/>	
Total number .....	1,187
Amount of fines assessed .....	\$231,825.00
Number of sentences suspended .....	203
Injunctions waived .....	23

SUMMARY OF STOLEN AUTOMOBILES

Summary of automobiles reported to this department as stolen and recovered during the years of 1931 and 1932.

1931	
Number of automobiles reported stolen .....	418
Recovered autos previously reported stolen.....	72
Recovered automobiles not previously reported as stolen .....	91
Automobiles stolen and recovered during year.....	1,572
1932	
Number of automobiles reported stolen .....	344
Recovered automobiles not previously reported as stolen .....	59
Recovered automobiles previously reported as stolen.....	99
Automobiles stolen and recovered during the year.....	1,221

PAROLES

The following is a summary of paroles granted from the different penal institutions of the state for the years 1931 and 1932.

ANAMOSA

Paroled—1931 .....	245
Paroled—1932 .....	223 468

FORT MADISON

Paroled—1931 .....	100
Paroled—1932 .....	108 208

ROCKWELL CITY

Paroled—1931 .....	3
Paroled—1932 .....	6 9

Grand Total .....	685
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## ABSCONDERS FROM PAROLE 1931 AND 1932

## ANAMOSA

11840.....	Parley Dennis
12568.....	Dale Archibald
11484.....	Lawrence Crom
11131.....	Ray M. Snoderly
12711.....	Ludie Tesch
12747.....	M. D. Schwenneker
12599.....	James Bates
12773.....	Raymond Moore
12710.....	LeRoy C. Reecheborn
12371.....	William H. Curl
13458.....	M. Patterson
12073.....	Miles Sabin
12867.....	Floyd Keopping

## FORT MADISON

13161.....	Wilber Wheelock
14806.....	A. L. Lewis
14938.....	William Fuller

# SUMMARY OF BANK ROBBERIES AND BANK BURGLARIES IN IOWA

From January 1, 1932 to November 25, 1932

Name of Bank Held Up	Date	No. in Gang	Number Identified	Number Convicted	Sentence	Amount of Loss	Amount of Loot Recovered
Union Trust & Savings Bank., Stanwood (Robbery) -----	2- 2-32	2	2 {Richard Forbes ----- {Herman Wall -----	Richard Forbes (Killed)----- Herman Wall -----	Killed 25 Years	\$ 575.00	\$ 575.00
Home Savings Bank, Davenport (Robbery)----	2-29-32	3	-----	-----	-----	\$ 26,379.14	-----
City National Bank, Clinton (Robbery)-----	3-15-32	4	4 {Clifford Edwards ----- {Earl Jeffries ----- {Lester Stanley ----- {Eddie Morris -----	Clifford Edwards ----- Earl Jeffries ----- Lester Stanley ----- Eddie Morris -----	Life Life Life Life	\$106,000.00	\$ 105,845.00
Farmers State Bank, Jesup (Robbery)-----	4- 9-32	1	-----	-----	-----	\$ 1,960.00	-----
Exchange State Bank, Wesley (Burglary)-----	5- 9-32	-----	-----	-----	-----	\$ 72.31 (Damages)	-----
Citizens State Sav. Bk., Cincinnati (Robbery)-	5-26-32	2	2 {Frank Weining ----- {Louis Wolk ----- {Louis Small and Ceell {Kern being held as possible accomplices.	Frank Weining (Killed)----- Louis Wolk -----	Killed Life	\$ 3,477.32	\$ 3,204.50
Gillett Grove Savings Bank, Gillette Grove (Burglary) -----	8- 5-32	-----	-----	-----	-----	\$ 2,954.08	-----
Home Savings Bank, Davenport (Holdup)-----	9- 9-32	2	2 {Ned Hills ----- {Russell Hughes -----	Ned Hills (Killed)-----	Killed	\$ 18,304.28	-----
Rossie Savings Bank, Rossie (Burglary)-----	9-16-32	-----	-----	-----	-----	\$ 1,761.80	-----
Iowa Trust & Sav. Bk., Centerville (Robbery)	10- 3-32	1	1—Jack Budiselich -----	Jack Budiselich -----	Life	\$ 2,665.00	\$ 2,665.00
Northwest Davenport Savings Bank, Davenport (Robbery) -----	10- 6-32	4	4 {Ned Hills ----- {James Russell (In custody awaiting trial) {Russell Hughes {Guy Ellis	Ned Hills (Killed) -----	Killed	-----	-----
First Trust & Savings Bank, Moville (Robbery)	11- 2-32	4	-----	-----	-----	\$ 2,006.25	-----
						\$166,155.18	\$ 112,289.50

NOTE: In addition to the foregoing, the following men have been apprehended since January 1, 1932 in connection with Iowa bank robbery cases of previous years:

1. *Jack Traynor Hines*, serving 30-year sentence at Fort Madison for the shooting of a Des Moines policeman. *Identified* as one of the men who held up the Ely Trust & Savings Bank, Ely, Iowa on May 15, 1931.
2. *Reese Bailey*, serving 10-year sentence in North Carolina State Penitentiary. Has been *identified* as one of the men who help up the Ely Trust & Savings Bank, Ely, Iowa on May 15, 1931.
3. *James P. Royston*, WANTED by Iowa authorities for the holdup of the Ely Trust & Savings Bank, Ely, Iowa on May 15, 1931.
4. *Dan Leonard*, sentenced October 26, 1932 to LIFE at Fort Madison for the holdup on October 21, 1931 of the Farmers State Bank, Yale, Iowa.
5. *Harvey Mighell*, tried for the holdup of the Farmers State Bank, Yale, Iowa on October 21, 1931, but ACQUITTED on October 21, 1932.
6. *Reinhold Engel*, now serving 30-year sentence in South Dakota State Penitentiary for Bank robbery in that state. Has been *identified* as one of the men who held up the First National Bank Little Rock, Iowa on October 16, 1931.
7. *Phil Ray*, now serving 30-year sentence in South Dakota State Penitentiary for bank robbery in that state. Has been *identified* as one of the men who held up the First National Bank, Little Rock, Iowa on October 16, 1931.

Men apprehended during the year 1931 for bank robberies occurring in years previous to 1931:

1. *William Hildebrandt*, identified as one of the men who held up the Ottumwa Savings Bank, Ottumwa, Iowa, on September 9, 1930 and WANTED by Iowa authorities for that holdup.
2. *James A. Connolly*, believed to have handled some of the bonds taken in the holdup of the Ottumwa Savings Bank, Ottumwa, Iowa on September 9, 1930. He died November 26, 1931 in the New York Federal House of Detention where he was waiting removal to the Federal Penitentiary at Atlanta, Ga., to which institution he had been sentenced for 10 years under a charge of using the mails to defraud.
3. *Walter Freeland*, arrested on or about December 9, 1930, at Minneapolis, Minn. and returned to Iowa for the holdup of the Leeds Bank of Sioux City on February 7, 1930. Sentenced March 16, 1931 to 30 YEARS at Fort Madison Penitentiary.
4. *Francis Farley*, killed in a gun battle with Minneapolis police on or about December 9, 1930 at the same time Freeland was arrested. Implicated in the holdup of the Calumet State Bank, Calumet, Iowa on June 24, 1930 by the statement of Walter Freeland.
5. *Frank Curtis*, arrested on or about January 30, 1931 for the holdup of the West Point State Bank on October 18, 1930. Sentenced May 18, 1931 to LIFE at Fort Madison.
6. *Ernest Newman*, arrested August 18, 1931 for the holdup of the West Point State Bank on October 18, 1930. Sentenced October 29, 1931 to 10 YEARS at Fort Madison under a charge of B. and E.
7. *Harrie Morris*, whose body was found along the highway near Red Wing, Minn., on August 18 1931, had been previously identified from photo as one of the men who held up the Emmet County State Bank, Estherville, Iowa on August 30, 1929.
8. *Clarence Campbell*, arrested October 10, 1931 at Wichita, Kansas for a bank robbery there. Sentenced October 14, 1931 to Kansas State Penitentiary for 10 TO 15 YEARS. Confessed to participating in the holdup of the Peoples Savings Bank, St. Benedict on October 25, 1930, and is believed to have participated in the holdup of the People Savings Bank, at Hardy on September 18, 1930.



9. *Hillary Henderson*, arrested October 10, 1931 at Wichita, Kansas for a bank robbery there. Sentenced October 14, 1931 to Kansas State Penitentiary for 10 TO 15 YEARS. WANTED by Iowa authorities for the holdups of the Peoples Savings Bank, St. Benedict, Iowa on October 25, 1930 and the Bank of LuVerne LuVerne, Iowa on August 30, 1930.

10. *George White*, arrested December 11, 1931 at Long Beach, California for the holdup on June 24, 1930 of the Calumet State Bank, Calumet, Iowa. Returned to Iowa to stand trial for that holdup. Found guilty and sentenced March 9, 1932 to LIFE at Fort Madison.

11. *William Engler*, arrested December 12, 1931 for the attempted burglarization on that date of the Capital City State Bank, Des Moines. Tried for possession of burglar tools and found guilty on March 17, 1932. All four men sentenced on March 26, 1932 to 15 YEARS at Fort Madison.

12. *John Lugar*, arrested December 12, 1931 for the attempted burglarization on that date of the Capital City State Bank, Des Moines. Tried for possession of burglar tools and found guilty on March 17, 1932. All four men sentenced on March 26, 1932 to 15 YEARS at Fort Madison.

13. *Wincel Urban*, arrested December 12, 1931 for the attempted burglarization on that date of the Capital City State Bank, Des Moines. Tried for possession of burglar tools and found guilty on March 17, 1932. All four men sentenced on March 26, 1932 to 15 YEARS at Fort Madison.

14. *Edward Wilhite*, arrested December 12, 1931 for the attempted burglarization on that date of the Capital City State Bank, Des Moines. Tried for possession of burglar tools and found guilty on March 17, 1932. All four men sentenced on March 26, 1932 to 15 YEARS at Fort Madison.

15. *Theodore Ebsen*, arrested at Ames on July 22, 1931 for investigation. While in custody identified as having participated in the holdup of the Webster County Bank, Red Cloud, Nebraska on July 2, 1931, and turned over to Nebraska authorities. Tried on this charge and sentenced September 27, 1931 to 20 YEARS in the Nebraska State Penitentiary.

16. *Harry Ebsen*, arrested at Ames on July 22, 1931 for investigation. While in custody identified as having participated in the holdup of the Webster County Bank, Red Cloud, Nebraska on July 2, 1931, and turned over to Nebraska authorities. Tried on this charge and sentenced September 27, 1931 to 20 YEARS in the Nebraska State Penitentiary.

17. *Charles D. Harris*, arrested in Des Moines December 29, 1931 in connection with a vice raid. While in custody identified as being wanted in Kansas City, Mo., for the holdup of the Inter-State National Bank of that City on December 10, 1930. Turned over to Missouri authorities. (Disposition unknown.)

18. *Adelbert McCabe*, killed by Des Moines police on October 9, 1931 resisting arrest. Identified as wanted for bank robbery in Tennessee and Texas.

19. *William S. Scrivnor*, pal of McCabe and arrested at time McCabe was killed. Identified as being wanted in Texas for a bank robbery in that state and turned over to Texas authorities. (Disposition unknown.)

20. *Melvin Furlong*, arrested September 13, 1931 at Ottumwa and held for investigation under a charge of possession of burglar tools. Tried on this charge and sentenced December 5, 1931 to 15 YEARS at Fort Madison.

21. *Frank Brown*, arrested September 13, 1931 at Ottumwa and held for investigation under a charge of possession of burglar tools. Tried on this charge and sentenced December 5, 1931 to 15 YEARS at Fort Madison.

22. *Robert Kelso*, arrested September 13, 1931 at Ottumwa and held for investigation under a charge of possession of burglar tools. Tried on this charge and sentenced December 5, 1931 to 15 YEARS at Fort Madison.

## SCHOOLS OF INSTRUCTION

Under the provisions of Chapter 132, Laws of the 44th G. A., forty-three counties in 1931 and fifty-eight counties in 1932 held schools of instruction for peace officers. This Bureau, in cooperation with the sheriffs of those counties, assigned State Agent R. W. Nebergall to assist in conducting these schools. The schools were attended by sheriffs and their deputies, vigilantes, police officers, city and town marshals, constables, boards of supervisors, justices of the peace, mayors and councilmen, county attorneys and coroners, in a total number of 2,007 in 1931, and 2,528 in 1932.

The course of instruction included the means of apprehension and identification of criminals, including the technical work of finger printing, ballistics, and other modern methods of identification. Numerous exhibits of enlarged photographs and stereopticon slides were used in the presentation of the various subjects under discussion. On most of the programs a local district judge appeared and discussed matters of collecting, preserving and presenting evidence.

A marked interest was exhibited by those in attendance, and the hearty cooperation of local officers among themselves and with the sheriff's office and this Bureau has resulted from these meetings.

**State of Iowa**  
**1932**

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**NINETEENTH BIENNIAL REPORT**

of the

**ATTORNEY GENERAL**

for the

**BIENNIAL PERIOD ENDING DECEMBER 31, 1932**

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**JOHN FLETCHER**  
Attorney General

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Published by  
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## ATTORNEY GENERAL'S DEPARTMENT

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JOHN FLETCHER .....	Attorney General
MAXWELL A. O'BRIEN.....	Assistant Attorney General
NEILL GARRETT .....	Assistant Attorney General
EARL F. WISDOM.....	Assistant Attorney General
C. J. STEPHENS.....	Assistant Attorney General
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EMMA CARLSON .....	Stenographer
ETHEL PICKARD .....	Stenographer
LOYAT BLAND .....	Stenographer

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SOME OF THE  
**IMPORTANT OPINIONS**  
OF THE  
**ATTORNEY GENERAL**  
FOR  
**Biennial Period**  
**1931-1932**

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## OPINIONS OF THE ATTORNEY GENERAL

**COUNTY OFFICERS—BOARD OF SUPERVISORS:** A board of supervisors may not refuse to approve the appointment of a deputy clerk because of the qualifications of such appointee.

January 7, 1931. *County Attorney, Logan, Iowa:* We are in receipt of your letter of January 3d wherein you ask:

May the board of supervisors refuse to approve the appointment of a deputy clerk of the district court who is a minor, basing their refusal upon the opinions of its respective members as to the qualifications of the appointee?

Section 5238 of the Code of 1927, provides as follows:

"Each county auditor, treasurer, recorder, sheriff, county attorney, clerk of the district court, and county superintendent of schools, may, with the approval of the board of supervisors, appoint one or more deputies or assistants, respectively, not holding a county office, *for whose acts he shall be responsible*. The number of deputies, assistants, and clerks for each office shall be determined by the board of supervisors, and such number together with the approval of each appointment shall be by resolution made of record in the proceedings of such board."

Section 5239 of said Code is as follows:

"When any such appointment has been approved by the board of supervisors, the officer making such appointment shall issue in writing a certificate of such appointment, and file the same in the office of the auditor where it shall be kept."

If the board of supervisors has the power to disapprove the aforementioned appointee because of its ideas as to the qualifications of the appointee, then they may by the processes of elimination require the appointment of a particular individual for whose official acts the clerk of the District Court might not desire to be responsible.

The individual disqualified from holding the office of the county official making the appointment may nevertheless hold the deputyship. (*Rehmel vs. Board of Supervisors, etc.*, 172 Iowa, 455, and cases there cited.)

It is, therefore, our opinion that the code sections above set forth refer to the number of appointees, if any, to be approved, rather than to the qualifications of such appointees, and the board of supervisors may not refuse to approve the appointment of a deputy clerk because of the respective opinions of its various members as to the qualifications of such appointee, even though that appointee be a minor.

**COUNTY OFFICERS—BOARD OF SUPERVISORS—VACANCIES:** The board of supervisors has authority to fill a vacancy in the office of constable when the person elected to that office refuses to qualify or resigns.

January 9, 1931. *County Attorney, Humboldt, Iowa:* We have your communication of the 8th instant requesting the opinion of this department upon the following question:

Has the Board of Supervisors of Humboldt County, Iowa, as constituted subsequent to January 2, 1931, authority to appoint a successor to fill a

vacancy created in the office of constable of that county when the officer elected has resigned, in writing?

Section 1152, paragraph 4, of the Code of Iowa, 1927, reads as follows:

"Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

"\* \* \* \*

"4. County offices. In county offices, including justices of the peace and constables, by the board of supervisors."

Section 1155, Code of Iowa, 1927, reads as follows:

"An officer filling a vacancy in an office which is filled by election of the people shall continue to hold until the next regular election at which such vacancy can be filled, and until a successor is elected and qualified. Appointments to all other offices, made under this chapter, shall continue for the remainder of the term of each office, and until a successor is appointed and qualified."

It is the opinion of this office that Section 1155 is intended to apply only to such vacancies as may not be filled by other provisions of law, and that the board of supervisors of Humboldt County has the right to appoint to fill the vacancy created under Paragraph 4 of Section 1146 in the office of a constable of that county.

**ROADS AND HIGHWAYS—CONTRACTS:** Board of supervisors has power to ratify contract if it has the authority, under the laws, to enter into such a contract.

January 12, 1931. *County Attorney, Fort Dodge, Iowa:* We beg to acknowledge receipt of your letter under date of December 22, 1930, requesting an opinion of this department on the following question:

A contract was entered into for certain work on the roads of a particular township. The work has been completed but the contract was never approved, ratified or authorized by the board of supervisors. The question has arisen as to whether or not the board of supervisors may now approve or ratify the contract and bind the county.

You are advised that if the contract is such a contract as the board of supervisors would be authorized to make in the first instance that, under the law, it would now have the power and authority to ratify, adopt and approve the contract made for the work which has been completed. The county auditor should present all claims filed with him to the board and need not recommend that they be paid or approved, but explain the facts in connection with the same and leave the matter to the action of the board. It is the one who audits and allows, all claims against the county.

**MOTOR VEHICLES:** Truck on which portable mill is mounted must procure motor vehicle license; if operated by another for hire, such operator must procure chauffeur's license.

January 12, 1931. *Secretary of State:* You have requested the opinion of this Department upon the following propositions:

"Is it necessary to license a motor truck upon which is mounted a portable mill?"

"If this truck is owned by an individual, corporation or company and is operated by one who is employed to do so, must said employee or driver of said truck procure a chauffeur's license for such operation?"

We are of the opinion that such a truck must be licensed. While the Forty-

third General Assembly exempted corn shellers, woodsaws, and other like articles of husbandry, we are of the opinion that this exemption would not extend to a motor truck upon which was mounted such instrument.

• The statute requires a chauffeur's license of every person who operates a motor vehicle for hire. If these parties are operating these trucks and driving upon the highways for hire, whether for compensation in the form of salary or commissions, they must procure a chauffeur's license.

**BOARDS OF SUPERVISORS—ROADS AND HIGHWAYS—BONDS:** Where the people have authorized the issuance of county primary road bonds in excess of the statutory limitation the authorization extends only to the amount of the limitation.

January 16, 1931. *County Attorney, Mount Ayr, Iowa:* We beg to acknowledge receipt of your letter under date of January 15, 1931, requesting the opinion of this department on the following question:

A petition has been filed with the board of supervisors of this county requesting an election on the question of authorizing the issuance of county primary road bonds in the sum of \$825,000.00. The petition was signed by the required number of electors. In this county the taxable valuation will only permit the issuance of approximately \$780,000.00 in bonds.

The question has arisen as to whether or not the fact that the petition called for the authorization of the issuance of \$825,000.00 in bonds, an amount in excess of the statutory limitations, will invalidate the proceedings for the issuance of the bonds if the board submits the question as requested in the petition.

You are advised that even though the people should authorize the issuance of bonds in excess of the statutory limitation that the authority granted by the election would only validate and authorize the issuance of bonds equal only to the statutory limitations; in your case, \$780,000.00, if this figure is the maximum amount which the statutes would authorize.

**CITIES AND TOWNS—AIRPORTS:** It is not necessary to submit the question of purchasing an airport to the electors where the cost of acquiring and the maintenance cost are to be paid out of the general fund of the city. (Chap. 138, Acts 43d G. A.) (Chap. 319, Code of the 1927.)

January 20, 1931. *Director of the Budget:* We acknowledge receipt of your request for an opinion of this department on the following question:

The city of Burlington proposes to acquire land to be used for the purpose of a municipal airport pursuant to the provisions of Chapter 138, Acts of the 43rd G. A. They propose to pay for the cost of the same out of the general fund of the city and to pay for the maintenance of the same out of the same fund. The question has arisen as to whether or not it is necessary to submit the question of acquiring such airport and the equipping of the same to a vote of the people. The question has also arisen as to whether or not, for the purpose of acquiring an airport, they may secure a transfer from a fund for which there is no need to the general fund of the city.

Chapter 138, Acts of the 43rd G. A., specifically authorizes cities and towns to establish, improve, maintain and operate airports. Section 4 of said chapter provides that the cost of the establishing, improving, equipping, operating or maintaining of an airport may be paid out of the general fund of the city or out of the proceeds of a tax which is authorized by said section, if the people at an election authorize the levy and imposition of said special tax pursuant to the provisions of Chapter 319 of the Code of 1927.



However, it will be noted that where the cost is paid out of the general fund it is not necessary to submit the question to a vote of the people. You are also advised that where the city has a fund which is not needed for any other purpose, or which has a surplus in it, that a transfer may be made on resolution of the city council by and with the consent and approval of the Budget Director.

**DOMESTIC ANIMALS—CLAIMS:** No agency of the State of Iowa is entitled to recover from the domestic animal fund for damages sustained to domestic animals which have been injured or destroyed by dogs. (Chap 277, Code of 1927.)

January 22, 1931. *Secretary of Agriculture:* We beg to acknowledge receipt of your recent request for an opinion of this department on the following question:

The Iowa State College has had a number of pure bred sheep destroyed by dogs within the last few months. The question has arisen as to whether or not the state, as owner of domestic animals which are destroyed by dogs, is entitled to the allowance of a claim for the damages sustained under and in accordance with Chapter 277, Code of Iowa 1927.

We are of the opinion that the State is not protected by, nor does it come within the provisions of Chapter 277, Code of Iowa 1927, and that, therefore, the State is not entitled to an allowance of a claim for damages sustained by injury to domestic animals owned by it which were killed by dogs.

**BOARD OF SUPERVISORS—CORPORATIONS:** Incorporated medical societies cannot contract with county boards of supervisors for the care of indigent sick. (Sec. 8339, Code, 1927.)

January 28, 1931. *Commissioner of Health:* This will acknowledge receipt of your request relative to the legality of an incorporated medical society contracting with the county board of supervisors of the respective counties for the care of indigent sick.

Section 8339 of the Code states that:

"Any number of persons may become incorporated for the transaction of any lawful business \* \* \*"

In view of the fact that the practice of medicine is a privilege granted by the State of Iowa and one which is solely personal to the licensee who, when called upon, is required to rely upon his own skill, mentality and strength of character, it is apparent that the practice of medicine is one which cannot be delegated or directed by an artificial person such as a corporation. A corporation could not meet the statutory requirements to secure a license to practice medicine. As was so ably said in the case of *State of Iowa vs. Bailey Dental Company*:

"A corporation as such has neither education, skill nor ethics, and inasmuch as a corporation, by its very nature, is incapable of passing an examination for the purpose of a license, and therefore incapable of receiving a license, it cannot lawfully practice dentistry in this state."

What has been said in the *Bailey Dental Company* case would equally apply to the question you submit.

**ROADS AND HIGHWAYS:** Constitutional Amendment H. J. R. No. 6, 43rd G. A. is invalid, if adopted.

January 28, 1931. *Honorable Francis Johnson, Speaker of the House of*

*Representatives, and the Honorable Members of the House of Representatives of the 44th General Assembly:*

On the 21st day of January, 1931, the following Resolution was adopted by your Honorable Body, to-wit:

“\* \* \* BE IT THEREFORE RESOLVED, that the Attorney General be requested to render an opinion to this House, not later than January 28, 1931, advising it as to the validity of the said proposed constitutional amendment as it is contained in said House Joint Resolution No. 6.”

A copy of said Resolution was officially transmitted to the Attorney General on the same date and, in conformity with that Resolution, I am submitting herewith my opinion on the subject matter of the Resolution.

At the outset it must be understood that it is not the function of the Judicial or Legal Departments of the state government to deal with the wisdom or policy of proposed legislation. In these respects, the responsibility rests solely with the Legislative branch of government. The same rule is true where, as in this case, the legislature is acting as a governmental agency in proposing an amendment to the Constitution. Therefore, in complying with your request for an opinion as to the validity of House Joint Resolution No. 6 of the 43rd General Assembly, and the proposed Senate and House Joint Resolution No. 1 now pending in the 44th General Assembly, we deal only with the question of whether the proposed amendment, if regularly passed by this General Assembly and adopted by a vote of the people, would constitute a valid, legal amendment to the Constitution of the state.

While it may be a commonly accepted notion among the laity that the electorate of a state alone can say what their Constitution shall contain, yet contrary to that notion, the authorities are without dispute on the proposition that in the final analysis, under our form of government, it is the province of the courts to determine whether an offered amendment is valid, not only in the procedure employed in its adoption, but in its substantive provisions as well.

In passing upon the validity of a proposed constitutional amendment, we must necessarily first have in mind the nature of a constitution, its purposes, and what fundamental principles are involved in constitution making. The courts, and many writers on constitutional questions, have defined constitutions. We cite the following definitions of a constitution:

“A ‘constitution’ is a Magna Charta of the people’s rights, the fundamental law of the land, intended, not for short periods of time, but for all time.”

Henry vs. State, 39 South. 856, 893, 88 Miss. 843.

“The ‘Constitution’ is supreme law of state, embodying principles on which government is founded, regulating division of sovereign powers, and directing to what persons each of these powers is to be confided and manner in which it is to be exercised.”

Browne vs. City of New York, 211 N. Y. S. 306, 311, 213 App. Div. 206.

“A ‘Constitution’ is in fact a fundamental law or basis of government. It is a rule as contra-distinguished from a temporary or sudden order; permanent, uniform, and universal.”

Story on the Constitution, Volume No. 1, Section 339;

State vs. Roach, 130 S. W. 689, at 694.

“The very term ‘Constitution’ implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicate the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature.”

Livermore vs. Waite, 102 Cal. 118, 25 L. R. A. 312 at 316.

"This Constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void. \* \* \*" Article XII, Section 1, Constitution of Iowa.

In attempting to amend the Constitution we must, therefore, keep in mind these fundamental principles, and any amendment proposed which violates these principles of constitution making will be held invalid by the courts.

The proposed amendment, at its beginning, reads as follows:

"Notwithstanding the provisions of Article VII or any other provision of the constitution of Iowa, the state may, by act of the general assembly, contract an indebtedness not to exceed one hundred million dollars (\$100,000,000.00) \* \* \*."

It will be observed that this language does not repeal any provision of the existing constitution. The proposed amendment, if adopted, would constitute a direct exception to, or suspension of, the provision of Article VII for a particular purpose and it would constitute an inferential exception to, or suspension of, every other provision of the now existing constitution insofar as any provision of that constitution might be affected by its operation.

What parts of the constitution other than the provisions of article VII are suspended by the adoption of this proposed amendment must be left to the conjecture of the electorate in passing upon the proposed amendment. If adopted by the people those parts which are inferentially suspended must still be left to the conjecture of the legislative, executive or judicial branches of government, or to the conjecture of any citizen who seeks to function under its provision. Those parts of the constitution which are thus swept aside by this blanket suspension can only be determined, if at all, when a test comes and a legislative, judicial or ministerial attempt is made at interpretation.

It must also be kept in mind in considering this phase of the proposed amendment that it does not seek to displace and suspend only those parts of the constitution that are inconsistent with its substantive purposes but it provides for its operation regardless of the interference of other substantive provisions and regardless of any provisions in procedure that might affect its enforcement. The sweeping aside of every constitutional restriction that might stand in the way of its operation affects even the procedure under which the legislature might seek to carry out the mandate of its provisions, and it leaves to the legislature alone, without the approval of the executive branch of government, the right to perform the purposes of the amendment. It sweeps aside every existing provision of the constitution which might, in any way, be construed by the courts as interfering with its operation. It is, therefore, rendered incapable of interpretation by the court, thus dispensing for its purposes with the services of the judicial branch of government.

A Republican form of government cannot thus be done away with. The Constitution of the United States guarantees to the people in each state of the Union a Republican form of government.

Constitution of the United States, Article IV, Sec. 4;  
Eckerson vs. City of Des Moines, 137 Iowa 452, 461;  
Cooley on Constitutional Limitations, 628.

Cooley on Constitutional Limitations, *supra*, speaking of this provision of the Federal Constitution, states:

"The purpose of this guaranty was to protect a Union founded upon republican principles against aristocratic and monarchial invasions,' that is, to pre-

vent the people of a state from abolishing a republican form of government.”

In *Eckerson vs. City of Des Moines*, referred to above, the court, in speaking of the guaranty of the Federal Constitution, said:

“The purpose of the Federal Constitution was to provide a form of government, republican in character, for the states as a united whole. \* \* \* And whatever may be the form of words employed by the lexicographers—and they are more or less varied—to define what is meant by the expression ‘a republican form of government,’ it is clear that it was understood by the fathers to mean a government by the people, through representatives appointed by them to the various departments—executive, legislative, and judicial, \* \* \*.”

The proposed amendment clearly suspends, not only article VII of the Constitution, but all other articles of the Constitution that in any way impinges upon its precepts and thus suspends the authority of the judicial and executive branches of our government in violation of the guaranty of the Federal Constitution.

Article X of the Constitution, provides the method by which our state Constitution may be amended. Section 2 of that Article provides that:

“If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.”

It is apparent by a casual reading of the proposed amendment that it contains more than one subject and more than one substantive amendment.

*First:* it repeals temporarily the general debt provision of the Constitution;

*Second:* it provides for the contracting of an indebtedness for improving certain highways;

*Third:* it provides for the creation of a state indebtedness to retire the obligations of the several counties of the state that have been incurred for road making purposes;

*Fourth:* it fixes and establishes certain described highways of the state as its primary roads;

*Fifth:* it prescribes the manner in which roads shall be improved;

*Sixth:* it seeks to delegate power to some unnamed authority to determine what roads other than those now constituting the primary road system shall become a part of that system;

*Seventh:* it repeals unnamed provisions of the Constitution affecting the creation of an indebtedness;

*Eighth:* it repeals unnamed provisions of the Constitution affecting the improvements of highways;

*Ninth:* it prohibits the issuance of bonds by the several counties of the state for primary road purposes.

The very terms of the provision itself separates it into different parts and subjects. It provides that

“After bonds in the total principal sum of one hundred million dollars (\$100,000,000.00) shall have been issued hereunder, all power to create an indebtedness hereunder shall cease.”

Upon the happening of this contingency the power to create indebtedness and to enact laws for the creation of an indebtedness terminates but the provision with reference to the expenditure of the funds for the construction and main-

tenance of the roads designated in the provisions remain as a separate and distinct part of the Constitution, and for all time until amended by the people.

The subject of creating an indebtedness is clearly one subject, and the subject of improving particular roads either from funds derived through the indebtedness authorized or from other funds is clearly another subject. This is made plain by the provisions of our existing Constitution. The subject of laying out and improving highways is treated in our Constitution under article III, and all the restrictions on road making are contained therein, while the subject of contracting indebtedness is treated as a separate subject under article VII of the Constitution. If these were considered separate subjects in the making of our original, permanent Constitution can we now say by adopting an amendment throwing these subjects together that they are only one? We do not believe courts will so hold.

It cannot be seriously claimed by anyone that a provision in the Constitution prohibiting the issuance of bonds by a county for a specific purpose is germane to the subject of creating an indebtedness by the state. The one is a restriction upon the powers of a municipality of the state government; the other is a grant of power from the people to the legislature of the state.

We will not prolong this opinion by pointing out the difference between the different matters which we set out in the nine points enumerated above. We believe that a mere naming of the subjects is sufficient argument that the proposed amendment contains more than one question.

The purpose of the provisions of Section 2 of Article X of the Constitution is tersely stated in the case of *Jones vs. McClaughry*, 169 Iowa, at 297, as follows:

"Its purpose is to exact the submission of each amendment upon its merits alone and thereby secure the free and independent expression of the will of the people thereon. Incongruous matter and that having no connection with the main subject is excluded and the evil of loading a meritorious proposition with another of doubtful propriety obviated. *The elector in approving or rejecting cannot be put in a position where he may be compelled, in order to aid in carrying a proposition, to vote also for another which, if separately submitted, he would reject.*"

The Supreme Court of Idaho, in considering a similar provision to the Constitution of that state with respect to amendment, says:

"This provision of the Constitution is a wise one, and is intended to prevent several inconsistent and conflicting propositions from being submitted to the voters in the same amendment, and forcing the voter to approve or reject such amendment as a whole. In other words, it prevents burdening a meritorious proposition with a vicious one, and alike prevents a vicious proposition from having the support of a meritorious one, and gives to the voter the right to have each separate proposition submitted to him in order that he may express his will for or against each separately without being compelled to accept a provision to which he is opposed in order to have adopted a provision which meets his favor."

Again, the Idaho court in applying the general principles, said:

"Looking, then, at the amendment submitted and under consideration, we find that the joint resolution proposed that two sections of the Constitution be repealed and that five other sections of the Constitution be amended, and the joint resolution in its terms submitted to the electors, as we read the submission, five different propositions: First, to abolish the probate court and extend the jurisdiction of the district court to all matters of probate; second, to provide for the election and appointment of judges; third, to pro-

vide for the salaries of judges; fourth, to provide for the terms of said courts; and, fifth, a system of districts.

"It thus appears that the Legislature, in providing for the submission of the proposed changes in the Constitution, recognized and considered that the questions covered thereby involved several distinct and independent propositions, and so stated in the resolution submitting such questions. In this conclusion the Legislature was certainly correct, as the particular matter covered by the proposed changes involved distinct and independent propositions; *yet, notwithstanding that fact, the Legislature made no provision and gave the voter no opportunity to vote upon each of these propositions separately. The entire matter was submitted to the electors in a lump, and they were compelled to accept or reject all of the propositions—all of the proposed changes. They had no choice.*"

The subject under discussion by the Idaho court was a provision relating solely to the judicial branch of government, abolishing the probate court, extending the jurisdiction of the district court, providing for the elections of judges, fixing their salaries, and providing for terms of court, and a system of districts. It might be said that they pertained to one subject—the judicial branch of government, but the court held otherwise and held that each was a separate and distinct proposition to be submitted to the voters separately.

In passing upon the proposed constitutional amendment here under consideration the electorate, in voting upon the measure, might desire to vote for the creation of an indebtedness for the purpose of road building without desiring to have it expended upon the particular roads named in the provision, while others of the electorate might desire to vote to create an indebtedness for the purpose of improving the roads designated in the amendment and would be opposed to the expenditure of money from the bond fund upon roads not designated in the amendment, but which by its provisions might be brought in by some unnamed authority to the primary road system.

Part of the electorate might desire to vote an indebtedness upon the state to build highways but they might not want to vote an indebtedness to discharge the obligations of the counties of the state. Part of the electorate, again, might desire to vote for any provision in the measure with the exception of that part denying to the counties the right to incur indebtedness for the improving of the primary roads. Some of the electorate might desire to vote an exception to the debt provision of Article VII of the Constitution, yet they might not want to vote for the repeal or suspension of some other section of the constitution unnamed.

Under the proposed amendment they must vote for all these things or vote against them all. They do not have the choice of determining which, if any, of the proposals shall become a part of the Constitution. Or, their desire to create an indebtedness to build roads might induce them to vote for every other provision, whether they believe it should be adopted or not. In other words, it precludes the electorate from expressing their free choice in passing upon the different subjects in the proposed amendment. Because of this duplicity of subjects involved in one proposal the instrument, if adopted, would, in the judgment of this department, be declared void.

After reciting the primary roads that are to be improved under the provisions of this amendment, stating through what cities and towns each road shall pass, the proposed amendment contains the following provisions:

"Nothing herein shall prohibit the changing of the number of any road or part thereof, or the changing of the location of any primary road between the cities and towns named herein."

While this paragraph would, on its face, indicate that changes of locations might be made in any primary road between cities and towns, yet it is entirely silent, and the entire act is silent, upon the question of what authority has been designated by the provision should it become a part of the constitution to bring about such a change in location. The paragraph does not provide that roads may be changed by act of the legislature, by act of the body having charge of the primary road system of the state, or by any other authority. When a provision of the constitution provides for the performance of a duty it must determine who shall perform that duty. If it does not do so the provision is void because of ambiguity. If there is no power delegated to anyone to change the location of one of the primary roads, then the act holds out to the public a void inducement for the purpose of soliciting its approval. When one section of a statute or constitutional amendment is void, and others valid, yet if it appears that the void section is a compensation or inducement for the other provisions and the connection between them is such as to warrant the belief that the valid part would not have been passed alone were it not that it was accompanied by the invalid part, then the whole enactment is void.

*State vs. Executive Council*, 207 Iowa, 923, 935.

This clause is, in the opinion of this department, void and inoperative for want of definiteness, because it is not capable of fulfillment and is an inducing clause. Being void it would nullify the act.

We have pointed out matters which we believe are legal impediments to the validity of the proposed amendment. You as Members of the General Assembly are the Judges of both the law and the facts insofar as your deliberations are concerned, and the responsibility of legislation rests alone upon your branch of government.

**CITIES AND TOWNS:** No city or town may sell its electric light consumers electric equipment and merchandise.

February 6, 1931. *County Attorney, Denison, Iowa:* We have yours of February 5, 1931, wherein you ask:

"Does a city or town owning and operating a municipal electric light plant have authority and power to sell its electric light customers electric stores, light fixtures, bulbs, and other electric equipment and merchandise?"

The right of cities and towns to enter into contracts is a delegated power.

No provision is found in our present code whereby any city or town may sell merchandise of any kind to private individuals. We are, therefore, of the opinion that no city or town may sell its electric light customers electric equipment and merchandise.

**COUNTIES—BOARD OF SUPERVISORS:** A member of a board of supervisors is not precluded from receiving payment for mileage actually travelled in attending regular and special meetings of such board and committee meetings thereof by his failure to file such claim promptly. (Section 5125, Code of Iowa, 1927.)

February 7, 1931. *County Attorney, Dubuque, Iowa:* We have yours of January 23, 1931, wherein you ask in substance:

Does the failure of a member of the board of supervisors to file claim for mileage to regular and special meetings and committee meetings, at the time such mileage is furnished, preclude him from making claim for such mileage at a later date?

Section 5125 of the 1927 Code, provides as follows:

"The members of the board of supervisors shall each receive five dollars per day for each day actually in session, and five dollars per day exclusive of mileage when not in session but employed on committee service, and ten cents for every mile traveled in going to and from the regular, special and adjourned sessions thereof, and in going to and from the place of performing committee service.

"When the board is in continuous session, mileage for only one trip in going to and from the session shall be allowed."

Under the above section the duty of the county to pay such mileage is definite and well defined. The county has not changed its position because of the failure of the supervisor to file in the first instance, nor has the supervisor benefited thereby. It is, therefore, our opinion that a supervisor is not precluded from filing a claim for mileage actually travelled by him in attending regular and special meetings of the board and committee meetings thereof by reason of the fact that he neglected to file the same promptly and with dispatch, unless precluded from so doing by other provisions of the law.

**COUNTY OFFICERS:** The unclaimed fee record in the office of the county auditor is a public record and should be kept open to inspection of the public. (Section 10840, Code, 1927.)

February 9, 1931. *County Attorney, Mt. Ayr, Iowa:* We have yours of January 24th wherein you ask:

"Is the record of unclaimed fees in the office of the county auditor a public record, so that anyone wishing to see and examine it, and take a list of the unclaimed fees from it, may do so?"

Section 10840 provides for the payment by the Clerk of the District Court of unclaimed fees in his office to the County Auditor. A similar provision is made with regard to justices of the peace in Code Section 10634. Each of these sections provide that a proper record be kept by the auditor of the amount so paid. We are, therefore, of the opinion that such record is as much a part of the records of the auditor's office as any other record; and that being a record of his office, and precluding, of course, any commercialization of such record on the part of private interests, any person desiring to inspect the same would be allowed to do so.

**COUNTIES—ROADS AND HIGHWAYS:** Counties must advertise for bids in purchasing materials for use upon the various highways and bridges of the county when the expenditure is more than \$1,500.00. (Sections 43, 44, Chap. 20, Laws of the 43d G. A.)

February 10, 1931. *County Attorney, Iowa City, Iowa:* We have yours of February 9, 1931, wherein you ask:

Must the county, in purchasing materials for use on several county road or bridge projects, no one of which requires the expenditure of \$1,500.00, purchase such materials at a public letting, when the total cost thereof exceeds \$1,500.00?

Section 43 of Chapter 20, Laws of the 43rd General Assembly, reads as follows:

"All contracts for road or bridge construction work and materials therefor of which the engineer's estimate exceeds fifteen hundred dollars (\$1,500.00), except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting. The board may reject all bids, in



which event it may readvertise, or may let the work privately at a cost not exceeding the lowest bid received, or build by day labor."

Section 44 of Chapter 20, Laws of the 43rd General Assembly, reads as follows:

"Contracts not embraced within the provisions of the preceding section may be advertised and let at a public letting, or may be let privately at a cost not to exceed the engineer's estimate, or may be built by day labor."

It will be noticed that the first section above set forth specifically refers to materials purchased, and sets a definite limit above which purchases thereof must be made at public letting.

It is therefore our opinion that the legislature had in mind at the time of the passage of this act, the amount of money to be expended, rather than the size of the particular road or bridge project. We are therefore of the opinion that the materials mentioned above must be purchased at public letting.

**BOARD OF CONSERVATION—RIVERS AND STREAMS:** The Skunk River in Mahaska County, Iowa, is a non-meandered stream, belongs to the riparian owners, and is not the property of the state.

February 10, 1931. *County Attorney, Oskaloosa, Iowa:* We have your letter of February 9th wherein you ask:

Is the Skunk River where the same lies within Mahaska County the property of the state of Iowa?

We are in receipt of advice from the State Board of Conservation and also from the Land Department of the office of the Secretary of State to the effect that the south Shunk River where it lies within Mahaska County is not a meandered stream.

We are advised that it is not navigable within the meaning of the law.

Although the state is the owner of river beds below high water mark on meandered or navigable streams (*McManus vs. Carmichael*, 3 Iowa 1), this rule does not apply to non-meandered and non-navigable streams. (*Watt vs. Robbins*, 160 Iowa, 587; *Compton vs. Hites*, 184 Iowa, 1074.)

We are, therefore, of the opinion that the river bed of the Skunk river in Mahaska County belongs to the riparian owners, and that the title thereto is not in the State.

**TAXATION:** Dance pavillion operated for a profit not exempt from taxation. (Sec. 6944, Code, 1927.)

February 12, 1931. *County Attorney, Tipton, Iowa:* This will acknowledge receipt of your request of January 30, 1931, which is as follows:

"The question has arisen as to the exemption from taxation of an outdoor dance pavillion, which is owned by the American Legion Post of Bennett, Iowa.

"Public dances sponsored by the Legion are held upon this pavillion, and it is admitted by them that during the past season they realized sufficient profit from the dances to pay for the pavillion. They state that it is their intention to use any profits which are realized in the future for further improvements and projects for the betterment of the community.

"It is their belief that they should be entitled to the exemption given by Section 6944, Par. VI of the Iowa Code of 1927. Our auditor has consulted me with respect to the problem, and I am inclined to the view that the pavillion should be taxable, not being within the exemption granted by Section 6944, because of the fact that it is operated for pecuniary profit, it being immaterial for what purposes the profits are used."

It is the opinion of this department that where a dance pavillion is operated for a profit, it is not exempt from taxation.

**STATE OFFICERS AND EMPLOYEES:** Persons in the employ of state colleges and universities engaged in the actual teaching of classes or individuals in connection therewith may be exempt from jury service; other employes of such institutions are not so exempt. (Section 10843, Code, 1927; Section 10846, Code, 1927.)

February 14, 1931. *State Board of Education:* We have yours of February 3, 1931, wherein you ask in substance as follows:

What employes of the state colleges and university in this state are exempt, under the laws of this state, from jury service; and should employes of such state institutions who are drawn for jury service be paid for their jury service in addition to their ordinary salary or compensation at the respective institutions?

Section 10843 of the 1927 Code reads as follows:

"The following persons are exempt from liability to act as jurors:

"1. Persons holding office under the laws of the United States or of this state.

"2. Practicing attorneys, physicians, licensed embalmers, registered nurses, chiropractors, osteopaths, veterinarians, registered pharmacists, dentists, and clergymen.

"3. Acting professors or teachers of any college, school, or other institution of learning.

"4. Persons disabled by bodily infirmity.

"5. Persons over sixty-five years of age.

"6. Active members of any fire company.

"7. Persons conscientiously opposed to acting as a juror because of religious faith."

You will note that Section 3 thereof provides that acting professors or teachers in any college, school or other institution of learning are exempted from jury service.

There are no interpretations of this statute by our supreme court to our knowledge.

We are, therefore, of the opinion that only those persons who are actually engaged in the regular course of their employment by such institution in the teaching of classes or individuals at the respective colleges and university are exempt from jury service under the law.

The fees are prescribed for jurors in Section 10846 of the 1927 Code, which reads as follows:

"Jurors shall receive the following fees:

"1. For each day's service or attendance in courts of record, including jurors summoned on special venire, three dollars, and for each mile travelled from his residence to the place of trial, ten cents.

"2. For each day's service before a justice of the peace, one dollar.

"3. No mileage shall be allowed talesman or jurors before justices."

The employee of the state institution above referred to is paid from state funds. Jury service rendered by such employee is paid for by funds from the county.

In no event should state funds be used to pay for the jury service of the employee of the institution in the respective counties. Such employment would be governed by the ordinary rule or regulation of the institution with regard to absence from work at the institution, in case no special rule or regulation to fit the circumstances of the case were in force at such institution.

**COUNTIES—DOMESTIC ANIMALS:** A county is liable for injuries to

domestic animals by dogs as well as for the killing thereof. (Sections 5452, 5454, Code, 1927.)

February 18, 1931. *County Attorney, Spirit Lake, Iowa:* We have yours of February 14th wherein you ask:

"Is the county liable for injuries caused domestic animals by dogs not owned by the owners of said domestic animals?"

Section 5452 of the Code, 1927, provides as follows:

"Any person damaged by the killing or injury of any domestic animal or fowl by wolves, or by dogs not owned by said person, may, within ten days from the time he or his agent has knowledge of such killing or injury, file with the county auditor of the county in which such killing or injury occurred a claim for such damage."

Section 5454, Code, 1927, provides as follows:

"The board shall act on such claims within a reasonable time, and allow such part thereof as it may deem just. When a claim is allowed, the value of each animal or fowl killed or injured shall be entered of record."

It will be noted that Section 5452 above quoted, specifically provides that the county shall pay for injury to the animals mentioned above, as well as for the killing thereof. It is therefore our opinion that the county is liable for the injuries inflicted upon domestic animals by dogs not owned by the owner of such domestic animals.

**TOWNSHIP TRUSTEES—COUNTIES—ATTORNEYS:** When township trustees are parties defendant in litigation in connection with their official duties, the county attorney is required to represent them; and in case he is disqualified from acting, representation is appointed by the board of supervisors. (Sections 5544, 5545, 5180-a1, 5180-a2, Code, 1927.)

February 18, 1931. *County Attorney, Forest City, Iowa:* We have yours of February 11, 1931, wherein you ask in substance as follows:

When township trustees are made parties defendant in litigation in connection with the performance of their official duties, and the county attorney is disqualified from acting, who represents such trustees as attorney, how is he appointed, and from what source does he derive his compensation?

Code section 5544 of the Code, 1927, provides as follows:

"In counties having a population of less than twenty-five thousand, where the trustees institute, or are made parties to, litigation in connection with the performance of their duties, as provided in this chapter, the county attorney, as a part of his official duties, shall appear in behalf of the township trustees, except in cases in which the interests of the county and those of the trustees are adverse."

Section 5545, Code, 1927, provides as follows:

"When litigation shall arise in any case not covered by the preceding section, involving the right or duty of township trustees with reference to any matter within their jurisdiction, and the trustees become or are made parties to such litigation, they shall have authority to employ attorneys in behalf of said township; and to levy the necessary tax to pay for their services, and to defray the expenses of such litigation."

Section 5180-a1, Code, 1927, provides as follows:

"In case of absence, sickness, or disability of the county attorney and his deputies, the court before whom it is his duty to appear, and in which there may be business requiring his attention, may appoint an attorney to act as county attorney, by order to be entered upon the records of the court, and he shall receive out of the compensation allowed to the county attorney, when

such appearance is before a justice of the peace, such sum as the board of supervisors shall determine to be reasonable for the services rendered, and, when it is before a court of record, such sum as the judge shall determine to be a reasonable compensation, and, while acting under said appointment, he shall have all the authority and be subject to all the responsibilities herein conferred upon county attorneys."

Section 5180-a2, Code, 1927, provides as follows:

"In criminal cases less than a felony, a justice of the peace or magistrate cannot appoint an attorney at the expense of the county or county attorney; and no justice of the peace shall appoint an attorney to act as county attorney in any case wherein a felony is charged, unless reasonable notice in writing has been given the county attorney that his services will be required before such justice at a time therein named, and he has failed to appear in response thereto."

We are, therefore, of the opinion that when trustees are made parties defendant in litigation in connection with the performance of their duties, the county attorney is required to defend them as provided in Section 5544; and that any duty performed under authority of statute is an official duty, taking the case out of the provisions of Section 5545 of the Code, above.

In such case it is our opinion that if the county attorney were disqualified from acting, counsel should be provided by the board of supervisors.

**MOTOR VEHICLES:** A non-resident of the state who operates his motor vehicle within the state of Iowa for a period in excess of six months in one year, would be required to purchase an Iowa license. (Sec. 4864, Code, 1927.)

February 18, 1931. *County Attorney, Corning, Iowa:* We have your letter of February 13, 1931, wherein you ask in substance as follows:

When a non-resident of the state operates his motor vehicle within the state of Iowa, when is he required to procure a license therefor?

Code section 4864 of the Code, 1927, provides as follows:

"A motor vehicle shall not, in the following cases, be operated by its own power upon any public highway of this state unless, at the time of such operation, it is registered and licensed, as hereinafter provided, to-wit:

"1. When such vehicle is kept in this state and the owner is a resident of this state.

"2. When such vehicle is kept and used in this state a majority of the time, by a non-resident.

"3. When such vehicle is used in this state and not properly licensed under the laws of another state or country."

You will note that paragraph 2 above mentioned requires that when the automobile is operated and kept within that state for a majority of the time, a license must be obtained.

In this state licenses are secured for a period commencing January 1st and ending December 31st.

It is, therefore, our opinion that the time referred to in paragraph 2 of Section 4864 is the period for which the automobile is licensed, as above stated, and that a person who kept and operated his automobile in the state for periods totalling six months or longer in one year, would be required to purchase a license; and in case he did not procure such license at once upon his entrance into the state, he would be subjected to all of the penalties provided in such cases, including the criminal penalty provided in Chapter 251.

**BANKS AND BANKING:** Banks organized under the provisions of Chapter 415, Code, 1927, as amended by Section 4, Chapter 30, Acts of the 43d General Assembly, may not be required to increase their capital stock when the population of the town wherein said bank is located increases.

February 18, 1931. *Superintendent of Banking:* We have yours of February 13, 1931, wherein you ask:

"If a bank were organized under the present law governing minimum capitalization, may it be required to increase its capital stock if the increase in population of the town or city, as shown by the official census, would require a minimum capital stock greater than that required at the time of organization?"

Chapter 415, Code, 1927, as amended by Section 4, Chapter 30, Acts of the 43rd General Assembly, provides as follows:

"\* \* \*

"The paid up capital of state and savings banks and trust companies shall be:

"(a) In villages, towns and cities having a population of three thousand (3,000) or less, not less than twenty-five thousand dollars (\$25,000.00);

"(b) In cities and towns having a population from three thousand (3,000) but not exceeding six thousand (6,000), not less than fifty thousand dollars (\$50,000.00);

"(c) In cities and towns having a population over six thousand (6,000), not less than one hundred thousand dollars (\$100,000.00).

"This section shall not apply to state and savings banks and trust companies already established."

It is the opinion of this department that the above quoted section has to do with the question of the organization of banks in the state of Iowa, in view of the fact that the above quoted section provides as follows:

"This section shall not apply to state and savings banks and trust companies already established."

and in view of the location of the above section in the present code and under the chapter title in which it is found.

It is, therefore, our opinion that if a bank were organized under the present law covering minimum capitalization, it may not be required to increase its capital stock when the increase in population of a town or city as shown by the official census would require a minimum capital stock greater than that required at the time of organization.

**CIGARETTES:** Dealers in cigarettes in Iowa may not sell individual packages of cigarettes to which revenue stamps cannot be firmly affixed; and in case any dealer breaks cartons containing such individual packages, his entire stock is subject to confiscation. (Secs. 1571, 1571-b1, 1572, Code, 1927.)

February 18, 1931. *Treasurer of State:* We have yours of February 17, 1931, wherein you ask—

May dealers in cigarettes in Iowa sell individual packages of cigarettes completely wrapped in a substance to which revenue stamps cannot be firmly affixed? And in the event cigarette cartons containing such packages are broken by the dealer, is the entire cigarette stock of such dealer subject to confiscation?

Section 1571 of the 1927 Code provides as follows:

"All cigarettes sold or given away under the provisions of this chapter shall be put up in packages containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each. Before

being delivered to the consumer each package of cigarettes, and each package, book, or set of papers or tubes shall have securely affixed thereto a suitable stamp denoting the tax thereon and said stamp shall be properly canceled prior to removal or consumption under such regulation as the treasurer of state shall prescribe."

It will be noted that the provisions of the above section require that the revenue stamp mentioned therein be firmly affixed to the package of cigarettes.

Section 1571-b1 of said code provides as follows:

"When a package or carton which contains inner individual, taxable packages of cigarettes, cigarette papers, wrappers or tubes, is opened, the stamps provided by this chapter shall be immediately affixed to all of said inner individual, taxable packages."

The provisions of the above section require that the stamp be firmly affixed to the individual package of cigarettes at once after the package is broken.

Section 1572 of said Code provides as follows:

"Any person violating any of the provisions of Sections 1557, 1570, 1570-b1, 1571, or 1571-b1 shall be punished by fine of not less than one hundred dollars, nor more than three hundred dollars, and be confined in the county jail until such fine is paid, but not exceeding six months. In addition all cigarettes, cigarette papers, and papers made or prepared for the purpose of making cigarettes, in his possession or in his place shall be confiscated and forfeited to the county in which seized, and be disposed of as like property is disposed of when seized on search warrant."

It will be noted that the above section provides that for a violation of the provisions of the first two Code sections quoted above, the entire stock of the dealer in cigarettes is subject to confiscation.

It is an obvious fact that a package of cigarettes completely wrapped in a substance to which revenue stamps cannot be firmly affixed cannot be possessed by any individual with such stamp securely attached thereto.

It is, therefore, the opinion of this department that dealers in cigarettes in Iowa may not sell individual packages of cigarettes completely wrapped in a substance to which the revenue stamps cannot be firmly affixed; and in the event cartons containing such packages of cigarettes are broken by the dealer, the entire cigarette stock of such dealer is subject to confiscation.

**BOUNDARIES—BOARD OF CONSERVATION:** A deed of conveyance to the state by sections, quarters or sixteenths thereof is a conveyance of tracts, and the boundary of the section, quarter or sixteenth is the boundary, and not the fence line.

February 20, 1931. *Engineer and Superintendent State Parks:* We have yours of February 20, 1931, wherein you ask:

When a deed of conveyance to the state described the real estate conveyed by sections, quarters and sixteenths, is the state bound by the partition fence lines between the property conveyed and adjacent property when such fence lines are not on the boundaries of the sections, quarters or sixteenths?

You are advised that the conveyance of real estate by sections, quarters or sixteenths, is a conveyance of tracts of real estate by the acreage, and that the correct boundary lines between such real estate and adjacent property is the line of the quarter or sixteenth section and not the fence line, as the same may be located off the line of the quarter or sixteenth section.

**INTOXICATING LIQUOR:** Prescriptions by physicians who are not regularly engaged in the practice in this state cannot be filled.

February 23, 1931. *County Attorney, Keokuk, Iowa*: You have requested the opinion of this Department as to whether or not sales of intoxicating liquors can be made as provided in paragraph 2 of Section 2093 in this state on prescriptions issued by physicians licensed under the laws of this State, but who are residents of Missouri or Illinois, just across the boundary line from Iowa, and who are engaged in the general practice in those states but who occasionally practice in the State of Iowa.

We do not believe that a physician who occasionally, or in isolated cases, practices in Iowa would meet the descriptions in or requirements of the provision of law referred to. It is the meaning of the statute that sales can be made only upon prescriptions by those physicians who are regularly engaged in the general practice in this State.

**ELECTIONS:** A voter registered in a presidential election, who has not voted at a general election in a non-presidential election, must register again before voting at any subsequent election.

February 27, 1931. *County Attorney, Ottumwa, Iowa*: We are in receipt of your request for an opinion upon the question as to whether or not, under the provisions of Section 714 of the Code, a person who was registered at the last presidential election must have voted at the last general election in 1930 in order to be entitled to vote at a city election in March, 1931, without registration.

Section 713 provides:

"A new registry of voters shall be taken in each year of a presidential election."

From the foregoing it is evident that a complete new registry is made every four years. Section 714 of the Code provides as follows:

"For all state or municipal elections, general or special, except in presidential years, the registers shall prepare a new registry book by copying from the poll book of the preceding general election all the names found therein, adding thereto those of all persons registered and voting at any subsequent election, which new registry book shall show all the facts of qualification of each voter as they appear in the last preceding registry book, and which, when thus made up, shall be used at each election until a new registry book is prepared as required by law."

It will be observed from the foregoing that for each state or municipal election, except in a presidential year, the registers are required to prepared a new registry book by copying from the poll book of the preceding general election all the names found therein, adding thereto those of all persons registered and voting at any subsequent election.

Thus, it will be observed that a new registry book should be made for the election to be held by your city in March, and that only those names should be included upon that new registry book of persons who voted at the general election in November 1930, or who have been subsequently registered for any other election since that time. Therefore, it will be imperative for any person who did not vote at the last general election to register if he desires to vote at the city election to be held in March this year.

**CITIES AND TOWNS:** There is no authority for establishing benefited districts for city water purposes. The signers of a petition calling for an election on the establishment and installation of water mains must be property owners. Chapter 312, Code of 1927. (Secs. 6130, 6132, 6134, 6210.)

March 4, 1931. *County Attorney, Des Moines, Iowa*: We beg to acknowledge receipt of your letter under recent date requesting an opinion of this department on the following questions:

"1. Can the town of Urbandale create a benefited district for construction of water mains on such district or part of such district?"

"2. Can a town by vote of owners in said district issue bonds to pay for said water mains?"

"3. What is limit of such bond issue and is percentage based on assessed value of taxable value?"

"4. Is a contract purchaser an owner so that he can sign petition calling for election on water mains?"

Your attention is called to Chapter 312, Code of Iowa 1927. Section 6130 of that chapter specifically authorizes a city or town to purchase heat, gas, *water* or electric current by contract and to erect the necessary mains, etc. In this connection it will be noted from reading this section that the term "water main" is not used therein but in construing the whole section it is necessarily read into the statute. Before, however, the city or town can purchase by contract water, etc., the question must be submitted to a vote of the people within the city or town. If the question of purchasing by contract water, etc., and erecting the necessary mains therefor, is approved by a vote of the people, then, under Section 6134, Code of 1927, the city or town would be authorized to issue bonds for the payment of the cost of establishing and installing the mains, etc. There is no authority in the statute of this state for establishing a benefited district for the purpose of assessing the cost of the installation of water mains against the property located within said benefited district.

The city or town, under Chapter 312, Code of 1927, would be authorized, upon favorable vote of the people, to enter into a contract with the City of Des Moines or its board of waterworks trustees for the purchase of water for city and town purposes, and, under Paragraph 2, Section 6211, Code of 1927, the city or town council would be authorized to levy against the property located within said city or town, subject to taxation for city or town purposes, a tax not to exceed five (5) mills; said tax to pay for the cost of water used for city purposes. The city would also be authorized to sell the water to the residents thereof and to charge a reasonable rate or rental therefor.

The question of whether or not the cost of installing the mains and the cost of the water for city purposes could be assessed against agricultural lands within the meaning of Section 6210, Code of 1927, that is agricultural lands located within the city limits, is one of fact. Our Supreme Court held in the case of *Perkins vs. City of Burlington*, 42 N. W. 441, that if the agricultural lands were included within the city limits at the time of the incorporation that said agricultural lands were not exempted from taxes for city purposes within the meaning of Section 6210, Code of Iowa. If, however, said agricultural lands were added and included within the city limits by action of the council after the incorporation of the city the said lands would, it would seem under our Supreme Court decision, be exempt from taxation for city purposes, such as water, etc., and the cost of the installation of water mains. In this connection we refer you to the case of *McKinney vs. McClure*, 220 N. W. 354.

With respect to the question as to the limit of a bond issue for the purpose of establishing water mains, etc., you are referred to Section 3, Article XI, Constitution of Iowa, which in substance provides that any municipal corporation shall not be allowed to become indebted in any manner or for any purpose



to an amount in the aggregate exceeding five per cent (5%) on the value of the *taxable* property within said municipal corporation, same to be ascertained by the last state and county tax list previous to the incurring of the indebtedness.

You are further referred to and advised that under Section 6132, Chapter 312, Code of 1927, a petition for the initiation and submission of the question of whether or not a city or town should enter into a contract to purchase water, etc., and to establish and install water mains must be signed by twenty-five (25) property owners of each voting precinct in a city or by fifty (50) property owners of any incorporated town.

You are further advised that the five per cent (5%) constitutional debt limit is based upon the taxable value of the property within said city or town.

**RAILROADS:** Local counsel for railroads are entitled to free passes under paragraph 3, Section 8128, Code of 1927.

March 17, 1931. *Secretary Executive Council:* You have requested the opinion of this Department upon the question as to whether attorneys who are only casually employed by railroad companies, who render legal services on behalf of said railroad companies, are entitled to free passes under the provisions of paragraph 3 of Section 8128 of the Code.

The provision of law insofar as applicable reads as follows:

"The persons to whom tickets, free passes, free transportation, or discriminating reduced rates may be issued, furnished, or given, shall be as follows:

"\* \* \* \* \*

"3. The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers, whose chief and principal occupation is to render service to common carriers of passengers, to the families of such persons, to physicians and surgeons actually employed by such common carriers to render medical service in behalf of said common carriers and to attorneys actually employed by such common carriers to render legal services in behalf of said common carriers."

Your attention is called to the fact that prior to the enactment of Chapter 191 of the Acts of the Forty-second General Assembly, the paragraph in question included only "the officers, agents, employees, attorneys, physicians, and surgeons of such common carriers whose chief and principal occupation is to render service to common carriers of passengers, and to families of such persons." If that were still the only provision in paragraph 3, there would be no question but that local attorneys of railroads would not be entitled to free passes. However, the Forty-second General Assembly added to the paragraph the further provision that such free passes might be given "to physicians and surgeons actually employed by such common carriers to render medical service in behalf of such common carriers and to attorneys actually employed by such common carriers to render legal services in behalf of said common carriers."

In view of the amendment by the Forty-second General Assembly, we are of the opinion that local counsel, actually employed by any common carrier to render legal services in behalf of said common carrier are entitled to free passes.

**FISH AND GAME:** Manufacturer who makes a practice of buying skins and hides of fur-bearing animals is a "dealer" within the meaning of Chapter 58, Acts of the 43rd G. A.

March 18, 1931. *Fish and Game Warden:* We beg leave to acknowledge receipt

of your communication of January 8, 1931, in which you ask the following question:

Is a manufacturer of garments, etc., out of furs, who makes a practice of buying furs from trappers, a dealer within the meaning of the definition of dealer as contained in Chapter 58, Acts of the 43rd General Assembly?

We are of the opinion that a manufacturer of fur articles, who makes a practice of buying skins or hides of fur bearing animals, is a dealer within the meaning of the definition as contained in Chapter 58, Acts of the 43rd General Assembly.

**BOARD OF CONTROL:** Appropriation for laundry building and equipment means building equipment ready to operate laundry.

March 18, 1931. *Board of Control:* You have requested the opinion of this Department upon the following proposition:

"We have an appropriation that calls for '\$35,000.00 Laundry Building and Equipment.' There is much equipment that goes into a laundry building that is not laundry machinery.

"What I desire to know is that the appropriation reads, '\$35,000 for Laundry and Equipment,' does that mean the building complete and all the machinery that it takes to run the laundry, including ironer, washer, dryer and so forth? Or does it mean building fully equipped for the machinery?"

You are advised that it is the opinion of this Department that the language employed in the appropriation act referred to means that the building completed with the laundry equipment was not to cost in excess of \$35,000.00. You will observe that the appropriation calls for "\$35,000.00 Laundry Building and Equipment."

**TAXATION:** Discussion of law relative to exemption of fruit tree reservations.

March 18, 1931. *Iowa State Horticultural Society:* You have requested the opinion of this Department upon the proposition of whether or not the assessor can take into consideration any enhancement in the value of land because of the fact that an orchard or fruit tree reservation is growing thereon, when such orchard is more than eight years old.

Section 7110 of the Code provides as follows:

"Forest reservations fulfilling the conditions of Sections 2604 to 2617, inclusive, shall be assessed on a taxable valuation of one dollar per acre. Fruit-tree reservations shall be assessed on a taxable valuation of one dollar per acre for a period of eight years from the time of planting. In all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade, or ornamental purposes, or for windbreaks, the assessor shall not increase the valuation of such property because of such improvements."

It will be observed that the first two sentences of the section refer to regulation fruit tree reservations such as are described in Sections 2611 to 2615 of the Code, and it is provided that for the first eight years after planting, such fruit tree reservations shall be assessed on a taxable valuation of \$1.00 per acre. There is no provision in the law restricting the assessment for taxation purposes thereafter.

The last sentence in the section provides that in all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade or ornamental purposes, or for windbreaks, the assessor shall not increase

the valuation of such property because thereof. This means in all other cases other than those known as forest or fruit tree reservations established or planted under the provisions of Sections 2604 to 2617 of the Code. In other words, it refers to those tracts of land which have such trees upon them, but which are not planted in the manner required to constitute such tracts as forest or fruit tree reservations. In those cases the law provides that the assessor shall not enhance the value of said tracts of land because of such trees growing thereon.

It is, therefore, the opinion of this Department that after a regulation fruit tree reservation has passed the eighth year after planting that then said reservation shall be assessed for taxation on its enhanced value, if any.

**ELECTIONS:** City council adopting permanent registration plan must fix effective date therefor else plan goes into effect the same as any other ordinance.

March 19, 1931. *County Attorney, Newton, Iowa:* We are in receipt of a communication signed by yourself and Mr. George Campbell, City Attorney of Newton, relative to the status of voters in Newton at the coming city election in view of the adoption by your city of the plan for permanent registration of voters.

Your attention is called to the provisions of Section 10 of Chapter 37 of the Acts of the Forty-third General Assembly, which provisions were substituted for the provisions of Section 718-b22 of the Code of 1927, and provide that:

"The council may adopt ordinances necessary to carry into effect the provisions of this chapter."

The answer to your question is dependent upon the provisions of the ordinance adopting the permanent registration plan. If that ordinance did not specify an effective date for the new plan, which date is beyond the time of your city election, then the ordinance became effective in the regular way, and is applicable to your city election which will be held March 30.

**TAXATION:** Postal Saving Certificates are assessable as moneys and credits.

March 19, 1931. *County Attorney, Jefferson, Iowa:* We have yours of February 24, 1931, wherein you ask:

Are postal saving certificates assessable as moneys and credits?

Chapter 330 of the 1927 code relates to property exempt from taxation.

Section 6953 of said code reads as follows:

"What taxable. All other property, real or personal, is subject to taxation in the manner prescribed, and this section is also intended to embrace: \* \* \*

"5. Credits, including bank bills, government currency, property or labor due from solvent debtors on contracts or judgment, mortgages or other like securities, accounts, bearing interest."

No exemption is stated in said chapter for postal saving certificates, and it would therefore, be the opinion of this department that said postal saving certificates are assessable as moneys and credits.

**CIGARETTES:** Person cannot sell cigarettes from truck.

March 21, 1931. *Treasurer of State:* You have requested the opinion of this Department upon the following proposition:

"May a wholesale cigarette permit holder who operates trucks over the state, call on retail permit holders and have an agreement with said retail

dealers for a standing order of so many cigarettes per week, not specifying the kind of brands to be delivered and at the time they make delivery, disregard the so called standing order, giving the dealer an invoice covering the particular brands and number of cigarettes delivered from the truck on that day."

Your attention is called particularly to the provisions of Sections 1557 and 1558 of the Code, 1927, which read as follows:

"1557. *Permit to sell.* No person shall sell cigarettes or cigarette papers without first having obtained a permit therefor in the manner provided by this chapter. Such permit may be granted by resolution of the council of any city or town under any form of government and when so granted, may be issued by the clerk of such city or town. If issued to a person for use outside of a city or town such permit may be granted by resolution of the board of supervisors and when so granted shall be issued by the auditor of the county. Such permit shall remain in force and effect for two years following the July first after its issuance, unless sooner revoked."

"1558. *Form of permit.* Such permit shall:

"1. Be granted only to a person owning or operating the place from which sales are to be made under the permit.

"2. Not be transferable.

"3. Be numbered and show the name and the residence of the person to whom granted and the place of business of the holder where sales are to be conducted under said permit."

You will note that it is provided in Section 1558, paragraph one, that such a permit shall be granted only to a person owning or operating the place from which sales are to be made under the permit. A person carrying a stock of cigarettes in an automobile or a motor truck, who calls upon the trade and sells cigarettes from that motor vehicle or truck directly to the trade, violates the provisions of the law for the reason that a permit cannot be given to a transient person or to one not operating at a fixed place. This is in accord with the previous opinions of this Department.

Under the facts stated by you in your proposition, it is the opinion of this Department that a so-called standing order which does not specifically state the kind and number of each kind of cigarettes to be delivered each week, and where the salesman calls each week and on every such occasion inquires of the merchant or purchaser the number and kind of cigarettes he desires and makes out a new invoice or statement covering the items sold and delivered from the truck at that time, is a subterfuge and is not such a one as will relieve the seller in any such a manner, from criminal liability under the provisions of the law. In the transaction described by you, the seller from the motor vehicle or truck, makes a new contract of sale, and the previous so-called standing order is thereby superseded by this new contract or order.

**COUNTIES—GENERAL FUND:** Judgment on warrants issued against county general fund, payable out of the judgment fund, in accordance with the provisions of Chap. 266, Code of 1927. Current receipts of the county general fund not obligated by such a judgment.

March 24, 1931. *County Attorney, Clinton, Iowa:* We beg to acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Clinton county has approximately \$61,000.00 of warrants outstanding issued against its county general fund for years prior to the year 1931; in other words, the deficit in said fund is approximately said sum. The question has arisen as to whether or not if the holders of these warrants secured judg-

ment against the county the county could then issue funding or refunding bonds, and if so what would be the status of the current receipts for the year 1931 with respect to the bonds so issued.

You are referred to Chapter 266, Code of Iowa 1927, and are advised that if judgment is obtained against the county on the warrants which have been issued against the county general fund, which warrants are unpaid because of lack of funds and were issued prior to 1931, that the board of supervisors would be authorized under Chapter 266, provided the indebtedness exceeded \$5,000.00, to issue bonds to the judgment holders and to levy a tax in accordance with the provisions of said chapter for the payment of the interest and principal on the bonds so issued. The bonds issued would be an obligation of the bond fund and not an obligation of the county general fund.

The current receipts of the county general fund for the year 1931 would then be unobligated and could be expended for the current expenses of the county as authorized by law.

Supplementing our opinion to you of March 24, 1931, you are advised that all warrants upon which judgment was rendered would be cancelled by said judgment and would no longer be an obligation of the current year's county general fund, and that warrants may now properly be issued against said county general fund and paid out of the same.

**CORPORATIONS:** Stock may be issued and sold before publication of notice regarding amendment has taken place.

March 24, 1931. *Secretary of State:* Replying to your recent request of March 12th, which is as follows:

"An amendment to the articles of incorporation of the above company has been filed with this department increasing their capital stock to thirty-five million dollars (\$35,000,000.00), and certificate has been issued for this amendment.

"Your opinion is requested upon the following:

"(1) Whether this corporation can issue this stock before proof of publication of the amendment is filed with this department.

"(2) Can this corporation issue this stock at once and start their publication at the same time.

"(3) Can they issue this stock before the publication is started."

—we beg to advise that it is the opinion of this department that the Northwestern Bell Telephone Company would be authorized to issue stock immediately upon the approval and recording of an amendment to the articles of incorporation, and there could be no question but that they would be authorized to issue stock if they started their publication at the same time that they started the issuance of their stock.

**CRIMINAL LAW:** The venue in a desertion case is in the county where the minors are residing, it being the duty of the husband to support in that county.

March 25, 1931. *County Attorney, Dubuque, Iowa:* We acknowledge receipt of your letter under date of March 21, 1931, requesting an opinion of this department on the following question:

Mrs. "A" and her husband were living in Waterloo and had a family of two children. She obtained a divorce from her husband in that city and secured the custody of the two children. After the divorce she and the children moved to Dubuque. The husband has left the state of Iowa and has failed to make any contribution toward the support of his children. The wife desires

to file an information against her husband in Dubuque county on the charge of desertion. Where is the venue and jurisdiction of such a charge?

We refer you to the case of *State vs. Dvoracek*, 140 Iowa, 266. It will be noted from reading that case that the venue in a case of desertion is akin to the venue in the case of embezzlement. In embezzlement cases the venue is in the county in which it was the duty of the accused to account or in the county where the embezzlement took place.

In a desertion case it is the duty of the husband to support his minor children and that duty is to be performed at the place where they reside. It would, therefore, appear that in the case about which you write, the wife and children having taken up their residence in Dubuque County, it was the duty of the husband to support and maintain them there. That being the case, we think that Dubuque County would have venue of the action.

**OFFICIAL NEWSPAPERS—BOARD OF SUPERVISORS:** Board must select required number of official newspapers.

March 26, 1931. *County Attorney, Eldora, Iowa:* You have requested the opinion of this Department upon the proposition as to whether the Board of Supervisors should select a new official newspaper in view of the fact that two of the newspapers which were official papers have consolidated since the selections were made in January.

Your first question is whether your board can wait until next January to select a third newspaper, or whether the so-called vacancy in these papers can be filled now.

It is the opinion of this department that it is the intention of the law that official proceedings shall be published in three newspapers in counties having in excess of 15,000 in population. The purpose is to advise the public as to the proceedings of the Board and all official county business which is required to be published. Therefore, the vacancy should be filled if there is a paper in the county which can qualify.

As to whether or not the failure to publish any official proceedings in the manner required by law would invalidate the proceedings is a question involving many other considerations. If the matter is one which the law specifically requires to be published in the official papers before effect can be given to it, then the publication must be made as the law requires in the required number of official papers. Otherwise we do not believe that any proceedings would be invalidated by reason of the fact that said proceedings were not published in one of three official papers.

**CORPORATIONS:** Executive Council has no duty to perform where stock is to be exchanged for property, except to value the property.

March 26, 1931. *Secretary, Executive Council:* You have requested the opinion of this Department upon the following proposition:

"The Executive Council requests an opinion from the Attorney General as to their authority to require certain companies to deposit stock in escrow with the Securities Department, when permission has been granted by the Council to issue stock for considerations other than money."

Your attention is called to the provisions of the law as contained in Sections 8412, 8413 and 8414 of the Code, 1927, relative to duties of the Executive Council in connection with the issuance of stock by a corporation for property instead of money. You will note that Section 8412 provides that no corporation or-

ganized under the laws of this state, except building and loan associations, shall issue any certificate of a share of capital stock until the corporation has received the par value thereof.

It is then provided in Section 8413 that if it is proposed to pay for said capital stock in property, or in any thing other than money, the corporation must first apply to the Executive Council for leave so to do.

Section 8414 provides what the Council shall do whenever such an application is made to it, and is in words as follows:

"The Executive Council shall make investigation, under such rules as it may prescribe, and ascertain the real value of the property or other thing which the corporation is to receive for the stock. It shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed."

It will be observed that the only function, or duty, that the Executive Council has to perform in connection with any such matter, is to fix a value on the property which the corporation desires to receive in payment for capital stock. When the Executive Council has determined and fixed that value, its function is at an end. The corporation, of course, cannot issue capital stock for said property or thing in a greater amount than the value so fixed, but the Executive Council has no power to control the manner of the issuance of the stock or to attach any conditions or requirements other than those specifically set out in the law. As stated, the sole function of the Council is to determine the value of the property or other thing which the corporation desires to exchange for stock. The Secretary of State is the officer charged with the control of the issuance of capital stock under what regulatory provisions we now have in the law. The Executive Council has no function to perform in that field.

**CITIES AND TOWNS:** The city council of a city or town fills vacancies in the office of mayor.

April 1, 1931. *County Attorney, Humboldt, Iowa:* We beg to acknowledge receipt of your letter under recent date requesting an opinion of this department on the following question:

The mayor of a city in this county has resigned. The question has arisen as to whether under the law, the city council elects a new mayor to fill the vacancy or whether it is necessary to have a special election.

We are of the opinion that the city council has the power and authority to fill the vacancy for the office of mayor created by the resignation of the present mayor, and the appointee holds office until the next city general election.

**ROADS AND HIGHWAYS:** Grading which is not of a permanent character is generally considered as maintenance and not construction. Chapter 20, Acts 43rd G. A.

April 1, 1931. *County Attorney, Onawa, Iowa:* We beg to acknowledge receipt of your letter under date of January 19, 1931, requesting an opinion of this department on the following question:

Under the Bergman Law, Chapter 20, Acts of the 43rd G. A., is "temporary grading" or grading to a natural grade considered a part of road construction, and the cost thereof payable out of the construction fund?

You are advised that this is largely a matter of engineering; what is construction and what is maintenance is not defined in the law and would, there-

fore, depend upon what was usually considered construction or maintenance from an engineering or technical standpoint. Generally speaking, any grading which is not of a permanent character is considered as maintenance and not construction. It being considered as maintenance, the cost is payable out of the maintenance fund, either local or county.

**FISH AND GAME:** The penalty for one who fails to secure permit tags for shipping furs outside of the state is that provided in Sec. 12893, Code of 1927. (Sec. 3, Chap. 58, Acts 43rd G. A.)

April 1, 1931. *County Attorney, Waukon, Iowa:* We beg to acknowledge receipt of your letter under date of December 4, 1930, requesting an opinion of this department on the following question:

Is it the duty of persons who have trapped, killed or ensnared any of the animals named and described in Chapter 58, Acts of the 43rd General Assembly, before shipping the same outside the state to secure permit tags, and if they fail to secure the tags and make the shipments what is the offense and the penalty?

Section 3, Chapter 58, Acts of the 43rd General Assembly, so far as is material to the question, provides in part as follows:

"\* \* \* Any person who has trapped, killed or ensnared any of the animals named and described in this act, and who desires to sell or ship the skins or hides thereof to dealers or buyers outside of this state, shall first obtain a special permit tag authorizing the same, from the state fish and game department. This department shall immediately furnish all such tags on request."

Clearly under that part of Section 3, Chapter 58, Acts of the 43rd General Assembly, set out above, it is the plain duty of any person who has trapped, killed or ensnared any of the animals named and described in said chapter, before shipping same outside of the state, to secure permit tags. In other words, the person is prohibited from shipping skins or hides outside of the state without first securing the permit tags.

Under Section 12893, Code of Iowa 1927, any act which is prohibited by any statute and for which no penalty for violation is imposed is a misdemeanor and the punishment is as is provided for in Section 12893, Code of Iowa 1927.

We cannot see why that part of Section 3, Chapter 58, Acts of the 43rd General Assembly, above set out, is in contravention of the Interstate Commerce clause. The regulation it would seem to us is reasonable.

**JUSTICE OF THE PEACE—BOARD OF SUPERVISORS:** The question of what is a proper expense to be allowed a constable in civil cases is one for the board of supervisors, of course, within the maximum limits specified by the statute. Subsection 4, Section 10639, Code of Iowa 1927.

April 1, 1931. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter under date of March 11, 1931, requesting an opinion of this department on the following question:

"Section 10639, subsection 4, Code of Iowa 1927, provides in part that justices and constables in all townships having a population of 10,000 or over shall retain such civil fees as may be allowed by the board of supervisors not to exceed \$500.00 per annum, except where the population of a township is in excess of 50,000 then \$1,000.00, 'for expenses of their offices actually incurred,' and the balance, of course, of the civil fees collected is to be paid into the county treasury.

"What items may be included in such expense?"



The question as to what items shall be included in the expenses of a justice or constable within the meaning of subsection 4, of Section 10639, Code of Iowa, 1927, is a question for the determination of the board of supervisors. It should be an easy matter for the board of supervisors to determine whether or not the expense item for which allowance is requested is one which is a proper expense of the office of either the justice or constable.

I do not believe that any hard and fast rule as to just what items may be included can be laid down. The board is the final judge and it must determine the matter.

The expense of operating an automobile might under certain circumstances, be a proper item for allowance; under other circumstances it would not be. In other words, it is a question of fact.

**ROADS AND HIGHWAYS:** Legal obligations of a township which were taken over under the provisions of Chap. 20, Acts of the 43rd G. A., by the county are to be paid out of the 65% of the secondary road construction fund. (Section 63, Chap. 20, Acts 43rd G. A.)

April 1, 1931. *County Attorney, Humboldt, Iowa:* We beg to acknowledge receipt of your letter of recent date requesting the opinion of this department on the following question:

In this county there were a number of townships which had legal obligations outstanding and which under Section 63, Chapter 20, Acts of the 43rd G. A., the county was required to assume and pay. The question has arisen as to out of what fund the county is to pay these obligations, whether it is to be taken out of the particular township's share of the 35% of the secondary road construction fund or out of some other fund?

You are referred to Paragraph 4, Section 11, Chapter 20, Acts of the 43rd G. A. It will be seen from reading this paragraph that the 65% of the secondary road construction fund is pledged, among other things, to the payment of any legal obligation or contract which, under Chapter 20, the county is required to take over. It would, therefore, follow that all legal obligations of the townships which the counties assume under the provisions of Chapter 20 must be paid out of the 65% of the secondary road construction fund.

It will be noted in this connection that the 65% pledged in Section 11 is not for use on the local county roads until all of the county trunk roads have been fully improved. It would, therefore, follow that the obligations of the township which the county assumes could not be deducted from the township's share of the 35% of the secondary road construction fund which is pledged for use on the township or local county roads.

**COUNTY OFFICERS—BOARD OF SUPERVISORS:** County board of supervisors has authority to purchase road machinery and to allow claims for the purchase thereof, and the county auditor, if there are funds in the particular fund to which the machinery should be charged, has no discretion with respect to the issuance of the warrants for the same.

April 1, 1931. *County Attorney, Albia, Iowa:* We acknowledge receipt of your letter under date of February 20, 1931, and are sorry that we have been unable to give you a more prompt reply.

The question about which you request an opinion is as follows:

The board of supervisors of this county during the year 1930 entered into a contract for the purchase of certain road machinery at a cost of \$5,600.00, and also other equipment at a cost of varying amounts. The claim of the

vendor could not be paid during 1930 for the reason that the time the contract was entered into there were not sufficient funds in the hands of the county with which to pay the same. The board of supervisors has now entered into what purports to be a new contract to purchase the said equipment and has allowed the claim and directed the county auditor to draw a warrant on the proper county road fund for the payment of the same.

There are now sufficient funds in the county road fund against which the warrant would be drawn to pay said claim. Is the county auditor justified in drawing said warrant in payment of this claim or does the fact that the original contract obligated and incurred an expenditure in excess of the current receipts and was, therefore, void, make it the duty of the county auditor to refuse to honor this present claim?

The board of supervisors of a county approve and allow all claims filed against the county. The responsibility for the same is their responsibility and if the board approves the claim as being a proper claim against the county and directs the county auditor to draw a warrant on the proper fund, and the county auditor has sufficient funds with which to pay the same, the county auditor has very little, if any, discretion in the matter. In this case, from the facts stated above, it would appear that the county has the equipment purchased on the contract and if such equipment which the board is authorized to purchase is necessary in the operation of the county's road business, the county cannot expect to retain the equipment and not pay for it. It would, therefore, follow that if the board has approved the claim under the circumstances heretofore stated, the county auditor would be justified in issuing the warrant.

**TAXATION—REFUNDS:** When the treasurer sells property at tax sale no warranty is made and the purchaser takes the property as described and any error in valuation does not justify a claim for refund. (Sec. 7236, Code of Iowa 1927.)

April 1, 1931. *County Attorney, Britt, Iowa:* We acknowledge receipt of your letter under date of February 14, 1931, and are sorry that we have been unable to give the matter prompt attention.

You request an opinion of this department upon the following question:

The treasurer of this county sold at tax sale certain lots for delinquent taxes. Upon one of these lots was located a house; the assessor in listing these properties assessed the house as being located on a different lot than the one upon which it was actually located. The purchaser at the tax sale who purchased the lot upon which the house was supposed to be located finds that it was a mistake and is now asking the county to take up the certificate. Is this such a mistake as would justify the county board refunding to the purchaser the money paid?

From the statement of facts it would appear that the only claim made by the certificate holder is that the taxes assessed against the property which he purchased were on a value in excess of the real value, because of the fact that said lot was supposed to have located on it a house.

No claim is made that the tax was an illegal or void tax, but that it was based upon an excessive value. This being true, the property owner, when the taxes were assessed, had the right to appear and object to the valuation, but not having done so the value must stand.

When the treasurer sells property at tax sale no warranty is made and the purchaser takes the property as described.

We are, therefore, of the opinion that the county board has no authority, under Section 7236, Code of Iowa, 1927, to refund the taxes paid at the tax sale.

**MUNICIPAL COURT—JUSTICE OF PEACE:** Where a municipal court is established in the manner provided by law the office of police judge and justice of the peace are abolished immediately on the qualification of the municipal court officers. (Sec. 10658, Code of Iowa 1927.)

April 1, 1931. *County Attorney, Fort Dodge, Iowa:* We beg to acknowledge receipt of your letter under date of October 31, 1930, requesting an opinion of this department on the following question:

Section 10658, Code of 1927, provides that the offices of police judge and justice of the peace shall be abolished upon the qualification of the officers of a municipal court. The question is, where at a municipal election in March, 1931, the municipal court plan is adopted and the court is established and the officers have qualified, would the present incumbents of the offices of police judge, justice of the peace and constable, who were elected and qualified for a two-year term, which would expire January 1, 1933, be immediately abolished?

The provisions of Section 10658, Code of 1927, seem to be clear and explicit. We are of the opinion that where a municipal court has been established in an incorporated city or town and the officers of said court have qualified that the offices of police judge and justice of the peace within said incorporated city or town are immediately abolished, and their term of office would cease on the date of the qualification of the municipal court officers; and said police judge and justice of the peace would have no power or authority to function from that date and could draw no salaries or collect any fees.

**ROADS AND HIGHWAYS—COUNTIES:** Where a bridge is built on a primary road since April, 1919, by the county and the said primary road is abandoned the county is entitled to a refund under the provisions of Chap. 3, Acts 42nd G. A., Special Session.

April 1, 1931. *County Attorney, Emmetsburg, Iowa:* We beg to acknowledge receipt of your letter under date of March 23, 1931, requesting an opinion of this department on the following question:

The county board of supervisors of this county built a bridge on a primary road, said bridge being constructed since April 19, 1919. Sometime after the bridge was constructed the Highway Commission passed a resolution establishing another road to take the place of this particular primary road. After this resolution, but before the new primary road was constructed, the legislature passed the provision with respect to refunds for bridges built on primary roads by counties since April 19, 1919.

The question has arisen as to whether or not Emmet county is entitled to a refund under the provisions of Chapter 3, Acts of the 42nd G. A. Special Session, or would the fact that after the bridge was built by the county on the primary road, said road was relocated or abandoned and reverted back to the county, defeat the right of the county to a refund out of the primary road fund?

We are of the opinion that under Chapter 3, Acts of the 42nd G. A. Special Session, the county which has built a bridge on a primary road since April 19, 1919, is entitled to a refund in accordance with the provisions of said chapter.

The fact that after the bridge was built on the primary road said primary road was relocated or abandoned would make no difference as to the right of the county to a refund. The sole question is, was the road a primary road at the time the bridge was built and was the bridge built since April 19, 1919? If so, the county is entitled to the refund.

**COUNTY OFFICERS—BOARD OF SUPERVISORS:** Where a member of the

board of supervisors is sued in his individual capacity and not as an official, it is not the duty of the county attorney to defend him.

April 1, 1931. *County Attorney, Tipton, Iowa:* We acknowledge receipt of your letter under date of October 28, 1930, requesting an opinion of this department on the following question:

One of the members of our board of supervisors had a bridge removed from what used to be called a township road. At the time said bridge was removed the road was closed and had not been used for some years prior to that time. The bridge was placed on another secondary road of the county. The administrator of a deceased owner of one of the farms abutting on this so-called township road has brought an action at law against the member of the board of supervisors, in his individual capacity, for damages for the wrongful removal of the bridge from said so-called highway and the board of supervisors desire to know whether or not it is the duty of the county attorney as county attorney, to defend this member of the board of supervisors who has been sued as an individual and not as a member of the board. They also desire to know, that if it is not the duty of the county attorney, whether or not there is any authority for the board to hire an attorney to represent and defend this particular member; or must the individual member furnish his own counsel?

We are of the opinion that there is no duty imposed upon the county attorney to represent members of the board of supervisors who have been sued in their individual capacity. This is a private matter.

We are, however, of the opinion that if the action against the member of the board of supervisors, as an individual, arose out of his duties as a member of the board of supervisors that the board of supervisors should and would have authority to employ counsel to represent and defend the said individual.

**TAXATION:** Personal estate of a decedent should be listed by the administrator or executor for assessment purposes in the county of the decedent's residence and in the particular taxing district or township in which the property is either located or in which the decedent was a resident at the time of his death.

April 1, 1931. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter under date of November 7, 1930, requesting an opinion of this department on the following question:

Where a decedent dies in one county leaving as assets of his estate certain monies and credits, and his estate is probated in the same county but the executor lives in a different county, and where such monies and credits are listed for assessment and taxation in the county where the decedent died and also in the county in which the executor lives, in which of said counties is the tax legally collectible. That is, in which county should the property be assessed?

We have examined the cases which you cite and have reached the conclusion that, while it might appear that there is some conflict, yet we believe that all of the decisions can be reconciled.

The McGregor case, cited by you, which is reported in 24 Iowa, 36, lays down the broad general rule that personal property of a decedent should, as a general rule, be assessed in the county of which he died a resident.

The Burns case reported in 57 N. W. 908, lays down the rule that where a decedent and two joint executors were residents of the same county, but the executors residents in two different townships of the same county, that each should return to the assessor in his particular district or township such personal

property which is in his immediate possession. This does not, as we view it, conflict with the McGregor case.

We are, therefore, of the opinion that the personal estate of a decedent, in a case where the executor or administrator is not a resident of the county in which the decedent died and original administration is taken out in the county in which the decedent died, that, under the Iowa cases, should be listed by the administrator or executor for assessment purposes in the county of the decedent's residence and in the particular taxing district or township in which the property is either located or in which the decedent was a resident at the time of his death. This, in our opinion, must necessarily be the rule for if it were not the personal estate of many decedents might go untaxed due to the fact that the assessor of a foreign county, that is, other than the decedent's residence, would most of the time have no knowledge or information concerning the decedent's estate, and it would permit gross evasion of the tax laws of the state.

You ask in your letter whether a minor may, under the laws of this state, be appointed and legally act as deputy county recorder. We find no statute which prohibits this.

**FISH AND GAME**—A licensed fur dealer may purchase and possess skins of animals from residents without the state during the closed season on such animals in Iowa. (Sec. 4 (1766-a6), Chapter 59, Acts 43rd G. A.)

April 1, 1931. *State Game Warden*: We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

May a licensed fur dealer in Iowa purchase and possess skins of animals from residents from without the state of Iowa during the time there is a closed season on such animals in Iowa?

We are of the opinion that, under Section 4 (1766-a6), Chapter 59, Acts of the 43rd General Assembly, a licensed or bonded dealer may purchase skins or hides of animals named and described in said chapter from without the state when the seller, who is a non-resident of the state, legally possesses said skins and hides under the laws of the state of his residence.

**TAXATION**: When county purchases at tax sale, price paid from general fund.

April 1, 1931. *County Attorney, Sac City, Iowa*: We acknowledge receipt of your letter under date of November 10, 1930, requesting an opinion of this department on the following question:

When the county purchases property at tax sale under and in accordance with the provisions of Section 7255-b1, Code of 1927, from what fund is the purchase price to be paid?

We are of the opinion that the only fund from which the purchase price may be paid is the county general fund, which, when the property has been sold, may be reimbursed.

**COUNTY OFFICERS**: The surety of a county officer who has received as compensation, upon order of the board of supervisors, is not liable on the bond for such illegal compensation.

April 1, 1931. *County Attorney, Bedford, Iowa*: We acknowledge receipt of your letter under date of December 4, 1930, requesting an opinion of this department on the following question:

Where the board of supervisors of a county has allowed extra compensation to a county officer, and the money has been paid to this county officer and it is later discovered that under the law the officer is not entitled to any extra compensation, and the payment therefor illegal, is the bondsman of the officer who received the extra compensation liable for such over-payment?

We are of the opinion that there would be no liability on the part of the surety for the over-payment. The bond is a fidelity bond, the obligations of which would not cover such a transaction.

**SECURITIES:** One-year Gold Notes issued for any purpose other than specified in the statute are not exempt from the provisions of Chap. 10, Acts of the 43rd G. A.

April 1, 1931. *Secretary of State:* We acknowledge receipt of your letter under date of November 8, 1930, requesting an opinion of this department on the following questions:

Are one-year gold notes exempt under Section 4-(h) of the Iowa Securities Law when used for any of the following purposes:

1. For the purpose of re-imbursing the issuer for expenditures that have been made in connection with improvements to properties pending contemplated permanent financing involving a re-grouping of the property of the issuer?
2. For the purpose of additions, betterments, or improvements to the issuer's property contemplating that at the time of the maturity of the so-called notes some method of permanent financing will be used?
3. For the purpose of re-financing fixed long term indebtedness?

We are of the opinion that one year gold notes issued for any one of the purposes above set out are not exempt from the Securities Act under the provisions of Section 4-(h), Chapter 10, Acts of the 43d General Assembly.

**FISH AND GAME:** The state fish and game protection fund cannot be used for the purpose of purchasing public shooting grounds.

April 1, 1931. *State Game Warden:* We acknowledge receipt of your letter of recent date requesting the opinion of this department on the following question:

May the State Fish and Game Protection Fund be used for the purpose of purchasing public shooting grounds?

We find no statute which would authorize the use of the State Fish and Game Protection Fund for such purposes, and are, therefore, of the opinion that said fund cannot be used for the purpose of purchasing public shooting grounds.

**TAXATION:** Sec. 373-a1, Code 1927, authorizes the filing of supplemental estimates for the purpose of levying taxes for future years, and any supplemental estimate made to include the year in which it was made would be void as to such year.

April 1, 1931. *County Attorney, Algona, Iowa:* We acknowledge receipt of your letter under recent date requesting an opinion of this department on the following question:

The town of Swea City by its council has sent for filing with the County Recorder a supplemental estimate for levy of taxes for future years for the purchase of a fire truck. This supplemental estimate includes a levy to be collected during the year 1930 and for subsequent years pursuant to the provisions of Section 5767, Code of Iowa 1927. The question has arisen as to whether or not the council can at this time file a supplemental estimate and whether or not the board of supervisors would be required, under the law, to make a levy to be collected during the year 1930?

You are referred to Section 373-a1, Code of Iowa 1927. It will be seen from reading this section that supplemental estimates for particular funds may be made for levy of taxes for future years when the same are authorized by law. Such estimates may be considered and levy made therefor at any time by filing the same and upon giving the notice provided for in Section 375, Code of Iowa 1927.

We are of the opinion, therefore, that the board of supervisors cannot, under the law, compel nor is the board of supervisors required to make a levy as provided for in the supplemental estimate filed by the town of Swea City to be collected during the year 1930.

**ROADS AND HIGHWAYS:** Under Sec. 4, Chap. 20, Acts 43rd G. A., boards of supervisors are only given authority to grade, drain or surface a street which is an extension of a county trunk road, when said extension has been built to grade and surface or is about to be built to grade and surface.

April 1, 1931. *County Attorney, Atlantic, Iowa:* We acknowledge receipt of your letter under date of November 10, 1930, requesting an opinion of this department on the following question:

There is a street within the city of Atlantic which is a continuation of Cass county trunk road system, known as County Road D. Said street is dirt and not built up to grade or surface, nor is it about to be built to grade or surface.

Has the board of supervisors power to, under the provisions of Section 4, Chapter 20, Acts of the 43rd G. A., grade, drain and surface the extension of said county trunk road?

It would appear from reading said section that the board only has power to grade, drain, bridge, gravel and maintain a street which is an extension of the county trunk system or local county road system when said extension has been built to grade and surface or about to be built to grade and surface. This is the limit of their authority.

We are also enclosing herewith copies of opinions rendered by this department to H. V. Levis, County Attorney, Chariton, Iowa, under date of January 22, 1930, and Vernon F. Kepford, County Attorney, Toledo, Iowa, under date of February 20, 1930.

**INSURANCE—COUNTIES:** Counties operating a public hospital in a proprietary capacity are liable for negligence in the same manner as an individual and it is for the board to determine whether or not insurance should be carried.

April 1, 1931. *County Attorney, Webster City, Iowa:* We acknowledge receipt of your letter in which you request an opinion of this department on the following question:

Hamilton county is operating a county public hospital. In connection with the operation of this hospital elevators, boilers and other equipment are operated by employees and others. The question has arisen as to whether or not the county, in a case where there is negligence in connection with the operation of this hospital, would be liable for injuries sustained by reason of such negligence, and whether the county should carry compensation insurance or whether the county comes under the law of municipal corporations as compensation insurance.

The question as to the liability of the county for injuries sustained by its employees or by the public in connection with the operation of a proprietary business is one about which there is considerable question.

Our Court in the Davis County case has held that the county is not liable for injuries sustained by reason of the defective bridges, etc.

We are, however, of the opinion that where the county engages in a proprietary business that it is in the same category as an individual with respect to negligent acts of its employees, and that one who is injured by reason of the negligent operation of the equipment of a hospital would have a right to recover from the county for such injury. This being true, it is a question of policy for the board of supervisors to determine as to whether the county would best be protected by carrying compensation insurance, etc., or whether the county could best carry its own insurance and pay claims as they arise rather than pay premiums out for the protection of the county.

**CITIES AND TOWNS—INSURANCE:** Cities and towns do not have authority to purchase liability insurance for the protection of the members of a volunteer fire department.

April 1, 1931. *Auditor of State:* Pursuant to your request we are handing you herewith an opinion on the following question:

Has a city or town council authority, under the law, to purchase liability insurance for the protection of the members of a volunteer fire department, said protection to cover the members while on duty, either within or without the city or town limits?

We are of the opinion that city and town councils generally do not have authority to purchase liability insurance. There is considerable question as to whether or not the city would be liable for any damages sustained by reason of any negligence on the part of the fire department. The courts have held that the city is not liable and, therefore, clearly the city could not expend money to purchase such insurance.

You will note from examining the policy which was enclosed with the request for an opinion that it only covers legal liability.

Furthermore, cities and towns have never been authorized by the Legislature to purchase such insurance.

**BOARD OF HEALTH:** Individuals who are competent may consent to sterilization. (Chapter 66, Acts 43rd G. A.)

April 1, 1931. *County Attorney, Eldora, Iowa:* We acknowledge receipt of your letter under date of February 25, 1931, in which you request an opinion, whether doctors can safely proceed with a sterilization operation based upon the written consent of the man in question.

An examination of Chapter 66, Acts of the 43rd G. A., will disclose the fact that the act only contemplates the sterilization of such persons as are reported to the Eugenics Board; such sterilization to be made only upon recommendation of the board either upon the consent of the individual or his legal guardian or after notice and a hearing, and has nothing to do with the sterilization of individuals by physicians where the individual consents and the question as to the advisability of the same has not been reported or submitted to the Eugenics Board. The individual, of course, under Section 19 of said chapter, is granted the right to select his own physician provided such physician is competent in the opinion of the Eugenics Board.

As to the question of whether a physician may, with the consent of an individual, perform a sterilization operation is a question about which there is some debate. However, we find that the majority opinion is to the effect that



an individual has the right and may consent to such an operation, and that the physician may perform said operation without violating any law; the physician, however, being held to the usual rule, that is, he, of course, to be responsible for any negligence on his part which might amount to malpractice.

**CITIES AND TOWNS:** Mayor has right to vote to break tie vote of council.

April 3, 1931. *City Attorney, Vinton, Iowa:* You have requested the opinion of this department upon the proposition as to whether the Mayor of your City has the right to vote upon the selection of a City Clerk, there being six members of the City Council and the vote being a tie.

Your attention is directed to the provisions of Section 5639, paragraph 5, of the Code, 1927. It will be noted that it is there provided that when there is a tie vote upon any proposition, the Mayor shall vote. You are respectfully referred to the case of *State vs. Alexander*, 107 Iowa 177, where a similar question arose and is discussed. It is the opinion of this department that the Mayor is entitled to vote on the matter suggested in your letter.

**INTOXICATING LIQUOR:** In the absence of bad faith a sale of intoxicating liquor may be made by a licensed pharmacist in the employ of a permit holder under Chapter 100, 1927 Code, and the request therefore may be attested by such permit holder after completion of the sale.

April 6, 1931. *County Attorney, Cedar Rapids, Iowa:* We have yours of April 3, 1931, wherein you ask:

"In the absence of any bad faith whatsoever on the part of a holder of a permit under the provisions of Chapter 100, 1927 Code of Iowa, may the sale of intoxicating liquor be made by a licensed pharmacist in his employ, under the provisions of paragraph 5, Section 2093, and the request therefore be attested by such permit holder under the provisions of Section 2094?"

Paragraph 5, Section 2093 of the 1927 Code of Iowa, reads as follows:

"No prescription for liquor shall be filled except by the permit holder himself or by a pharmacist licensed under the laws of this state and in the employ of such permit holder."

Section 2094 of the 1927 Code reads as follows:

"Request. Before selling or delivering any intoxicating liquors, a written request, therefore must, after being fully, accurately, and legibly filled out in ink in the presence of the applicant and by the person making the sale, be signed by the applicant in his true name, and attested by the holder of the permit."

To attest is to "affirm to be true or genuine" and an attestation is "a solemn or official declaration in support of a fact." *Sawyer vs. Lorenzen and Weise*, 147 Iowa 87.

The first provision of the code, above quoted, contemplates that the sale of intoxicating liquor may be made by any licensed pharmacist employed by the permit holder.

The second provision of the code, above quoted, provides that the "person making the sale" may sell by filling out written request therefor in the presence of the applicant for intoxicating liquor and does not contemplate that the permit holder necessarily be then present.

It is therefore our opinion that in the absence of bad faith on the part of the permit holder, a sale of intoxicating liquor may be made by a licensed pharmacist

in the employ of such permit holder and that the request therefor may be attested by the permit holder after the completion of the sale.

**BOARD OF CONSERVATION:** No part of the funds appropriated to the State Board of Conservation may be used for the purchase or improvement of real estate located outside of the state of Iowa.

April 12, 1931. *Superintendent of State Parks:* We have yours of March 21, 1931, wherein you ask if a part of an appropriation to the State Board of Conservation for the improvement of certain real estate located in Iowa, that is property of the state of Iowa, may be used for the purpose of building a dam on a stream in another state to divert water to that real estate owned by the state of Iowa, for its improvement.

We are of the opinion that no money of the state of Iowa may be used for the purchase or improvement of real estate located outside of the state of Iowa.

**DEPARTMENT OF HEALTH:** Co-Operative Burial Associations are not illegal where the actual embalming work is done under a licensed embalmer.

(Secs. 2, 3 and 7 of Chapter 69, Acts of 43rd G. A.)

April 24, 1931. *Commissioner of Health:* This will acknowledge receipt of your request of April 14, 1931, which is as follows:

"In the last year or so several Co-operative Burial Associations have been formed and are operating in this state. The question has been asked of me on numerous occasions whether or not this is illegal. In view of the fact that this is considered by licensed embalmers as encroaching upon their field of practice; and further, 'Burial Plans' of many kinds and character are now operating in other states, I request, in order that the department may be more enlightened on the legality of this sort of practice, an opinion upon the following proposition:

"Does Chapter 69, 43rd G. A. prohibit a service company (acting as agent for various individuals) from securing contracts between individuals and a funeral home, in which contract the funeral home would contract to furnish funeral services on a 'cost-plus basis'?"

In reply we would say that co-operative burial associations are not prohibited by the present statutes, found in Chapter 69, 43rd G. A.

We desire to quote the following from Chapter 69, Acts of the 43rd G. A.

"Sec. 2. For the purposes of this chapter, the following classes shall be deemed to be engaged in the practice of embalming:

1. Any person, firm, corporation or association of persons who prepare dead human bodies for burial, cremation or other final disposition; or who, in connection with the disposition or sale of any casket, vault or other burial receptacle, shall furnish any embalming or funeral service, directly or indirectly, by himself, or in conjunction with another; or who publicly professes to be an embalmer, funeral director, mortician, or any other title indicating that such person, firm, corporation or association of persons assumes the duties, or any part of the duties, incidental to the preparation, care, and final disposition of any human dead; or who, in connection with the preparation of dead human bodies for burial, cremation or other final disposition, furnishes funeral services.

2. Any person, firm, corporation or association of persons who shall infect, preserve and make final disposition of dead human bodies, in whole or in part, or who shall attempt to do so, by the use or application of chemical substances, fluids or gasses ordinarily used, prepared or intended for such use, either by outward application of such chemical substances, fluids or gasses on the body, or by the introduction of same into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities, or by any other methods or processes."

"Sec. 3. The preceding sections shall not be construed to include the following classes of persons:

1. Manufacturers, wholesalers and jobbers of caskets, vaults or other burial receptacles not engaged in the other functions of embalming or furnishing of funeral services as above defined.

2. Those who distribute or sell caskets, vaults or any other burial receptacles and who do not furnish any embalming or funeral service, directly or indirectly, by himself or in conjunction with another, except under the personal direction of a licensed embalmer.

3. Those who use bodies for scientific purposes as defined in sections twenty-three hundred fifty-one (2351), twenty-three hundred fifty-two (2352) and twenty-three hundred fifty-five (2355) of the code, 1927; or those who make scientific examination of dead bodies, or perform autopsies.

4. Physicians or institutions who preserve parts of human bodies either for scientific purposes or for use as evidence in prospective legal cases.

5. Persons burying their own dead under burial permit from the registrar of vital statistics."

The above sections set forth refer to those who are deemed to be engaged in the practice of embalming, but it is seen by the provisions of subdivision 2 of Section 3 that the use of the words "except under the personal direction of a licensed embalmer" would permit a co-operative burial association to engage in this business, provided the work is done by a licensed embalmer, and it must further be borne in mind that Chapter 69 of the Acts of the 43rd G. A. purports to regulate the practice of embalming and does not prohibit the ownership of a funeral home by one not licensed as an embalmer, the only requirement being that where a funeral home is owned or where funeral services are furnished by one not licensed under this act, the actual embalming and handling of the body must be done by a licensed embalmer, or under the personal direction of a licensed embalmer.

As to your second question relative to a service company securing contracts between individuals and a funeral home on a cost-plus basis, we desire to quote Section 7, of Chapter 69, Acts of the 43rd G. A.

"Any embalmer who wilfully solicits professional patronage or business and gives, or agrees to give, money, property, gift or other reward therefor, and any person who wilfully and knowingly receives the same, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00) dollars and not more than five hundred (\$500.00) dollars, or be imprisoned in the county jail for not less than thirty days or more than six months."

It is our opinion that unless a licensed embalmer gave, or agreed to give, money, property, or some reward, for the securing of this business, he would not be violating any of the provisions of Chapter 69, Acts of the 43rd G. A. We might suggest further that Section 7, of Chapter 69, Acts of the 43rd G. A. is personal, prohibiting licensed embalmers from wilfully soliciting professional patronage or business. But this section does not apply to funeral homes, so that contracts of this character entered into by a funeral home, where the service agency was not acting as the agent of the licensed embalmer, would not be in violation of the present statutes relative to embalming.

**MOTOR VEHICLES:** An automobile should be licensed in the county of the owner's residence. Where a car was in transit only in good faith it should be permitted to travel to the residence of its owner to be registered and licensed.

May 6, 1931. *County Attorney, Toledo, Iowa:* Replying to your request of February 23rd, which is as follows:

"An automobile was repossessed under conditional sales contract in this county by finance company, on which the license fee for 1931 has not been paid. The representative of the finance company came after the car in the evening after the court house had closed, and started to drive it to Cedar Rapids where their branch office is located. He was arrested by the town marshal. He claimed that he was unable to apply for registration in this county since the corporation is a resident of Polk County, Iowa; that the car was in transit only, and that either your office or the Motor Vehicle Department of the Secretary of State had ruled that under such circumstances, no offense was committed."

—we beg to advise that it is the opinion of this department that under the facts related by you it would not be proper for the finance company to attempt to register the automobile in another county other than that of its residence, which in this particular case happened to be Cedar Rapids. Where a car is in transit, it should be permitted to travel to the place of the residence of its owner, where it should be registered and licensed. Under the facts related; no crime was committed by the finance company, nor could a crime be imputed to it, because the party from whom the finance company repossessed the machine had failed to secure a license.

**TAXATION:** There is no exemption for gas pumps, pool or billiard tables under the present statutes of this state.

May 6, 1931. *County Attorney, Osage, Iowa:* Replying to your request of February 27th, which is as follows:

Are gas pumps licensed by the state subject to taxation; also, are billiard and pool tables to be listed for taxation?

—we would say that we find no exemption for either gas pumps or pool or billiard tables, and while they are subject to an occupation tax, or license fee, there is no provision for this license exempting them from taxation. Therefore, they should be listed by the assessor.

**TAXATION—SCHOOLS AND SCHOOL DISTRICTS:** Where a tax levy is made for band purposes, it may not be used for musical instruction in the public schools.

May 6, 1931. *County Attorney, Guthrie Center, Iowa:* This will acknowledge receipt of your request of April 1st, which is as follows:

"The town of Guthrie Center, some years ago, authorized the levy of a band tax and has proceeded to make the levy and employ a band for music purposes. This year, however, they are proposing to use the funds for the purpose of providing for musical instruction in the public schools of the town. The town has an organized band which has heretofore received the proceeds of the levy and some of the tax payers are objecting to using these funds for instruction in the public schools as above stated."

We beg to advise that this matter has not come to the attention of this department prior to this time, but we are of the opinion that where a tax levy is made for band purposes, it should be used for the maintenance or employment of a band and not for musical instruction in the public schools.

**MINORS—JUVENILE COURTS:** Where the juvenile court provides jurisdiction over a child, jurisdiction extends until the age of 21 years is reached, unless the child is legally adopted or committed to a state institution. (Sections 3649 and 3639, Code, 1927.)

May 6, 1931. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your letter of April 2nd in which you submit the following question:

"Section 3649 of the 1927 Code provides that Juvenile Court commitments shall be until the child attains the age of 21 years.

"Does this apply only in the case of a child being committed to an institution or does the Court, when it finds a child to be a delinquent child, have custody of that child until the age of 21 years irrespective of whether a commitment is made to any specific institution or not?

"The case I have in mind wherein a child was found by the Court to be a delinquent child and the Court made the further provision 'and that it is for the best interests of the said defendant that she be taken to the General Hospital for medical care and treatment and that she remain in the custody of this Court until further orders shall be made.'

"This child has now attained the age of more than 18 years and the specific question I desire to present is whether the Court has any jurisdiction over her at this time as a Juvenile case?"

In reply we refer you to Section 3639, wherein it is stated that the court may, from time to time, incorporate in its order such conditions and restrictions as it may deem advisable for the welfare of the child, and the jurisdiction of the court over said proceedings and said child shall continue until the child is legally adopted, or until the child is committed to a state institution.

We are, therefore, of the opinion that the court would have jurisdiction until a child became 21 years of age, unless the child was legally adopted or committed to a state institution.

**BOARD OF HEALTH:** Podiatrists cannot sign death certificates in the State of Iowa, nor can they practice surgery by amputating a toe. (Sec. 2321, Code, 1927.)

May 6, 1931. *Board of Podiatry Examiners, Waterloo, Iowa:* This will acknowledge receipt of your request of February 9th, which is as follows:

"1st. Can a podiatrist sign a death certificate in Iowa?

"2nd. Do you think that the amputation of a toe or toes rightfully belongs in the practice of podiatry?"

In reply to your first question submitted, we cite you to Section 2321 which states that where there was an absence of an attending physician the death certificate should be filled out by a health officer or coroner. We believe that a podiatrist would not be permitted to sign a death certificate in this state.

As to your second question, this is answered by Section 2546 which provides that a license to practice podiatry shall not authorize the licensee to amputate a human foot or toe, so that the amputation of toes is plainly prohibited by the statute.

**TRADE MARKS:** The name "Remembrance Advertising" is not sufficiently distinctive to be registered as a trade mark.

May 6, 1931. *Secretary of State:* Replying to your request of March 26th, which is as follows:

"Whether said trade mark is of distinctive character enough to be registered as a trade mark.

"Can the word 'Advertising' or any other similar word denoting a trade or profession be used alone as a trade mark, or with any other word or words."

—we beg to advise that it is the opinion of this department that the name "Remembrance Advertising" is not of sufficiently distinctive character to be registered as a trade mark.

We are of the opinion that the word "Advertising" should not be registered in connection with any other name.

**FIRE MARSHAL—BUILDINGS:** The owner does not have the right to burn any type of building, under the present statute. (Secs. 12991-b1-b2, Code of 1927.)

May 6, 1931. *State Fire Marshal:* Replying to your request of March 25th, which is as follows:

"The question has arisen in this office as to whether or not a person has a right to burn a building under the circumstances, as follows:

"John Doe owns a building clear of incumbrance of any kind, which he desires to dispose of. Rather than tear the building down, he desires to burn it. He has no insurance on the building, and it is not closely surrounded by other buildings, and would in no way endanger other property.

"In your opinion, would John Doe be guilty of a crime and subject to a penalty therefor, under the provisions of Sections 12991-b1 and 12991-b2, Code, 1927, if he set fire to and burned said building?"

—we would say that it is the opinion of this department that Sections 12991-b1 and 12991-b2 absolutely prohibit the burning of any type of building, as set out in the two paragraphs just mentioned.

**CHIROPRACTORS—BOARD OF HEALTH:** Chiropractors are not entitled to act as insurance examiners under the present statutes of this state. (Section 8671, Code, 1927.)

May 6, 1931. *Board of Chiropractic Examiners:* This will acknowledge receipt of your request of December 12, 1930, which is as follows:

"Will you kindly give me a ruling as to the status of Chiropractors acting as Insurance Examiners in this state? Do they have the same status as other physicians in examining persons for insurance?"

In reply we beg to advise that under the provisions of section 8671 a chiropractor is not authorized to act as an insurance medical examiner, as the statute expressly limits this to physicians authorized to practice medicine, and osteopathic physicians.

**COSMETOLOGY—BOARD OF HEALTH:** Beauty shops may employ experts to advise and consult with clients and where the said experts do not do any of the work but only consult and advise, it is not necessary that the said experts have licenses to practice cosmetology in this state. (Sec. 2585-b1 of the Code, 1927; Sec. 3 of Chap. 70, Acts of 43rd G. A.)

May 6, 1931. *Commissioner of Health:* This will acknowledge receipt of your request of April 23rd which is as follows:

"May cosmetology shop owners in Iowa employ experts in cosmetology to consult and advise with clients or patrons in regard to the different styles of hair dressing, facials, and massage treatment and other methods and not do the actual work of practicing cosmetologists without first obtaining a license to practice cosmetology in Iowa?"

We desire to quote Section 2585-b1, of the Code, 1927.

"For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of cosmetology:

1. Persons who, for compensation, engage in any one or any combination of the following practices: cutting, dressing, curling, waving, bleaching, coloring and similar work, on the hair of any woman or child by any means whatever.

2. Persons who, with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions,

or creams, engage for compensation, in any one or any combination of the following practices: massaging, cleansing, stimulating, manipulating, exercising, beautifying, or similar work, the scalp, face, neck, arms, bust or upper part of the body, or the removing of superfluous hair by the use of electricity or otherwise, on or about the body of any woman or child."

It will readily be seen from the above quoted section that a person only consulting and advising with patrons of a cosmetology shop does not fall within the definitions as outlined in either paragraph 1 or paragraph 2 of Section 2585-b1, because both of these paragraphs presume that the work is being done by the individual with his own hands or with the aid of some mechanical or electrical apparatus.

The only other provision in our present law requiring a license is found in Section 3 of Chapter 70, Acts of the 43rd General Assembly, which is as follows:

"Managers of shops or other places where cosmetology is practiced, who directly supervise the work of operators, shall be licensed cosmetologists."

In view of the fact that the expert spoken of in your request would not be the manager of the shop, he would not be liable under Section 3. We are, therefore, of the opinion that cosmetology shop owners in this state may employ experts to consult and advise with clients or patrons without violating the law, provided the experts do not actually perform any work as defined in Section 2585-b1.

**POOL HALLS—CITIES AND TOWNS:** An individual may not operate a recreation club and be exempt from licensing.

May 6, 1931. *County Attorney, Mount Ayr, Iowa:* This will acknowledge receipt of your request of March 23, 1931, which is as follows:

"One 'T' is operating what he calls the Mount Ayr Recreation Club and the Club Rooms rules are as follows (club rooms have four or five pool and billiard tables and he also sells candies and soft drinks).

"The name of the Club shall be the Mount Ayr Recreation Club and its sole purpose shall be for recreation and amusement of Mount Ayr and nearby citizens. There shall be a lock on the door at all times and no one admitted, except members. **NO MINORS.** Each member will be allowed to bring out-of-town guests. The original fee shall be fifty cents (\$0.50) and each member who plays shall be expected to pay a customary fee at the end of each game, for the purpose of keeping up the tables and maintaining the building. They must do this in order to be in good standing. The management reserves the right to cancel memberships. **THERE SHALL BE 1. NO INTOXICATING LIQUOR. 2. NO GAMBLING. 3. NO BOISTEROUS LANGUAGE OR ROUGHNESS.** Any member found guilty of violating these rules, his membership shall be automatically cancelled."

"The Town of Mount Ayr has ordinance providing for the licensing of pool halls. **QUESTION:** Under the plan above stated can 'T' operate without paying license—the ordinance simply providing that the town shall have the right to license a pool hall, or is his recreation club of such nature that he does not have to pay license?"

In reply we would state that this would appear to be an attempt to evade the present law on the licensing of pool halls. We are, therefore, of the opinion that the operation of a recreation club by an individual along the lines stated by you would not be permitted under the present statutes, or exempt him from paying the city license.

**INSURANCE—COUNTIES:** Board of Supervisors has power to enter into a contract for insurance in a mutual assessment insurance company. Sec. 5130, Code 1927. Sec. 8907, Code 1927.

May 7, 1931. *County Attorney, Williamsburg, Iowa:* Yours of May 5, 1931, is at hand wherein you ask—

May a county board of supervisors insure the county buildings in a mutual assessable insurance company?

Code Section 5130 reads in part:

“General powers. The board of supervisors at any regular meeting shall have power:

\* \* \*

“11. To cause the county buildings to be insured in the name of the county or otherwise for its benefit, and in case there are no county buildings, to provide suitable rooms for county purposes. \* \* \*”

Section 8907 of the 1927 Code reads as follows:

“Any public or private corporation, board or association in this state, or elsewhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. \* \* \*”

It is, therefore, the opinion of this department that a board of supervisors is authorized under the 1927 Code to insure county buildings in mutual assessable insurance companies.

**FISH AND GAME:** An automatic rifle which fires as long as the trigger is held back is a machine gun within the meaning of the statute. (Sec. 12960-b1 of Chapter 564-B1, Code of Iowa 1927.)

May 7, 1931. *State Game Warden:* We acknowledge receipt of your letter of April 29, 1931, requesting an opinion of this department on the following question:

Is an ordinary 15 shot, 22 short Remington Automatic rifle which has been made over so that it will keep shooting as long as the trigger is held back a machine gun within the meaning of the statute of this state pertaining to such matters?

Your attention is called to Chapter 564-B1, Code of Iowa 1927. We are of the opinion that an ordinary 15 shot, 22 short Remington automatic rifle which has been made so that it will keep shooting as long as the trigger is held back is a machine gun within the meaning of Section 12960-b1 of Chapter 564-B1, of the Code of Iowa 1927.

**SCHOOLS AND SCHOOL DISTRICTS:** School board cannot be a member of association requiring dues; cannot pay expenses of member, officer or other employee to conference or convention; can pay expenses of board, officer, superintendent, or employee to make investigation in regard to the school system or other business of school district.

May 8, 1931. *Department of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following propositions which we shall answer in the order set out:

“1. Is it legal to pay expenses of any board member, superintendent, supervisor, principal, teacher, paid secretary, superintendent of buildings and grounds or other employee to a conference or convention?

- a. To a meeting of an association of which the individual is a member.
  - b. To a meeting of an association of which the system is a member.
  - c. If the individual is sent to such meeting as the official delegate or representative of the system.
  - d. Is it legal for the system to be a member (pay dues) of any association?
2. Is it legal to pay the expenses of any board member, etc., to inspect any other school system to get information to aid in solving a local school problem?



3. Is it legal to pay the expenses of any board member, superintendent, etc., to interview any applicant for a vacancy?"

1. In reply to section "d" of this question, we shall say that there is no authority in the statute for a school board or school corporation to be a member of any association. The school corporation is a corporation created by statute and therefore its powers and authority are limited specifically to those created by statute. Therefore, the school corporation could not be a member of an association where dues were required.

The board could not pay the expenses of any member, superintendent or other employee to a meeting of an association of which such member or employee is a member unless it were done for the purpose of securing information of value to the school corporation in the conduct of its affairs.

Since we have ruled that the system cannot be a member of such association and pay dues one could not be an official delegate or representative of the system at such meeting.

2. The board may within its discretion pay the expenses of any board member or superintendent or other employee incurred in the inspection of any other school system to secure information of value to the local school corporation in the conduct of its affairs.

3. The same rule would apply to the expenses of a member of the board or the superintendent to interview an applicant for a vacancy, if in the judgment of the board it is necessary and proper in conducting the affairs of the school corporation.

**CITIES AND TOWNS:** Contracts for the repair, alteration, improvement of sewers must be made by the authority of the city or town council and pursuant to statute. (Secs. 6001-6006, Code of Iowa 1927.)

May 16, 1931. *Director of the Budget:* We acknowledge receipt of your letter under date of May 15, 1931, requesting an opinion of this department on the following question:

The city engineer of the city of Council Bluffs let a contract for the repair and improvement of a sanitary sewer to a construction company without the knowledge, authority or approval of the city council of said city. The construction company which made the repair and alteration of said sewer has now presented a claim to the city council for its approval.

The question has arisen as to what action, if any, the city council should take in connection with the matter. That is, is the city council legally bound under the law to pay said claim?

The city council of any city or town is the business manager of said city or town. All contracts for the repair, alteration or improvement of a sewer must, under the statutes, be authorized and approved by the council and before any contract is let the provisions of Sections 6001-6006, inclusive, Code of Iowa 1927, as amended by the Acts of the 43rd General Assembly, must be complied with.

It would appear from the facts stated that the city engineer acted wholly without authority from the city council and that none of the statutes pertaining to said matter were complied with. No bids were received by the council and no advertisement for bids was made.

We are, therefore, of the opinion that the city council would be acting entirely within its rights if it rejected the claim filed for said repair on the ground

that the work was performed without its knowledge, authority, or approval and not in accordance with the statutes pertaining to said matter.

**GASOLINE LICENSE FEE—REFUND—PENALTY:** Where an unintentional omission is made on a gasoline report, it is not necessary that Treasurer require a penalty. (Sec. 5093-a5, Code, 1927.)

May 19, 1931. *Treasurer of State:* This will acknowledge receipt of your request of May 18, 1931, which is as follows:

"Section 5093-a5 of the 1927 Code provides that any distributor of gasoline failing to remit license fees on or before the 20th of each month shall be subject to a penalty of 10% of the amount due. Some of the larger distributors of gasoline have omitted certain cars of gasoline from their monthly reports and have reported same on a subsequent report, on discovering the omission.

"Your opinion is asked as to whether or not a penalty should be imposed on the license fees due on the car omitted."

In reply we desire to quote the following lines from Section 5093-a5.

"If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected."

It is our opinion that the 10% penalty required on past due accounts by the Legislature was intended to apply where there was an intentional failure or neglect to report and remit on or before the 20th of the month. Distributors of gasoline were given an additional twenty days in which to pay the tax, and we believe that the Legislature felt that where they were given this additional time, a failure to file a report within the required period would have to be construed as an intentional neglect or failure, and that they should, therefore, be required to pay an additional 10%.

However, under the facts related by you in your request, it would seem that an omission of an item on a report might or would perhaps be an unintentional clerical error, and if reported and paid on the subsequent monthly reports, the distributors should not be required to pay the penalty and thereby as a practical proposition penalize honesty, as the filing of the omitted cars on the following reports would be evidence of the good faith of the distributor. We are, therefore, of the opinion that, under the facts related by you, it would not be necessary for you to demand the additional 10%.

**BOARD OF CONTROL:** Board of Control is confined in entering contracts of the sale of products to either one of two forms (1) they may enter a contract to sell labor, or (2) they may enter a contract to sell the output of one of their institutions.

May 20, 1931. *Board of Control:* In reply to your oral request for an opinion as to the validity of the contract entered into on the 18th day of August, 1930, between the Method of Economy Company of Des Moines, Iowa and the Board of Control, it is the opinion of this department that this contract is not valid, for the reason that the contract calls for certain performance on the part of the Board of Control for which there is no statutory authority, and that in effect, under this contract, the Board of Control entered into a partnership with the Method of Economy Company and does not, under the terms of this contract, sell the output of their plant to the Method of Economy Company; nor does it sell the labor of the inmates of any of the institutions. The statute,

at the present time, contemplates only that the Board of Control sell either the labor of the inmates of one of the penal institutions, or the output from one of its factories. In view of the fact that this contract does not fall within either of the provisions now in force, we would be constrained to say that this contract was invalid, and that the Board had acted beyond its statutory authority in entering into an agreement of this character.

**BOARD OF CONSERVATION:** Moneys collected by the board of conservation from sources other than the State of Iowa constitute a revolving or continuing fund, under the provisions of Section 1820 of the 1927 Code.

May 20, 1931. *Superintendent State Parks:* We have yours of May 19th wherein you ask:

Do receipts of the board of conservation collected from sources other than the State of Iowa and under the provisions of Chapter 87 of the 1927 Code constitute a revolving or continuing fund, and would the same revert to the general treasury?

Section 130-a1 of the 1927 Code provides as follows:

"Except when otherwise provided by law, the auditor of state shall transfer to the general fund of the state any unexpended balance of any annual or biennial appropriation remaining at the expiration of six months after the close of the fiscal period for which the appropriation was made. At the time the transfer is made on the books of his office he shall certify such fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office."

Section 1820 of Chapter 87, 1927 Code, provides as follows:

"All funds collected, from whatever source, by the board shall be deposited in the state treasury and shall be available for use by the board subject to the approval of the executive council for any purpose necessary in the carrying out of the terms and provisions hereof."

Chapter 87 makes provision for the collection of rents and other revenues by the board of conservation.

We are, therefore, of the opinion that moneys collected by the board of conservation from sources other than the State of Iowa would constitute a revolving or continuing fund under the provisions of Section 1820 of the 1927 Code set out above.

**BANKS:** The branch office of a bank may not sell drafts on foreign banks or travelers' checks, and it may not write insurance. The officer in charge of such branch bank may not formally transfer to the bank applications of customers for loans. In acting as a notary an official of a bank must necessarily act in his individual capacity and such notary might act at any time and any place regardless of any restriction contained in Chapter 415 of the 1927 Code of Iowa. Sec. 9858-b1.

May 20, 1931. *Department of Banking:* Yours of May 19, 1931, is at hand. You ask therein:

Can an officer in charge of a branch office of a bank, provided for in Section 9258-b1, Code, 1927, sell drafts on foreign banks, travelers' checks, and may he write insurance, act as notary, and perform other acts of like nature for his customers?

Can such officer transmit to the bank proper applications of customers for loans, and could notes taken by the parent bank pursuant to such applications be made payable to the bank at the branch office?

Section 9858-b1, Code, 1927, as written by the Forty-fourth General Assembly, reads as follows:

"No banking institution shall open or maintain any branch bank. However, as may be authorized by and subject to the jurisdiction of the banking department any banking institution may establish an office for the sole and only purposes of receiving deposits and paying checks and performing such other clerical and routine duties not inconsistent with this act. No banking institution may establish any office beyond those counties contiguous to the county in which said banking institution is located, nor in a city or town in which there is already an established banking institution. No office shall be continued at any place after a banking institution has actually commenced business at that place. Nothing in this act shall prohibit national banks the privileges of this section whenever they may be so authorized by federal law."

In its primary and ordinary meaning "to pay" is to discharge indebtedness by the use of money. *Angelo v. Railroad Commission*, 194 Wisc. 543, 217 N. W. 670.

An application for a loan may be transmitted from any distance to the principal office of the bank by any individual or any of his agents under the present statute.

It will be noted that the above provisions of the Forty-fourth General Assembly negative any activity by the branch office of the bank excepting the receiving of deposits and the paying of checks.

It is, therefore, the opinion of this department that a branch office of a bank may not sell drafts on foreign banks or travelers' checks; that it may not write insurance. The officer in charge of such branch office may not therefrom transmit to the bank applications of customers for loans, for the reason that his acts are restricted definitely by the above act. Loans made under such applications, however, could not be made payable to the bank at the outside office because of the restriction contained in the act above set out. In acting as a notary, an official of the bank must necessarily act in his individual capacity in every case and it would be the opinion of this department that such notary might act at any time or place regardless of any restriction contained in Chapter 415 of the 1927 Code of Iowa.

**TAXATION:** Where a person purchases property from the county treasurer at tax sale and gives a check for the purchase price and the bank closes before the check is paid the check is not payment for the purchase price and the purchaser must pay the purchase price otherwise the county treasurer must cancel the sale.

May 21, 1931. *County Attorney, Osceola, Iowa:* We beg to acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

On December 1, 1930, the County Treasurer of Clarke County held the annual tax sale. On December 5th the treasurer notified the local purchasers that their tax certificates were ready and on that date and on the 6th checks were given to the treasurer and tax certificates were delivered to the purchasers. On December 19th one of the banks upon which the checks were drawn closed its doors. The treasurer had not at that time presented the checks to the bank for payment. The accounts of the drawers of the checks were verified and each had ample funds to pay the checks out of.

The question has arisen as to whether or not the county has the right to cancel the tax sale certificates.

You are advised that the general rule is that the county is not liable for the negligence of its officers, and that a check is not and cannot be accepted by a county officer as payment of any obligation due the county—in this case

of the purchase price of the properties sold at tax sale. This being true, therefore, so far as the county is concerned, the purchasers at the tax sale have not paid the county for the property sold to them at said sale and the county can, therefore, now cancel the tax sale certificates unless the purchasers pay to the county the purchase price thereof.

It must be borne in mind that the county cannot be injured by the treasurer's failure in connection with the matter and that the purchasers are still indebted to the county and must either pay the purchase price or the certificates of purchase must be cancelled.

**ROADS AND HIGHWAYS:** Board of approval have authority to select and designate roads in the local county system which shall first be improved under a plan looking to the permanent improvement of said roads. The question as to the manner and method of construction and as to the acquisition of rights of way is one for the boards of supervisors to determine.

May 21, 1931. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter under date of April 10, 1931, requesting an opinion of this department on the following question:

The board of approval of this county passed the following resolution:

"Moved that the Board of Approval do hereby instruct and order the Board of Supervisors of Johnson County, Iowa, that no part of said program as adopted be constructed until the right of way 66 feet in width, including the moving of fences be *granted* without cost to the County."

1. Should the word "*granted*" contained in the above quoted resolution be construed in its technical sense and be restricted to a voluntary donation by the owner of the property or should it have the broader meaning such as the word "acquired", and if it should be strictly construed would the land owner on that ground be entitled to enjoin the further construction of the highway?

2. In the event financially responsible persons would guarantee to pay all costs and expense of every kind in connection with the condemnation proceedings to widen the highway so that the County would be to no eventual expenses in connection therewith, could condemnation proceedings be brought by the County Board of Supervisors to condemn sufficient land for that purpose without violating the provision of the above quoted resolution.

3. Has the board of approval any authority to dictate to the board of supervisors the manner of the construction of highways or is their sole power limited to the designation of the particular highways which are to be included in the road program?

1.

We are the opinion that the court would not construe the word "granted", as used in said resolution, in its narrow or restricted sense as it would not, in our judgment, make any difference how the right-of-way was acquired as long as it was acquired *without cost to the county*.

2.

We are of the opinion that if satisfactory guarantees of the payment of all of the costs and expenses, including the damages of every kind in connection with the condemnation proceedings, to condemn the right-of-way necessary are made and these costs and expenses are paid, that the county board of supervisors would have the right to proceed to condemn said right-of-way.

3.

In connection with the above two questions you are advised that the board of approval, in our opinion, has authority only to select and designate the

roads in the local county road system which shall first be improved under a plan looking to the permanent improvement of said roads.

The question as to the manner and method of construction and as to the acquisition of rights-of-way is one for the board of supervisors to determine.

**FISH AND GAME:** The Fish and Game Commission, under the new law, has all the powers and duties formerly performed by the State Game Warden and, therefore, has the power to exercise the authority granted the warden under the provisions of Sec. 17, Chap. 57, Acts of the 43rd G. A.

May 21, 1931. *Fish and Game Department:* We beg to acknowledge receipt of your letter under date of May 8, 1931, requesting an opinion of this department on the following question:

Has the Fish and Game Commission the right to license nets and seines for the removal of undesirable fish from the Des Moines River?

You are advised that, under the new law which establishes the Fish and Game Commission, the powers and duties of the State Game Warden are transferred to the Fish and Game Commission. This being true the Fish and Game Commission would have authority to exercise the powers granted to the warden under the provisions of Section 17, Chapter 57, Acts of the 43rd General Assembly.

**INSANE—COUNTIES:** Where a patient has been committed by the insane commission of one county as having a legal settlement in another county and later an agreement is reached between the two counties as to a division of the expense, the committing commission should certify said fact to the superintendent of the hospital who should correct his books accordingly and certify to the Auditor of State accordingly. (Sec. 3583, Code 1927.)

May 21, 1931. *Auditor of State:* We acknowledge receipt of your letter under date of May 18, 1931, requesting an opinion of this department on the following question:

A controversy arose between Dickinson and Osceola counties as to which county was chargeable with the expense of the care and keep of an insane patient. The Board of Control sent one of its agents to both counties to investigate in an effort to determine which of the counties was the legal settlement of the patient. The agent of the board brought about an agreement between the two counties whereby both counties were to divide the expense equally.

The question has arisen as to how the expense incurred by the agent of the board is to be paid and who shall bill the two counties in accordance with the settlement. The total charge on the Auditor of State's books is against Dickinson county. Who shall furnish necessary statement to the Auditor for change or correction of this charge in accordance with the settlement?

Your attention is called to Section 3583, Code of Iowa 1927. We are of the opinion that the proper way to correct the records in connection with the committed patient would be for the committing commission to make a new certificate to the superintendent of the hospital attaching to the certification a statement of the amicable agreement and settlement, and directing the superintendent to charge on his books one-half of the total expense to each of said counties. This would then authorize the superintendent to make the necessary certification to the Auditor of State and also to the auditors of the two interested counties so that the changes could be made accordingly.

As to the traveling expenses incurred by the agent of the Board of Control, we are of the opinion that this expense should be paid out of the travel-

ing expense account of the Board of Control. We find no authority for paying it out of any other fund.

**ROADS AND HIGHWAYS—BOARD OF APPROVAL:** Where the board of approval has approved the construction program for local county roads in a county and later a petition is filed for the establishment of a road district, which district includes some of the roads incorporated in the road program which has been approved, and later the petition is withdrawn, the withdrawal of said petition does not withdraw the roads from the construction program. (Sec. 4746, Code of 1927.) (Sec. 34, Chap. 20, Acts 43rd G. A.)

May 21, 1931. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter under date of May 6, 1931, requesting an opinion of this department on the following question:

A petition was filed under Section 4746, Code of Iowa, 1927, with the county board of supervisors of this county requesting the establishment of a secondary road district in Dayton and Burnside townships, and on the date the petition was presented the board of approval for the townships of this county met, as authorized in Section 34, Chapter 20, Acts of the 43rd General Assembly, and finally adopted their road program. In the program adopted and approved by the board of approval were included the same roads as were included in the petition. At a later date the petition was withdrawn and the proposed district abandoned.

The question has now arisen as to whether or not said roads were withdrawn from the secondary road program which the board of approval adopted and approved by the withdrawal of the petition for the secondary road district.

We are of the opinion that the withdrawal of the petition which was filed with the county board, under the provisions of Section 4746, Code of Iowa 1927, had no effect whatsoever upon the secondary road program which was adopted by the board of approval, and that the withdrawal of the petition did not take said roads out of the secondary road program as approved by the board of approval.

**CITIES AND TOWNS—ELECTIONS:** The general election law with respect to the publication of notice of election is applicable to town elections; the polls in a city or town are open at 8 A. M., except in cities and towns where there is registration and the polls open then at 7 A. M. In all cases polls close at 8 P. M. Stickers may be used to correct names on ballots.

May 21, 1931. *County Attorney, Elkader, Iowa:* We acknowledge receipt of your letter of April 9, 1931, requesting an opinion of this department on the following questions:

- 1—Is it necessary to publish notice of a regular town election?
- 2—What hours are the polls to be left open?
- 3—In case a candidate's name is misspelled on the ballot, or the wrong name is placed on the ballot, is it legal to paste a sticker over this name, on which sticker is printed another name to be used on all the ballots?

1.

With respect to your first question you are advised that the general election law with respect to the publication of notice of elections is applicable to town elections.

2.

You are also advised that the polls open at 8 A. M. except in cities and towns where there is registration and then the polls open at 7 A. M. In all cases the polls close at 8 P. M.

3.

You are also advised that where there is a mistake in printing the candidate's name on the ballot it may be corrected by pasting a sticker with the correct name thereon.

**CITIES AND TOWNS:** Where a resident of a city or town was nominated and elected mayor and after the election, but before qualification, removes without the limits of such city or town there is a vacancy in the office of mayor; which vacancy shall be filled by the city council of said city or town. (Sec. 1146, Code of 1927.)

May 21, 1931. *County Attorney, Boone, Iowa:* We acknowledge receipt of your request for an opinion of this department on the following question:

"A," a resident of a certain town in this county, was nominated and elected mayor of said town. After the election he moved without the corporate limits of said town. Does there a vacancy exist in the office of mayor of said town, and if so how should the vacancy be filled?

You are referred to Section 1146, Code of Iowa 1927. It will be noted from reading Paragraph 30 of said section that there is a vacancy in the office of mayor of said town. This being true the former mayor would not hold over by reason of the failure of the newly elected mayor to qualify, and the city council of said city would fill the vacancy in the office of mayor.

**TAXATION—POLL TAX:** Poll tax authorized under Chap. 20, Acts of the 43rd G. A. does not bear any penalty and the treasurer of the county is authorized to collect said tax and may appoint deputies and pay them under the provisions of Sec. 7225, Code of 1927.

May 21, 1931. *County Attorney, Mt. Pleasant, Iowa:* We are in receipt of a letter under date of January 8, 1931, from your County Treasurer, and in view of the fact that we are not permitted to render opinions to anyone except state officials and county attorneys we are rendering you herewith an opinion on the following question:

Under Section 57-a6, Chapter 20, Acts of the 43rd G. A., the county treasurer is authorized by and with the approval of the board of supervisors to appoint and authorize deputies to collect a poll tax. Is there any penalty attached to delinquent poll taxes and what compensation is authorized to be paid deputies authorized to collect said tax? What procedure should be followed for the collection of the same?

You are advised that under Chapter 20, Acts of the 43rd G. A., the Legislature has not provided for the imposition of any penalty either as such or as interest, and that, therefore, no penalty attaches to delinquent poll taxes as the law now stands.

The deputies appointed to collect such tax should receive compensation in accordance with the provisions of Section 7225, Code of Iowa 1927.

The procedure would be an ordinary action in justice court of the county where the delinquent taxpayer resides, for the collection of the poll tax.

**TAXATION—MANDATORY LEVIES AND PAYMENTS DEFINED:** See Opinion. (Secs. 7162-7170, Code of Iowa 1927.) (Secs. 5766-5767, Code of Iowa 1927.)

May 21, 1931. *Director of the Budget:* We acknowledge receipt of your letter under date of May 11, 1931, requesting an opinion of this department on the following question:

The last legislature passed what is known as the Elliott Tax Reduction



Law, said act provides that for the years 1931-32 the taxing bodies in all taxing districts in the state, including townships, school districts, cities, towns, counties and special charter cities, shall, after computing tax rates as provided in Section 7162 to 7170 of the Code of Iowa 1927, reduce all of said rates so that the total funds raised by taxation shall be 5% less than that raised by the 1930 levy. It also provides that the provisions of Section 7165, Code of Iowa 1927, shall be suspended and shall not be applied during the years 1931-32 except in taxing where such excess levy was made for the year 1930. The 5% reduction, however, does not effect or include mandatory levies or payments—the amounts of which are fixed by statute—nor does it effect taxes levied for the purpose of paying interest and/or principal on bonds or for creating a sinking fund for the retiring of bonds issued prior to the passage of this act.

The question has arisen as to what are mandatory levies or payments fixed by statute.

You are advised that a mandatory levy is a levy which the governing board (taxing board) of the taxing district is required to levy annually, the board having no discretion or option whatsoever. In some cases the number of mills is fixed by statute and in other cases some agency other than the governing board certifies the amount which the board must raise by a levy. An example of this is the certification of the Secretary of Agriculture to the county board of supervisors as to the amount of money necessary to be expended in connection with the eradication of bovine tuberculosis in the county.

Mandatory payments are payments which are fixed by law and over which the governing board has no discretion as to the amount of the payment. For example: Salaries of the county officers; the minimum wage for teachers; indebtedness created under the authority of the statutes payable in a term of years, the levy for which is made at one time. (See Sections 5766-5767, Code of Iowa 1927).

The amount of the levy for the years 1931-32 must be reduced by 5% where the board has an option as to the number of mills which may be levied and as to whether or not a levy shall be made at all. It must be borne in mind that the board must in every case levy sufficient millage to raise enough revenue to take care of the mandatory payments, that is, payments fixed by statute.

**COUNTIES—PUBLIC FUNDS:** There is no statute which authorizes creation of a sinking fund for the purpose of building a county home. (Section 5261, Chapter 265, Code of Iowa 1927.)

May 21, 1931. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter under date of April 30, 1931, requesting an opinion of this department on the following question:

Is there any statute which would authorize the board of supervisors of a county to create a sinking fund for the purpose of building a county home on the county farm?

Your attention is called to Section 5261, Chapter 265, of the Code of Iowa 1927. It will be noted from the reading this section that the question of building a county home, the cost of which will exceed \$10,000.00, must be submitted to a vote of the people.

We assume for the purpose of this opinion that the county home which is contemplated by your board will exceed a cost of \$10,000.00. This being true we know of no statute which would authorize the creation of a sinking fund, and know of no way in which a county home may be built at a cost to exceed

\$10,000.00 except in the manner provided for in Chapter 265 of the Code of Iowa 1927.

**TAXATION:** Baby beeves under one year of age are exempt from taxation and cannot be legally assessed for such purpose. (Par. 13, Sec. 6944, Code of 1927.)

May 21, 1931. *County Attorney, Hampton, Iowa:* Pursuant to your request we are submitting you herewith an opinion on the following question:

Where a farmer purchases baby beeves under one year of age and feeds them and ships them to market before they are one year of age are such animals subject to assessment for taxation purposes?

We are of the opinion that, under Paragraph 13, Section 6944, Code of Iowa 1927, baby beeves under one year of age are exempt from taxation and cannot be legally assessed for such purposes.

**FISH AND GAME:** Where the renewal fee for fur-dealer's license was paid by the licensee for the year 1931, said license would not be cancelled under the provisions of Senate File No. 37. (Sec. 4, Chap. 58, Acts 43rd G. A.)

May 21, 1931. *Fish and Game Department:* We acknowledge receipt of your letter under date of April 24, 1931, requesting an opinion of this department on the following question:

Senate File No. 37 amended Section 4, Chapter 58, Acts of the 43rd General Assembly to provide as follows: "The license and certificates shall expire March thirty-first following their issuance."

Section 2 of Senate File No. 37 provides in substance that said amendment shall apply to all licenses heretofore issued and that all licenses shall expire on March 31, 1931. Said act became effective by publication.

Under the provisions of this act do all licenses which were issued prior to July 1, 1931, expire as of that date?

We are of the opinion that, under the law as it appears in Senate File No. 37, Acts of the 44th General Assembly, all licenses which were issued prior to March 31, 1931, where no fee for the year 1931 was paid as a renewal of said license, expires of date of March 31, 1931.

We are, however, of the opinion that where the renewal fee was paid on said license by the licensee for the year 1931 that said license would not expire until March 31, 1932.

**ROADS AND HIGHWAYS—COUNTIES:** There is no statute which would prohibit boards of supervisors of two counties from letting a contract for the improvement of an inter-county road to two different contractors for the work to be done in each county.

May 21, 1931. *County Attorney, Dubuque, Iowa:* We acknowledge receipt of your letter under date of April 9, 1931, requesting an opinion of this department on the following question:

Dubuque and Jackson counties received sealed bids for improvement of a county road part of which is in each of the two counties. It is an inter-county highway. One of the contractors bid was low for the Jackson County mileage and another low for Dubuque County mileage.

The question has arisen as to whether or not the boards of supervisors of the two counties have authority to let the work to the two contractors?

You are advised that we find no statute which would prohibit such a procedure.

**ROADS AND HIGHWAYS—COUNTIES:** County board of supervisors has no authority, under the law, to permit the use of gravel from county gravel

pits for graveling of private drives and roads. (Sec. 4659, Code of 1927—amended by Chap. 20 (Sec. 85) Acts of 43rd G. A.)

May 21, 1931. *County Attorney, Britt, Iowa*: We acknowledge receipt of your letter under date of May 9, 1931, requesting an opinion of this department on this following question:

In interpreting Section 4659, Code of Iowa, 1927, as amended by Chapter 20, Section 85, Acts of the 43rd General Assembly, would the board of supervisors be authorized to use gravel from county pits or permit its use for the purpose of graveling private drives from the gravelled highway to a farmer's residence, said graveling being for the purpose of protecting the gravelled road from the mud that would be brought on to such road from the private drives and giving the farmer a good drive?

We are of the opinion that the use of the county gravel pit by the board of supervisors for the purpose of graveling a private road is wholly unauthorized by the provisions of Section 4659, Code of Iowa 1927, as amended by Chapter 20, Section 85, Acts of the 43rd General Assembly. Of course, under said section, as amended, the board would be authorized to use the gravel from the county pit to gravel highways in the secondary road system.

**COUNTY OFFICERS.** Under Sec. 10837, Par. 4, Code 1927, Clerk should charge fee of \$.75 for trial of default cases.

May 21, 1931. *County Attorney, LeMars, Iowa*: I am in receipt of your request of May 18 for the opinion of this department upon the question as to whether or not, under the provisions of subparagraph 4 of Section 10837 of the Code, the Clerk of the District Court is required to charge the fee of seventy-five cents when a default is taken.

The provision of law in question reads as follows:

"The clerk of the district court shall charge and collect the following fees, all of which shall be paid into the county treasury:

" \* \* \*

"4. For every cause tried by the court, seventy-five cents."

Referring to default, defaults are taken by a presentation and hearing before the court. That requires the action of the trial court. Therefore, they are in the nature of a trial, but not a complete trial, on the issues, so the same situation exists as though there were a trial insofar as the legal fiction is concerned.

Therefore, viewing it in that light, we are of the opinion that the Clerk of the District Court should charge the fee of seventy-five cents for every hearing of a default by a court as required by the provision of law in question.

**SCHOOLS AND SCHOOL DISTRICTS:** Heir is entitled to offset tuition on taxes on undivided interest under section 4269 if estate is not recaptured to pay debts.

May 21, 1931. *Department of Public Instruction*: This will acknowledge receipt of your letter of recent date in which you request the opinion of this department on the following proposition:

"May the heirs of an undivided estate offset tuition to the extent of the school tax paid by the estate on their share of the estate?"

This would depend upon the status of the estate. The rule is that real estate descends immediately upon the death of the ancestor to the heirs subject to the rights of the administrator to recover the same if necessary

to pay debts. In this status the administrator, if he pays the taxes, pays them as the agent of the owner and one of the heirs who comes under the provisions of Section 4269, Code of Iowa 1927, would be entitled to the offset of his share of the school tax paid in said district upon any tuition which he was required to pay by reason of having children attending school therein.

If in the administration of the estate there were not sufficient personal property to pay the debts and the administrator was managing the real estate and applying the rents, issues, and profits on the debts pending the sale of the real estate, then the title would not be in the heir, the taxes paid would not be his taxes, and he would not be entitled to the offset.

**BOARD OF SUPERVISORS:** Under no obligation to determine liens on cattle condemned and slaughtered under bovine tuberculosis eradication statutes.

May 21, 1931. *County Attorney, Charles City, Iowa:* This will acknowledge receipt of your letter of recent date requesting an opinion of this department upon the question:

Whether the county board of supervisors or the auditor have any duty in connection with protecting lienholders under chattel mortgages or other liens on cattle that are condemned and slaughtered under the bovine tuberculosis eradication statutes.

The county is not subject to garnishment upon such claim. We are, therefore, of the opinion that no legal duty is imposed upon the board of supervisors or the auditor in connection therewith.

The State Department, if notice is served by a lienholder, attempts to get an agreement out of the parties as to the issuance and delivery of the warrant. This is merely a matter of accommodation and equity. We know of no law which would require the county board or the auditor to do so or to take any action to protect lienholders. The State, of course, can pay the indemnity only to the person in whose name the cattle are tested.

**PUBLIC OFFICERS:** Where mileage is paid to a public officer or employee for the use of his private owned car, said officer or employee cannot also charge expense for gas and oil used in his car and for storage of said car. (Sec. 6, Senate File No. 297, 44th G. A.)

May 22, 1931. *Auditor of State:* We acknowledge receipt of your letter under date of May 6, 1931, requesting an opinion of this department on the following question:

Section 6 of Senate File No. 297, Acts of the 44th General Assembly, which was enacted and will become a law provides in part as follows:

"No law shall be construed to give to a public officer or employee, both mileage and expense for the same transaction."

The question has arisen as to what is the meaning of "expense for the same transaction?"

You are advised that where mileage is paid to a public officer or employee for the use of his private owned car that said officer or employee cannot also charge expenses for gas and oil used in his car and for storage of said car, for the trip for which he received mileage. Said statute did not effect the allowance of expenses for meals and lodging incurred in connection with the particular mission of said public officer or employee.

**TAXATION—REFUND:** Where two persons have been assessed and have paid taxes on the same piece of property the one who has possession and title is the one who is liable for the taxes and the other is entitled to refund for taxes paid.

May 22, 1931. *County Attorney, Center, Iowa:* We acknowledge receipt of your letter under date of January 9, 1931, requesting an opinion of this department on the following question:

A farmer several years ago deeded a small tract of ground to his son, but the deed was never recorded. The son took possession of said tract and built and improved the same and continued to occupy the same since said date.

During all of the time the father has paid taxes on the tract deeded to his son and his son has likewise paid taxes on said ground.

Which of them is entitled to a refund, if any, and for what period of the time would they be entitled to such refund?

This is a question for the board of supervisors to determine from the facts as adduced to them. If the father in fact deeded the ground to the son and it can be established that the son has been in possession since that time there is no question but what the son would be liable for the taxes on the property deeded to him. This being true, the father who has been assessed for said property would be entitled to a refund of the taxes illegally assessed and paid.

**SCHOOLS AND SCHOOL DISTRICTS:** County superintendent certificate of proficiency in common branches under section 4276 of the Code can be issued only by the superintendent of the pupil's residence.

May 22, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"Must this certificate showing proficiency in common branches provided for in section 4276 of the code, be secured from the county superintendent of the county of the pupil's residence, or may it be secured from any county superintendent in the state?"

We are of the opinion that this certificate must be granted by the county superintendent of the pupil's residence. While there is nothing in the statute to indicate this restriction, the district which is required to pay the tuition is required to have the county superintendent in charge of its school, determine the question of proficiency which will warrant this charge against the district. To hold otherwise would open the door to injustice, and perhaps fraud, in the issuance of this proficiency certificate.

**DEPARTMENT OF AGRICULTURE—BOARD OF SUPERVISORS:** Repeal of Section 4820 and amendment to Section 4819 by Forty-fourth General Assembly does not relieve adjacent property owner of the obligation to destroy weeds on the highways adjoining his land except Canada thistles, sow thistles and quack grass.

May 25, 1931. *Secretary of Agriculture:* You have requested the opinion of this department upon the following proposition:

"Does the repeal by the Forty-fourth General Assembly, of Section 4820 of the Code, and the first sentence of sub-section 2 of Section 4819 of the Code as amended by the Forty-third General Assembly, excuse landowners or those in possession and control of lands from the duty of cutting weeds, other than Canada thistles, sow thistles and quack grass growing in and along the highways adjoining their lands?"

It was evidently the intention of the Forty-fourth General Assembly to require the board of supervisors and the highway commission to destroy Canada thistles, sow thistles and quack grass growing in the highways under their respective jurisdictions. Inasmuch as sub-section 1 of section 4819 as it now exists requires each owner and each person in possession or control of any land, to keep the said lands free from such growth of *other weeds* as shall render the streets and highways adjoining said lands unsafe for public travel or such *other weeds* as shall interfere in any manner with the proper construction or repair of streets or highways, we are of the opinion that the amendment to these sections by the Forty-fourth General Assembly, would not remove the responsibility of these landowners or persons in possession or control of lands to keep the highways free from growths of *other weeds* that is, other than Canada thistles, sow thistles and quack grass, growing on the highways adjoining said lands. It is our opinion that this duty still exists and that such owners are required under the statute to mow such weeds along the highway, except of course, those which are specifically required to be destroyed by the board of supervisors and the highway commission.

Amendments to the statute are to be strictly construed, and since the legislature did not repeal subsection 1, section 4819 of the Code, we believe that the above was the intention of the legislature, and that such is the law.

#### SCHOOLS AND SCHOOL DISTRICTS—COUNTY SUPERINTENDENT:

Transcript fee on appeals from county superintendent to state superintendent must be paid by certificates from the county superintendent to the county auditor and taxed as a part of the costs by the county superintendent or the state superintendent on appeal; and the county superintendent cannot require bond for costs on appeals taken in the absence of statutory provisions.

May 25, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in regard to the cost of a transcript of the proceedings before the county superintendent on appeal from the decision of the board of school directors.

Under the provisions of Section 4300 of the code, the county superintendent is required to have a transcript of the evidence taken down and transcribed by a shorthand reporter whose fee shall be fixed by the county superintendent and be taxed as a part of the costs in the case.

It is then provided by section 4302 that the appeals to the state superintendent shall be in the same manner as provided in this chapter (chapter 219) for taking appeals from the board of a school corporation to the county superintendent.

The manner of taking the appeal to the county superintendent is prescribed in sections 4298-9. In section 4298, it is the duty of the secretary of the school corporation to file a complete certified transcript of the record and proceedings relating to the decision appealed from with the county superintendent. No provision is made for the payment of this transcript fee by the appellant.

We are therefore of the opinion that this transcript must be paid for by the county, and the expense thereof taxed as a part of the costs in the case under the provisions of section 4300 and that a transcript of such costs shall be filed in the office of the clerk of the district court and a judgment entered thereon by him which shall be collected as other judgments.

If these costs are eventually taxed to the appellant, a judgment would be entered in the office of the clerk of the district court against the appellant for such costs, but we are of the opinion that the original should be paid by the board of supervisors upon a certificate from the county superintendent in the same manner as other costs of the office of the county superintendent are paid.

**ENGINEERS:** A plat or blue print is not admissible in evidence for the reason that there is attached thereto a certificate and seal of a registered engineer; the attachment of such certificate and seal does not properly lay the foundation for the admission thereof as evidence.

May 28, 1931. *Board of Engineering Examiners:* Yours of May 23, 1931, is at hand. You ask therein:

Are the blue prints and plats of a registered engineer admissible in evidence over his certificate and seal without further identification or foundation in the record.

No provision is made in the code whereby the certificate and seal of a registered engineer properly identifies his plat or blue print as evidence. The common law would require identification of such plat or blue print by a registered engineer. We are therefore of the opinion that a certificate and seal of a registered engineer attached to his plat or blue print does not properly lay the foundation for the admission thereof as evidence, and that it would be necessary to have such plat or blue print identified by the registered engineer personally prior to the acceptance thereof by a court in evidence.

**ENGINEERS:** A registered engineer under Chapter 89 of the 1927 Code may not practice land surveying without qualifying as a land surveyor, and without a specific grant of such privilege in his certificate as registered engineer, excepting as provided in Sec. 1876, Code, 1927.

May 28, 1931. *Board of Engineering Examiners:* We have yours of May 23, 1931. You ask therein:

May a registered professional engineer engage in the practice of land surveying without being specifically registered as a land surveyor?

Code, 1927, Section 1854, provides as follows:

"No person shall practice professional engineering or land surveying in the state unless he be a registered professional engineer or a registered land surveyor as provided in this chapter, except as permitted by the last section thereof."

Code, 1927, Section 1869, provides as follows:

"To any applicant who shall have passed the examination as a professional engineer and who shall have paid an additional fee of ten dollars, the board shall issue a certificate of registration as a professional engineer signed by the chairman and secretary of the board under the seal of such board, which certificate shall authorize the applicant to practice professional engineering as defined in this chapter. Such certificate shall not carry with it the right to practice land surveying, unless specifically so stated in said certificate, which permission shall be granted by the board without additional fee in cases where the applicant duly qualifies as a land surveyor as prescribed by the rules of said board."

Code, 1927, Section 1870, provides as follows:

"To any applicant who shall have passed the examination as a land surveyor and who shall have paid an additional fee of ten dollars, the board shall issue a certificate of registration signed by its chairman and secretary under the

seal of the board, which certificate shall authorize the applicant to practice land surveying as defined in this chapter and to administer oaths to his assistants and to witnesses produced for examination, with reference to facts connected with land surveys, being made by such land surveyor."

It will be noted that Code Section 1869 negatives the right of a registered engineer to practice land surveying unless his certificate specifically grants that privilege.

It is, therefore, the opinion of this department that a registered engineer, under Chapter 89 of the 1927 Code, may not practice land surveying without qualifying as a land surveyor, and without a specific grant of such privilege in his certificate as a registered engineer, excepting as provided in Section 1876, Code, 1927.

**TAXATION—AGRICULTURAL LANDS:** (Chapter 20, Acts 43rd G. A.) Agricultural lands in cities and towns which do not control their own bridge levies are subject to the levies provided for in Sections 7 and 12 (paragraph 1) Chapter 20, Acts 43rd G. A. Agricultural lands in cities and towns which control their own bridge levies are not subject to said levies nor are they subject to the levies provided for in Sections 8 and 12 (paragraph 2), and 13, Acts 43rd G. A. They are subject to the levy provided for in Sec. 15-a1, Chapter 20, Acts of the 43rd G. A.

May 29, 1931. *Assessment and Review:* We hereby recall opinion rendered to your board under date of May 21, 1931, on the following question:

"What levies, under Chapter 20, Acts of the 43rd G. A., should be assessed against agricultural lands, that is, tracts of ten acres or more, devoted to agricultural purposes within the limits of cities and towns?"

We hereby submit to you the opinion of this department on said question.

Your attention is directed to Section 7, and Section 12—Paragraph 1, Chapter 20, Acts of the 43rd General Assembly. It will be noted from reading these sections that the taxes therein provided are to be levied on all the taxable property in the county except on property within cities and towns which control their own bridge levies. It would, therefore, follow that in cities and towns which do not control their own bridge levies, agricultural lands, within the meaning of Section 6210, Code of Iowa 1927, as well as other city property would be subject to the levies in said sections provided. In cities and towns which control their own bridge levies agricultural lands would not be subject to said levies.

Your attention is directed to Sections 8, 12—Paragraph 2, and 13, Chapter 20, Acts of the 43rd General Assembly. It will be noted that the levies in said sections provided are only on all of the taxable property in the county outside of cities and towns. Agricultural lands located within cities and towns, therefore, within the meaning of Section 6210, Code of Iowa 1927, would not be subject to said levies.

Your attention is next called to Section 15-a1, Chapter 20, Acts of the 43rd General Assembly. This levy is on all taxable property within the county. Agricultural lands within cities and towns would, therefore, be subject to said levy the same as other city and town property.

**BOARD OF RAILROAD COMMISSIONERS—MOTOR VEHICLES:** 1. A semi-trailer is subject to permit under Chapter 129, laws of the Forty-third General Assembly; 2. A trailer, not being self-propelled, is not subject to permit.

June 3, 1931. *Board of Railroad Commissioner:* This will acknowledge



receipt of your letter of recent date requesting the opinion of this department upon the following propositions:

"1. Is a semi-trailer subject to license under the provisions of Chapter 129, Laws of the Forty-third General Assembly?

"2. Is a trailer a motor vehicle within said chapter?"

This department has ruled that a semi-trailer is a part of the motor vehicle and that the truck which pulls it and the semi-trailer itself constitute one motor vehicle. So long, therefore, as it is operated as one motor vehicle it would come under the provisions of Chapter 129 if used for hire.

If it is used with another truck, we are of the opinion that a permit should be required for each unit with which it is operated.

The provisions of Chapter 129, Laws of the Forty-third General Assembly, apply to motor trucks and truck operators. A motor-truck is defined as "any automobile, automobile truck or other self propelled vehicle not operated on fixed rails or track, etc."

A trailer is defined as "any vehicle which is at any time drawn upon the public highway by a motor vehicle excepting certain implements of husbandry." (Section 4863 (4) of the Code.)

It is evident therefore, that a trailer is not an automobile, automobile truck, or other self propelled vehicle used on the highway. We are therefore of the opinion that the provisions of Chapter 129 do not apply to a trailer as it is defined by the cited sections.

**ROADS AND HIGHWAYS:** The county is entitled to a refund for the costs of construction of a bridge or culvert when the same was built on a road, which, at the time it was built was a primary road, provided the same was built since April 19, 1919, and paid for out of county road or bridge funds. No refund can be made for bridges or culverts which have been built on secondary roads since April 19, 1919, and which roads have since become and made a part of the primary road system.

June 5, 1931. *State Highway Commission:* Pursuant to your request we are herewith submitting to you an opinion on the following questions:

1. Under Chapter 3, Acts of the 42nd G. A. Special Session, when is a county entitled to a refund for bridges or culverts which have been built and paid for out of the county road or bridge funds?

2. Under Chapter 3, Acts of the 42nd G. A. Special Session, where a bridge or culvert has been built by a county on a secondary or county road and paid for out of county road or bridge funds, and subsequently said road is by proper authority made a part of the primary road system is the county entitled to a refund?

1.

Your attention is called to that part of Chapter 3, Acts of the 42nd G. A. Special Session, which reads as follows:

"Where additional right-of-way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April nineteen (19), nineteen hundred nineteen (1919), said county shall be reimbursed for said right-of-way and said bridges or culverts out of the primary road fund in seven (7) annual payments. \* \* \*"

It will be noted from reading that part of said Chapter above set out that where the bridge or culvert has been built on a primary road and paid for out of county road or bridge funds since April 19, 1919, that the county is entitled to a refund. Before the county is entitled to a refund for the costs of a

bridge or culvert said bridge or culvert must have been built on a road which, at the time it was built, was a primary road, and it must have been built since April 19, 1919, and paid for out of county road or bridge funds. The only question being, was the road a primary road at the time the bridge was built and was the bridge built since April 19, 1919, and paid for out of county road or bridge funds?

The effective date of Chapter 3, Acts of the 42nd G. A. Special Session, would have no bearing upon the question of the county's right to a refund and it would not make any difference whether or not a primary road upon which the bridge was built was later abandoned and said road reverted to the secondary road system.

2.

There is no authority contained in Chapter 3, Acts of the 42nd G. A. Special Session, for refund for bridges or culverts which have been built on secondary roads since April 19, 1919, and which roads have since become and made a part of the primary road system.

Any opinion rendered by this department contrary or inconsistent with this opinion is hereby cancelled.

TAXATION—BONDS: (H. F. 368, 44th G. A.) (Sec. 7165, Code of Iowa 1927.)

June 5, 1931. *State Highway Commission*: We acknowledge receipt of your letter under date of May 27, 1931, requesting an opinion of this department on the following question:

Do the provisions of House File No. 368, as enacted by the 44th General Assembly affect the levy for bonds issued after July 4th, 1931?

Your attention is called to that part of House File No. 368, 44th General Assembly which reads as follows:

"The provisions of Section seventy-one hundred-sixty-five (7165) of the Code, 1927, shall be suspended and shall not be applied during said years, \* \* \* Provided, however, that the provisions of this act shall not affect or include mandatory levies or payments, the amounts of which are fixed by statute, or taxes levied for the purpose of paying interest and/or principal on bonds or creating a sinking fund for the retiring of bonds, issued prior to the passage of this act."

It will be noted that said act does not affect or include mandatory levies or payments, the amounts of which are fixed by statute. This being true, when bonds are authorized and issued in accordance with the statute pertaining to the same, then the payment and levy for both principal and interest on said bonds are mandatory.

It will be noted from an examination of the various sections of the statutes pertaining to the authorization, issuance, and retirement of bonds by the various political sub-divisions that the retirement of the bonds is mandatory, the time of retirement being fixed by statute and the levy for the payment of the principal and interest being made mandatory upon the governing board; the governing board having no option with respect to the maximum time within which such bonds shall be retired and with respect to the making of an annual levy for said purpose.

That part of House File No. 368, Acts of the 44th General Assembly, which reads as follows:

"\* \* \* or taxes levied for the purpose of paying interest and/or prin-

principal on bonds or creating a sinking fund for the retiring of bonds, issued prior to the passage of this act. \* \* \*

does not, in our opinion, in any way affect the right of the governing board of a political sub-division of the State to levy taxes for the payment of the principal and interest on bonds authorized and/or issued after July 4, 1931. The Legislature by House File No. 368 did not repeal the statutes which authorize the issuance of bonds nor did it repeal the statutes making the retirement of bonds when issued and the annual levy for the payment of the principal and interest mandatory.

We are of the opinion that that part of House File No. 368, set out above, does not in any manner affect the right or authority of a political sub-division of this state after July 4, 1931, when authorized, to issue bonds and to make a levy for the retirement of the same. In other words, we are of the opinion that House File No. 368, Acts of the 44th General Assembly, has no application whatsoever to mandatory levies and payments, and that bonds when issued under authority of the statutes of this state are mandatory as to payment and levy.

**TAXATION—BANK STOCK:** Where amount represented by capital stock exceeds the amount which the bank has invested in real estate, the difference is to be taxed as monied capital and all surplus and undivided profits taxed as monies and credits. Where the amount represented by capital is less than the amount invested in real estate then the amount invested in real estate may be deducted from the capital plus the surplus and undivided profits, and the difference taxed as monies and credits. (Sections 7002-7003, Code of Iowa 1927.) (Sections 23, Chap. 30, Acts 43rd G. A.) (Senate File No. 289, 44th G. A.)

June 5, 1931. *State Board of Assessment and Review:* Under date of May 21, 1931, we rendered an opinion to the Honorable J. W. Long, with respect to the following questions:

How should banks now be assessed under the provisions of Sections 7002-7003, Code of Iowa 1927, as amended by Section 23, Chapter 30, Acts of the 43rd G. A., and by Senate File No. 289, Acts of the 44th G. A.?

In view of the fact that the opinion of this department to the Auditor of State has been misconstrued we are herewith recalling and cancelling said opinion and rendering to your Board an opinion upon said question.

You are advised that, under the provisions of Section 7002, as amended by Section 23, Chapter 30, Acts of the 43rd G. A., and by Senate File No. 289, Acts of the 44th G. A., the assessor, for the purpose of deducting real estate, shall include in the capital structure the amount represented by capital stock together with surplus and undivided profits from which the amount invested in real estate may be deducted.

In this connection you are advised that if the amount represented by the capital stock exceeds the amount which the bank has invested in real estate then the difference between the amount represented by the capital stock and the amount invested in real estate is to be taxed as monied capital in accordance with the provisions of Section 7005, Code of Iowa 1927, in which case the surplus and undivided profits of the bank shall be taxed as monies and credits. If, however, the amount invested in real estate exceeds the amount represented by the capital stock then the amount represented by capital stock plus the surplus the undivided profits shall be added together and the amount invested

in real estate deducted therefrom. The balance, if any, in said case being surplus and undivided profits would be taxed as monies and credits.

To illustrate and for example take a bank with capital stock in the amount of \$50,000.00, surplus \$15,000.00, and undivided profits of \$10,000.00; the amount of the capital of said bank actually invested in real estate being \$40,000.00. In this case it will be seen that the amount represented by capital stock exceeds the amount of the capital actually invested in real estate by \$10,000.00. There would, therefore, be after the deduction of real estate \$10,000.00 which would be taxed as monied capital under the provisions of Section 7005, Code of Iowa 1927. In this case the surplus of \$15,000.00 and the undivided profits of \$10,000.00, or a total of \$25,000.00, would be taxed as monies and credits.

Take a bank with a capital stock of \$50,000.00, a surplus of \$15,000.00 and undivided profits of \$10,000; the amount actually invested in real estate being \$60,000.00. In this case the amount of capital invested in real estate exceeds the amount represented by capital stock by \$10,000.00. There would, therefore, be no balance to be taxed as monied capital, but the total of the capital stock, surplus, and undivided profits would be \$75,000.00. Deduct from this amount the amount actually invested in real estate, or \$60,000.00, and you would have \$15,000.00 left of the surplus and undivided profits which amount would be taxed as monies and credits.

Take again a bank with a capital of \$50,000.00, surplus of \$15,000.00, and undivided profits of \$10,000.00, and the amount actually invested in real estate \$75,000.00. In this case it will be seen that the amount represented by capital stock, surplus, and undivided profits total \$75,000.00, and that the amount actually invested in real estate totals \$75,000.00. In this case there would be nothing to tax as monied capital and nothing to tax as surplus and undivided profits.

To state the rule concretely as the law now stands, where a bank has more actually invested in real estate than is represented by its capital stock, said bank for the purpose of arriving at the value of its shares of stock may deduct the amount actually invested in real estate from its capital structure (capital stock, surplus and undivided profits). In other words, where the amount actually invested in real estate exceeds the amount represented by the capital stock, the banks are permitted for the purpose of deducting real estate to add the amount represented by the capital stock, the surplus and undivided profits.

**COUNTY OFFICERS:** Indexing required in house file 502, Forty-fourth General Assembly applies to lien index for *lis pendens* docket only.

June 6, 1931. *County Attorney, Orange City, Iowa:* This will acknowledge receipt of your letter of recent date in regard to the construction to be placed upon house file 502 which provides in part as follows:

"When the Clerk of the District Court enters a lien, or indexes an action affecting real estate, on the records of his office, he shall immediately in connection with the entry, enter the year, month, date hour and minute when the entry was made."

While this section is apparently all inclusive, we are of the opinion that it applies only to the lien index and the *lis pendens* index of the clerk's office. The evident purpose of this act was to show the priority of liens. The appearance docket is more in the nature of a history of the proceedings and

the lien index is the real record of liens. We believe that this conclusion is borne out by the fact that the act requires that he enter the date required in this section when a suit affecting real estate is indexed in his office. The entry of such a case upon the appearance docket does not constitute a lien; hence the provisions for the *lis pendens* docket.

**TAXATION:** One who purchases real estate subject to mortgage indebtedness not entitled to deduct same from moneys and credits under Section 6988, Code, 1927.

June 6, 1931. *County Attorney, Red Oak, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following proposition:

"A owned real estate and borrowed money executing his promissory note and gave a mortgage on his real estate to secure payment of his debt. Later A sold his real estate to B subject to the mortgage indebtedness. B omitted certain personal property in returning his property for taxation and it was later assessed by the County Auditor under the provisions of Section 7149 of the Code of 1927. Thereupon B who purchased the real estate from A subject to mortgage indebtedness claimed a right to deduct the mortgage indebtedness against the assessment made by the County Auditor. Is such a deduction allowable under Section 6988?"

We are of the opinion that B is not entitled to deduct any alleged indebtedness or liability on this transaction from his assessment for omitted property. If he takes the property subject to the mortgage, he would have no liability on the note and would be subjected only to the loss of the real estate if he failed to pay the indebtedness of record against it. Furthermore his liability is contingent in any event as his personal liability, even if he assumed the mortgage indebtedness would not attach until the real estate is sold under the mortgage. There is a discussion of the right to deduct a contingent fee in *Schoonover vs. Petonina*, 126 Iowa 261. Although this case is not directly in point, it deals with the right to offset contingent liabilities.

**TAXATION:** Under facts related, Tri State Agricultural Association not entitled to benefits of Sec. 6994.

June 8, 1931. *Auditor of State:* This will acknowledge receipt of your letter of April 30, 1931, which is as follows:

"Will you kindly advise me your interpretation of Section 6994 of the 1927 Code with reference to the Tri State Agricultural Association, copy of Mr. Cary's letter following:

"I am writing you with reference to the interpretation of Section 6994 of the 1927 Code with reference to taxation on loan corporations.

"I represent the Tri State Agricultural Association, who have been granted a charter of incorporation here in this state and are desirous of obtaining the certificate provided in Section 6994 if in your opinion they come under this division.

"This corporation is connected with the Federal Intermediate Credit Bank in that they discount loans which they make to the Federal Intermediate Credit Bank at Omaha. The corporation makes loans to farmers on their personal property at the rate of 6½% per annum. With the consent of the Federal Intermediate Credit Bank the corporation holds back 10% of the loan and issues for the 10% hold back a certificate of stock. At the maturity date of the loan, which averages six months to a year, the borrower has the option of either getting credit for his stock certificate in the cancellation of his loan or he may keep the stock if he so desires. In practically every case the

borrower does not keep the stock but is credited with the 10% hold back at the time he pays out on the loan.

"Our thought is that for the purpose of taxation we would like to obtain the certificate provided for in Section 6994 if in your opinion we would be classified under this section.

"Our loans being direct loans to farmers and at the very reasonable rate of 6½%, we feel that we should come under this section."

"Will you kindly advise if the corporation would be entitled to the certificate as provided in Section 6994 of the Code of 1927?"

In reply we would say that it is the opinion of this department that the Tri State Agricultural Association, under the facts set out in the request, does not fall within the provisions of Section 6994.

**TAXATION:** The failure of the city clerk to certify a special assessment levy promptly will not suspend the provisions of the law with regard to the addition of penalty and in such case it would be necessary for a taxpayer to ascertain the amount of tax levied against his property and pay or tender payment of such special assessment levy to the county treasurer to avoid payment of penalty. Sec. 6007, Code 1927; Sec. 6031, Code 1927; Sec. 6033, Code 1927; Chap. 308, Code 1927.

June 9, 1931. *County Attorney, Nevada, Iowa:* Yours of May 29th at hand wherein you ask:

When a city council levies special assessments more than one month prior to the following first of March, which are not certified to the county auditor by the city clerk until some months after the levy and subsequent to the first of March following such levy, does such tax become delinquent on the first day of the first March subsequent to the levy, so that the same must bear interest with penalties in the manner provided for ordinary taxes?

Certification by the city clerk of the county auditor is required in Section 6007, Code, 1927.

Such special assessments become payable at the office of the county treasurer thirty days after the levy and bear interest at the rate of six per cent per annum from the date of the acceptance of the work. Section 6031, Code, 1927, as amended by Chapter 108, Laws of the 43d General Assembly.

Section 6033, Code, 1927, as amended by Chapter 181, Acts of the 43d General Assembly, reads as follows:

"The first installment or total amount of assessment, if less than ten dollars (\$10.00), with interest on the whole assessment from date of levy by the council, shall mature and be payable thirty days from the date of such levy, and the others with interest on the whole amount unpaid, annually thereafter at the same time and in the same manner as the March semi-annual payment of ordinary taxes.

"Any or all installments not yet paid together with accrued interest thereon may be paid on the due date of any installment.

"All such taxes with interest shall become delinquent on the first day of March next after their maturity, and shall bear the same interest with the same penalties as ordinary taxes.

"Upon the payment of any installment, there shall be computed and collected interest on the whole assessment remaining unpaid up to the first day of April following."

It will be noted that under the provisions of Section 6033 the first installment (with interest on the whole assessment if the work has been accepted as provided in Section 6031) becomes mature thirty days from the date of such levy. Paragraph 3 of said section provides as follows:

"All such taxes with interest shall become delinquent on the first day of

March next after their maturity and shall bear the same interest with the same penalties as ordinary taxes."

It will be noted that the last section quoted makes provision with regard to the maturity of such special assessment, and also provides that a penalty is incurred if the special assessment tax is not paid on the first of March following the date of such maturity.

Ample provision is made for notice to parties affected by special assessment in Chapter 308 of the 1927 Code of Iowa, and every property owner affected thereby must have actual or constructive notice of the levy of such assessment and the date thereof. We do not believe that the failure of the clerk to certify the assessment levy promptly will violate the provisions of the law with regard to the penalty and that in the case above mentioned it would be necessary for a taxpayer to ascertain the amount of the tax levied against his property and pay or tender payment of such special assessment levy to the treasurer of the county where the same has been made to avoid the payment of penalty.

**INSANITY—SOLDIERS:** County of legal settlement to pay costs in insanity commitment. (Section 3562-b1, Sec. 3590, Code of 1927.)

June 15, 1931. *County Attorney, Knoxville, Iowa:* This will acknowledge receipt of your letter of April 14, 1931, which is as follows:

It has been necessary for the local board of insanity to commit a number of patients who are veterans, to the United States Government Hospital at Knoxville, Iowa, under the provisions of Section 3562-b1, Code of Iowa 1927. This was made necessary on account of the federal holding that they would be unable to keep these patients unless committed by the insanity commissioners, and as a result we have found that a great number of these cases have legal settlements in different counties in the state of Iowa and the costs of commitment have averaged \$10.75 apiece, and we have found it extremely difficult to secure these costs from the counties where the patient had a legal settlement.

Will you kindly give us your opinion as to whether or not Marion county would be entitled to collect these fees from the several counties?

In reply we would say that Section 3562-b1 specially provides for the commitment of veterans by the board of insanity commissioners to a United States Veterans Bureau Hospital, and the superintendent of the hospital is vested with the same power as the superintendents of the state hospitals.

The above mentioned section refers to commitments and discharge of insane, and we desire to quote from Chapter 178 of the Code of Iowa 1927 and particularly Section 3590, which is as follows:

"All legal costs and expenses attending the arrest, care, investigation, and commitment of a person to a state hospital for the insane under a finding that such person has a legal settlement in another county of this state, shall, in the first instance, be paid by the county of commitment. The county of such legal settlement shall reimburse the county so paying for all such payments, with interest."

It is the opinion of this department that where a veteran was committed to the United States Veterans Hospital at Knoxville, Iowa, by your board of insanity commissioners and has legal residence in one of the several counties in this state, that upon presentation of the settlement of costs for a commitment to the county of his legal residence they should immediately repay your county for the necessary expense thereof.

**BOARD OF SUPERVISORS:** Board may not re-convey but may sell same at fair valuation. (Secs. 7864, 5130, Code of 1927.)

June 15, 1931. *County Attorney, Osage, Iowa.* This will acknowledge receipt of your request of May 7, 1931, which is as follows:

"Am writing to ask whether a board of supervisors may re-convey a condemned gravel pit to the prior owner, when they are through using it. In case in question it is agreeable all around that the board may take another 1,000 yards of gravel in the near future, and then abandon it and let it go back to the owner. May the board execute a deed or contract to that effect, without waiting the five years for it to revert under Code Sec. 7864."

In reply we would say that under the provisions of Section 7864 there seems to be no authority for the board of supervisors to execute a deed or contract to re-convey previously condemned gravel pits to the prior owner.

However, the Board of Supervisors may, under the provisions of Paragraph 13, Section 5130 sell a real estate not needed, at a fair valuation, and under the provisions of this section they might sell the condemned gravel pit, if they no longer desire the same.

**PHARMACY COMMISSION:** Under the new law the word drugs shall not be used in such way as to mislead the public. (Sec. 2582, Code of 1927, as amended by 44th G. A.)

June 15, 1931. *Board of Pharmacy Examiners:* This will acknowledge receipt of your request of May 26th, which is as follows:

"The Pharmacy Examiners would like an opinion relative to the use of the word 'Drug' in signs as 'Drug Sundries' after July 4th when the Pharmacy Laws as amended in the 44th General Assembly become effective.

"There are many 'Drug Sundry' signs in use where the word 'Drug' is carried in larger letters than 'Sundries' as well as in different line. If it is your opinion that such signs are permissible I believe that these points should also be considered in your opinion."

Under the provision of the new law, which becomes effective July 4, 1931, and which is as follows:

"\* \* \* \* 4. No person shall use the word or words: 'drug,' or 'druggist,' 'drug store,' 'pharmacy,' 'pharmacist,' or 'apothecary,' on any sign, card, circular, device, or advertisement, unless his place of business is operated as a pharmacy as defined in this chapter." (Section 2582, Code of Iowa, 1927, as amended by the 44th General Assembly.)

—we are of the opinion that the above quoted section absolutely prohibits the use of the word "drug" or "drugs" in connection with the word "sundries". We are inclined to believe that at the time this provision of the law was passed, it was the intention of the Legislature to prohibit the use of any of the words found in the above quoted section either alone or in connection with other words in any circular, or advertisement, and which might in the least mislead the public.

**COUNTIES—BOARD OF SUPERVISORS:** Where the board of supervisors are aware of the fact that they will need a considerable amount of material it should be purchased on contract. (Chap. 20, Acts 43rd G. A.)

June 15, 1931. *County Attorney, Fort Madison, Iowa.* This will acknowledge receipt of your request of April 10, 1931, which is as follows:

"Where a county knows it is to use materials of a certain kind, of the cost of more than \$1,500.00 during one year, for the materials, and to be independently delivered and paid for in quantities of considerably less than \$1,500.00



does Section 43 of Chapter 20 of the Acts of the 43rd General Assembly apply and would bids therefor be necessary?

"To cite an example: This county will use about \$6,000.00 worth of gasoline, in road and bridge construction work and maintenance during the year. The gasoline will be purchased as needed and paid for monthly. Would it be necessary to advertise for this material?"

In reply we beg to state that it would appear to be at least a violation of the spirit of the present law for the board of supervisors to purchase from time to time small amounts of gasoline, which, at the beginning of the construction season, they were aware would amount to the total aggregate somewhere in the neighborhood of \$6,000.00. We are inclined to believe that it would carry out the thought and the spirit of the law if bids were taken on materials where it was known by the board of supervisors that the total amount to be used would be a substantial sum.

**ROADS AND HIGHWAYS:** Where a road has been constructed and layed out, maintained, and traveled on a line other than the line originally established the board of supervisors does not have authority to summarily re-locate said highway.

June 16, 1931. *County Attorney, Cherokee, Iowa:* We acknowledge receipt of your letter under date of June 5, 1931, requesting an opinion of this department on the following question:

Has the board of supervisors authority to summarily re-locate a county road to the section line on which it was originally laid out or established when said road has for a number of years been open, worked, maintained and traveled on a location other than the location originally ordered?

We refer you to the case of *Clarcken, et al. vs. Lennon, et al.*, 212 N. W. 686; and call your attention particularly to the last paragraph on page 688. It will be noted from reading this paragraph that the Court holds that the true highway location is the highway that was laid out, opened, worked and has since been improved irrespective of what the field notes, plats, and original order of the board may provide. This, we think, covers your situation exactly.

**INTOXICATING LIQUORS—BOARD OF CONTROL:** Alcohol may be shipped in the name of the Board of Control without a permit. (Chapter 103, Code of 1927.)

June 16, 1931. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your request of May 28, 1931, which is as follows:

"Dr. Edwards, Superintendent of the State Sanitarium at Oakdale, Iowa, has asked me to obtain an opinion concerning the necessity of this institution obtaining a manufacturers' permit in order to obtain shipping permits covering alcohol for hospital purposes. This institution has been obtaining a manufacturers' permit but this has now expired and our local clerk is requesting that this permit be renewed in order that shipping permits may be issued from his office.

"Dr. Edwards informed me that other state institutions do not obtain manufacturers' permits. The bond expense is about \$20.00 per year and in the event no permit is necessary such expense could be saved.

"I wish you would please advise me as to whether or not it is necessary for this institution to obtain a manufacturers' permit under Chapter 103 of the 1927 Code of Iowa in order to obtain shipping permits from the Clerk of the District Court."

We are of the opinion that a manufacturer's permit would not be necessary, provided the alcohol purchased was for hospital purposes and was shipped

to the Board of Control at Oakdale, for the use of the State Sanitarium, as the statute specifically provides that the Board of Control may receive liquor for hospital uses. I would advise that this liquor be shipped in the name of the Board of Control to Oakdale for the use of the State Sanitarium and thereby relieve the necessity of the State Sanitarium securing a manufacturer's permit.

**TAXATION:** Cemetery associations are exempt from taxation. (Section 6944, Code of 1927.)

June 16, 1931. *County Attorney, Mason City, Iowa:* This will acknowledge receipt of your request of June 12, 1931, which is as follows:

"We have a cemetery association in this county which is organized for a profit.

"Under the provisions of Paragraph 7 of Section 6944 of the Code no distinction is made between corporations organized for profit and those which are not. The old statute Section 1304 of the 1907 Supplement exempted cemetery associations as long as no profit or dividend was derived therefrom. The case of Simcoke vs. Sayre, 148 Iowa 132, was decided under this old law.

"In our opinion, under the new statute even cemeteries which are organized for profit are exempt from taxation, but there are others interested who do not agree with this and we would appreciate very much having your opinion."

In reply we desire to quote Paragraph 7 of Section 6944, which is as follows:

"7. *Property of cemetery associations.* All grounds and buildings used by cemetery associations and societies for cemetery purposes."

It is the opinion of this department that under the particular wording used relative to the exemption of cemetery associations that all cemetery associations and societies used for cemetery purposes are exempt from taxation.

**MOTOR VEHICLES:** No penalty to be charged for period license revoked.

June 16, 1931. *County Attorney, West Union, Iowa:* Replying to your request of May 26, 1931, which is as follows:

"The question has come up where a man is convicted of operating a motor vehicle while intoxicated and his license and registration is suspended for a period of one year or more, and after the year has expired and the defendant has been granted permission to re-register his car and drive it, as to whether or not the County Treasurer can collect the penalty, provided where motor vehicles are not registered and new license plates secured after the first of the year."

—we beg to advise that where a license and registration had been suspended for a period of one year the owner would not have been permitted, nor would it have been legal for him, to have a license and in that event the county treasurer could not collect the penalty for the period of time the license was suspended, but could only collect the penalty from the time he was granted permission to register the car.

**SOLDIERS—TAXATION:** Exemption from poll tax for veterans means road poll tax not per capita tax. (Secs. 6946, 7171, 6231 and 4813, Code of 1927.)

June 16, 1931. *Board of Assessment and Review:* This will acknowledge receipt of your letter of May 12, 1931, which is as follows:

"We desire your opinion on the following question:

"In paragraphs 1 and 2 of Section 6946, Code of 1927, it states that the soldiers, etc., of certain wars are exempt from poll tax."

"The question is, does this poll tax as referred to in paragraphs 1 and 2 of Section 6946 refer to the poll tax levied by the board of supervisors under paragraph 2 of Section 7171, or to the road poll tax in Sections 4813 and 6231."

In reply we beg to advise that the poll tax referred to in Paragraphs 1 and 2 of Section 6946 does not refer to the poll tax levied by the board of supervisors under the provisions of Paragraph 2 of Section 7171, which is, in fact, a per capita, or head tax, but does refer to the road poll tax provided for in Sections 4813 and 6231.

**DEPARTMENT OF AGRICULTURE:** A live stock shipping association which does not buy live stock and hold the title thereto in its own name is not required to keep a record regarding the time of purchase of live stock, the name and residence of the seller, a description of live stock purchased as may be determined by the Department of Agriculture. (Sec. 1, Chap. 67, Laws of the 44th G. A.)

June 17, 1931. *County Attorney, Brooklyn, Iowa:* Yours of June 15, 1931, is at hand. You ask therein—

Does Chapter 67, Laws of the 44th General Assembly, apply to shipping associations organized under the provisions of the 1927 Code, as cooperative associations?

Section 1, Chapter 67, Laws of the 44th General Assembly, provides as follows:

“Any person or corporation engaged in the business of buying live stock for the market or for slaughter shall keep such records regarding time of purchase, name and residence of seller and description of the live stock purchased as may be determined by the department of agriculture. Such records shall be open to inspection of peace officers, at reasonable times.”

Section 2 of the above chapter imposes a penalty for failure to follow the requirements of Section 1 above quoted, and Section 1 is therefore entitled to a strict interpretation.

It will be noted that under Section 1, Chapter 67, Laws of the 44th General Assembly, only the *buyer* of live stock is required to keep the records provided therein and we are therefore of the opinion that a live stock shipping association which does not buy live stock and hold the title thereto in its own name, does not fall within the scope of the above entitled chapter.

**COUNTY OFFICERS:** The county engineer, under the provisions of Sec. 5, Chap. 12, Acts of the 44th G. A., is entitled to draw as transportation expenses only at 7 cents per mile.

June 17, 1931. *County Attorney, Emmetsburg, Iowa:* We acknowledge receipt of your letter under date of May 12, 1931, requesting an opinion of this department on the following question:

What is the affect of the amendment contained in Section 5 of Senate File No. 297 as enacted by the 44th General Assembly?

Section 5 of Senate File No. 297, reads as follows:

“Sec. 5. That chapter twenty (20), acts of the forty-third (43rd) general assembly be amended by adding at the end of section twenty-three (23) the following:

“In computing the said expense, mileage at the rate of seven cents (7c) per mile for distance actually traveled may be included.”

We are of the opinion that in the future, pursuant to the provisions of Section 5 of Senate File No. 297, Acts of the 44th General Assembly, that the county engineer may only be allowed mileage at the rate of seven cents (7c) per mile; any contract to the contrary notwithstanding.

Senate File No. 297, Acts of the 44th General Assembly, became effective by publication as of May 1, 1931.

**BOARD OF CONSERVATION:** Section 1799-b2, Code 1927, as amended by Senate File 217 (Chap. 36) 44th G. A. applies to persons who own buildings or docks on bodies of water under state control, regardless of the use to which same may be put, or by whom such use may be had, and said owner is required to pay the fee provided in said act.

June 17, 1931. *Board of Conservation:* We have your request for an opinion in several parts, with regard to the interpretation of Section 1799-b2, Code, 1927, as amended by Senate File 217, Acts of the 44th General Assembly, which reads as follows:

"The board shall charge a fee of not less than \$10.00 nor more than \$25.00 per year in the discretion of the board of conservation for each such permit issued for any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, used for commercial purposes."

I.

Under the above quoted provision any person who owns a wharf who permits another party or other parties to use the same for commercial purposes with his knowledge would be required to pay the fee provided in the above amendment.

II.

The owner of a toboggan slide erected on a lake and used without charge by the general public would not be required to pay the fee above provided by virtue of the reason that he owns on or near that lake another building or erection used for commercial purposes.

III.

A dock used on a lake by the owner of a plant manufacturing boats for the purpose of exhibiting boats manufactured and offered for sale, would be required to pay the fee above provided.

IV.

The owner of such permit may control his dock or structure so as to exclude its use by the general public or by any parties other than persons authorized to use the same by such owner.

V.

A person who is engaged in the business of selling merchandise for use in or about a lake who owns a dock or structure in the lake and permits the general public to use the same would not be required to pay the charge above mentioned, unless there was some direct connection between the sale of his merchandise and the use of such dock or pier. If, however, he is using such pier for the purpose of landing boats rented for hire on such lake and the use of the pier is incident to renting the boat, such owner would be required to pay the fee above mentioned.

**PUBLIC FUNDS:** Only those funds in the hands of county officers and officers of municipalities prescribed in Chapter 2, 44th G. A. that find their way into the public treasury for public use, are covered by the act.

June 27, 1931. *Treasurer of State:* This will acknowledge receipt of your letter of May 19th in which you request the opinion of this department upon the following propositions:

"One of the provisions in Senate File No. 146 authorizes the depositing of funds in the custody of the County Auditor, County Clerk, County Recorder, County Sheriff, Town Clerk and School Secretary.

"A question has arisen as to whether or not funds paid to the County Auditor for redemption for tax sales is reimbursible from the 'State Sinking Fund for Public Deposits.' Also whether or not fees other than those belonging to the county and judgments paid to the Clerk of the District Court are reimbursible from the said fund.

"To properly inform the county officers interested, an opinion is asked as to whether or not the funds above mentioned are reimbursible from the 'State Sinking Fund for Public Deposits.' In the event that the said funds are not reimbursible from the 'State Sinking Fund for Public Deposits' should interest be collected on said trust funds for the benefit of the 'State Sinking Fund for Public Deposits'?"

This bill, which becomes Chapter 2 of the Laws of the Forty-fourth General Assembly, provides in Section 1, as follows:

"Deposits in general. The treasurer of state, and of each county, city, town, and school corporation and each township clerk and each county recorder, auditor, sheriff, and clerk of the district court, and each secretary of a school board shall deposit all public funds in their hands in such banks as are first approved by the executive council, board of supervisors, city or town council, board of school directors, or township trustees, respectively. The term 'bank' shall embrace any corporation, firm, or individual engaged in a general banking business."

From this you will note that only the deposits of "public funds" is required.

By Section 8 the treasurer or other officer is absolved from loss of "public funds" by reason of the insolvency of the bank. Under Section 10 all interest collected from depositories of "public funds" is diverted to the general fund, subject to diversion when necessary to the state sinking fund for public deposits.

From the provisions of the act we reach the conclusion that it requires the deposit only of those funds in the hands of the various officers specified which are the property of the county or the municipality, and which find their way eventually into public use. Therefore, the act would not cover such funds as moneys paid in redemption from tax sales, or judgments or fees paid to the Clerk of the District Court for the use and benefit of another, but would cover only those moneys paid into these officers and by them required under the statute to be paid into the public treasury for public use.

From this conclusion, it naturally follows that the interest required to be diverted under Section 10 is the interest accruing on such moneys as are dedicated to public use and eventually find their way into the public treasury for such use. No interest is required on these other funds which are in the nature of trust funds and are merely being held by the public officer in trust for the real beneficiary when he calls for the same. The test, both as to the requirement for deposit and the payment and diversion of interest, is whether the funds temporarily held in the hands of these various county and municipal officers eventually find their way into the public treasury for public use. If so, they are required to be deposited under the act, and the interest required to be diverted; otherwise not.

**DRAINAGE DISTRICT:** Chap. 208, Acts 43rd G. A., applies to all drainage districts whether they consist only of main ditches, or both main ditches and laterals, or laterals only.

June 29, 1931. *County Attorney, Newton, Iowa:* We acknowledge receipt of

your letter under recent date requesting an opinion of this department on the following questions:

(1) Does Chapter 208, Acts of the 43rd G. A., apply to all drainage districts or does it apply only to districts consisting of both ditches and laterals?

Drainage district No. 17 consists only of a main ditch without laterals.

(2) If Chapter 208, Acts of the 43rd G. A., does not apply to drainage district No. 17 is there any other drainage statute under which refunds can now be made?

(3) If said Chapter 208, Acts of the 43rd G. A., does apply to said drainage district No. 17 can there be any such refund now made therein before all assessments have been paid in?

(4) In the event that a refund can now be made can such refund to those persons now paying yearly assessments be applied on their unpaid or future assessments instead of paying them in cash?

We are of the opinion that Chapter 208, Acts of the 43rd G. A., applies to a drainage district consisting only of main ditches, to a drainage district consisting of main ditches and laterals, and to a drainage district with only laterals.

We are also of the opinion that no refund can be made in accordance with the provisions of said Chapter 208, Acts of the 43rd G. A., until all of the assessments have been paid.

We find no statute, other than Chapter 208, which would authorize a refund of any amount in excess of the actual costs before all of the assessments have been paid.

**SECURITIES:** The sale of preferred stock of the Davenport Water Co. on the installment plan is not such a sale of stock as would come within the provisions of Chap. 392, Code of Iowa 1927.

June 29, 1931. *Auditor of State:* We acknowledge receipt of your letter under date of June 4, 1931, requesting an opinion of this department on the following question:

The Davenport Water Company of Davenport, Iowa, has submitted to this office an application for authority to sell its preferred stock on the partial payment or installment plan under the provisions of Chapter 392, Code of Iowa 1927. The question has arisen as to whether or not it is necessary for said company to qualify said stock under the provisions of Chapter 392, Code of Iowa 1927, or whether it is only necessary to register and qualify the same under Chapter 10, Acts of the 43rd G. A.?

You are advised that, in our opinion, the sale of preferred stock in the Davenport Water Company on the installment plan does not come within the provisions of Chapter 392, Code of Iowa, 1927. You are also advised that it does, however, come within the provisions of Chapter 10, Acts of the 43rd G. A., unless a showing is made to the Securities Department which would entitle it to exemption.

**SCHOOLS AND SCHOOL DISTRICTS:** Board cannot collect tuition under Section 4274 unless statute strictly complied with and agreement made prior to attendance.

June 29, 1931. *County Attorney, Boone, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following propositions:

"1. Students from a rural district have been attending school in an independent city school for a period of about 10 years during which time no tuition has been paid either by the district or by the parents of the children. Now

a demand is being made upon the school district in which the legal residence of the children is, for tuition, which has accrued over this period of years. No demand had previously been made and no statement of the tuition furnished to the district at any time.

"2. Also this city independent district has been receiving the taxes on about 80 acres of land which actually lies outside of their district and within the rural district, for considerable period. Are they legally entitled to the use of those taxes or does the independent district have to account to the rural district for them?"

It is provided by statute, code section 4274, that a child residing in one corporation may attend school in another in the same or adjoining county if the two boards so agree. In order to charge the board of the corporation of his residence with the payment of tuition, it is necessary that the said board agree thereto. In order to charge the parent with the payment of tuition, it is necessary that the parents agree to pay the same. It is evident from your statement of facts that there was no agreement in regard to such attendance. In view of the fact that no demand has been made for tuition over a period of years as you set out, we are of the opinion that tuition cannot now be recovered by the corporation wherein these children have been attending school.

Upon your second question, we are of the opinion that the rural district cannot recover the taxes which have been erroneously apportioned to the city independent district or erroneously assessed in the wrong district by the county treasurer.

We are enclosing herewith copy of the opinion of this Department heretofore rendered in which it was so held and which we believe covers the question under consideration.

**SCHOOLS AND SCHOOL DISTRICTS:** Amendment by house file 111, forty-fourth general assembly, allows county superintendent to consent to attendance in adjoining district if pupil lives on transportation route and more than two miles from the school in the district of his residence.

June 29, 1931. *County Superintendent, Bloomfield, Iowa:* This will acknowledge receipt of your letter of recent date in regard to the amendment adopted by the Forty-fourth General Assembly to Section 4274 of the Code.

This amendment is provided by House File 111, Chapter 94, Laws of the Forty-fourth General Assembly. The amendment provides as follows:

"Add after the word 'residence' in line eleven the following: 'the county superintendent may also consent to such attendance in case the child resides on a consolidated transportation route and more than two miles from any public school of his residence'."

We assume that this means more than two miles from any public school in the district of his residence.

Prior to the passage of this amendment, we had held that this statute would not apply in a consolidated district unless the pupils actually lived nearer the school building in the consolidated district, and that the distance was to be measured from the school buildings and not from a transportation route. This amendment would permit the county superintendent to give his consent to attendance in the consolidated district at the expense of the district of the child's residence if the child lived upon a road along which a school bus route was located, and more than two miles from his own school.

We are sending a copy of this opinion to the county attorney for his information.

## ROADS AND HIGHWAYS—COUNTIES: (See opinion, Delaware county.)

July 1, 1931. *County Attorney, Manchester, Iowa:* We acknowledge receipt of your letter of June 30, 1931, requesting an opinion of this department on the following questions:

At a special election held in Delaware county the 3rd day of July, 1929, the board of supervisors of this county was authorized to issue bonds from year to year in the aggregate amount not exceeding \$500,000.00 for the purpose of providing funds for the draining, grading, and hard surfacing of the primary roads of the county, etc. Since the election the Highway Commission has made provision for paving primary road No. 13 from Manchester north to the county line, a distance of about ten miles, all of which, with the exception of about one-half mile, has been relocated and has been established on the general line one mile west of primary road No. 13 as it existed at the time the special election was held.

The portion of the road which is now being paved was not included in the original paving program of the Highway Commission but has since been added. Part of the paving is in place and an estimate of about \$60,000.00 has been paid, and an estimate of about \$60,000.00 was filed June 15, 1931, and is being held up, and another estimate of about \$60,000.00 is about to be filed. Approximately six miles of the ten miles is now laid and four miles remains to be finished.

In view of the decision in the Osceola County case (Harding, appellant, vs. Board of Supervisors, Osceola County, et al., appellees) we desire an opinion on the following questions:

(1) Whether it is lawful for the board of supervisors to allow the payment of further claims for the paving operations now going on on primary road No. 13, as above stated.

(2) Whether the allowance of such claims and the authorization of payment for such paving would constitute valid grounds for ouster proceedings against the board of supervisors.

The facts in the Osceola county case (Harding, appellant, vs. Board of Supervisors, Osceola county, et al., appellees) are on all fours with the facts as stated herein, and were the situation in Delaware county the same as it was in the Osceola county case, under the rule laid down in the Osceola county case, an injunction would lie against the board of supervisors of Delaware county and any expenditure of the funds for the paving of the relocated primary road No. 13 would be a diversion of funds in accordance with said decision.

However, the Delaware county situation is quite different than that in Osceola county. In Osceola county the board was enjoined before any county primary road bonds were issued and before any work was commenced under the contract on the relocated portion of the primary road.

In Delaware county the board of supervisors in good faith has proceeded to issue and sell the primary road bonds and work has been commenced on the relocated portion of primary road No. 13, and approximately six miles of the ten miles of relocated primary road has been completed; all of the work being done before and preceding the decision rendered in the Osceola county case.

The contractor has furnished materials, labor, and services—all in good faith. No one in the county has questioned the authority of the board of supervisors to proceed with the expenditure of the bond money for the purpose of paving the relocated portion of primary road No. 13. An obligation has in good faith been created and we are of the opinion that the contractor can collect for the materials, labor, and services already furnished and rendered and to



be rendered, and the Courts would find that the obligation created by virtue of the expenditure of monies under the contract for the paving of the relocated primary road was the obligation of the county, and that it should properly be paid for out of the funds received from the sale of the county primary road bonds authorized by a vote of the people of said county on July 3, 1929.

We are also of the opinion that from the facts stated herein no member of the board of supervisors has committed such an act in connection with this paving project as would constitute grounds for an ouster proceedings.

**TAXATION—COUNTY OFFICERS:** Chapter 182, Acts of 44th G. A., void. (See opinion.) (Section 6985, Code of Iowa 1927.) (Chapter 244, Acts of the 44th G. A.)

July 2, 1931. *State Board of Assessment and Review:* We acknowledge receipt of a request for an opinion of this department on the following questions:

(1) Chapter 182, Acts of the 44th G. A., provides in part as follows:

"Section 1. \* \* \* 'Provided that the county auditor shall, in computing the tax rate for any taxing district, deduct from the total budget requirements certified by any such district all of the tax to be derived from the moneys and credits and other moneyed capital taxed at a flat rate as provided in section sixty-nine hundred eighty-five (6985) of the code, 1927, and shall then apply such rate to the adjusted taxable value of the property in the district, necessary to raise the amount required after the deductions herein provided have been made.'

"Sec. 2. \* \* \* 'Provided that the county auditor shall in computing the tax rate for any taxing district, deduct from the total budget requirements certified by any such district eighty (80) per cent of the tax collected and distributed to such district for the preceding year from the moneys and credits and other moneyed capital taxed at a flat rate as provided in section sixty-nine hundred eighty-five (6985) of the code, 1927, and shall then apply such rate to the adjusted taxable value of the property in the district, necessary to raise the amount required after the deductions herein provided for have been made.'"

(2) Your attention is called to the fact that the auditor does not compute the tax rate for the total tax requirements but computes the millage rate for each individual fund which makes up the total for the budget. The local board estimates a tax in dollars for each fund it levies. The county auditor then arrives at the millage based upon the taxable value of the property within the district. The question has arisen as to whether or not the deductions of the moneys to be received from moneys and credits and moneyed capital should be made from the total budget of the district or should it first be apportioned to the several funds of the district and then deducted from each fund as certified to the auditor by the local board?

(3) Your attention is next called to the fact that there are certain mandatory levies, such as the secondary road construction and mandatory levies. How will Section 2, Chapter 182, Acts of the 44th G. A., affect these levies; the law specifying the number of mills that must be levied—say for example for the secondary road construction fund and the secondary road maintenance fund?

(4) Where a local board ignores the provisions of Chapter 244 (House File 368), Acts of the 44th G. A., and certifies the tax without making the 5% reduction, has the county auditor any discretion with respect to the computation of the rate for the taxing district, that is, may he refuse to spread the tax?

Both Sections 1 and 2 of said Chapter 182, Acts of the 44th G. A., relate to the same matter, that is, the method of computing the tax rate for any taxing district. In Section 1 the county auditor is directed to deduct from the total

budget requirements all of the tax derived from the moneys and credits and other moneyed capital taxed at a flat rate.

In Section 2 the county auditor is directed to deduct from the total budget requirements 30% of the tax collected and distributed to such district for the preceding year from the moneys and credits and other moneyed capital taxed at a flat rate.

It is obvious that the two sections of said chapter are inconsistent with each other. Should either section prevail?

In examining the history of Chapter 182, Acts of the 44th G. A. (House File No. 114), we find that both sections were part of the same bill and became effective at the same time. It is impossible to determine which section should prevail, that is, what was the Legislative intent. If the question should be presented to the Courts we are of the opinion that they would hold that it is impossible to determine the Legislative intent, and that both sections being inconsistent with each other, the act is not valid.

We are, therefore, of the opinion that for the reason stated Chapter 182, Acts of the 44th G. A., is invalid and should be ignored.

**BOARD OF EDUCATION:** Board has no authority to pay expenses of students to N. E. A.

July 3, 1931. *State Board of Education:* This will acknowledge receipt of your letter of recent date in which you request the opinion of this Department upon the following proposition:

"Does the State University of Iowa have the legal right and authority to pay the expenses of a student who has been appointed to represent and to appear on the program of the National Education Association meeting to be held in Los Angeles, California?"

We are of the opinion that this expense cannot be paid from the appropriated funds of the University nor from the income of the University from tuition or other sources from the property of the state dedicated to the use of the University nor from any other source where the funds are the proceeds of the activities of the University as an institution. The University might have funds arising from extra curricular activities, entertainments, or some source wherein the University itself or the student body is acting not in a governmental capacity from which this expense could be paid.

**SCHOOLS AND SCHOOL DISTRICTS:** School board has no authority to rent text books.

July 3, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this Department upon the following proposition:

"Enclosed is a copy of a contract which has come to this department with a request for an opinion as to the legality of its provisions. Will you please let us know whether or not boards of education may legally enter into such agreements as are specified in said contract?"

"We should like to have your opinion on this matter at an early date and thank you in advance for it."

This contract provides for the rental of text books and one encyclopedia by the party of the first part to the board of directors of the school corporation; that the title to said text books and encyclopedia shall remain in the party of the first part, and shall be merely hired out and rented by it to the board of

directors for a period of one year subject to certain extensions; that the board may loan or hire out the said books to parents or pupils; and that the board shall pay by warrant a specified amount at the end of each year as a rental on the said books.

It is a well established rule that a school district is a municipal corporation and that such corporations are limited in their powers to those granted by the statutes.

The only powers granted to school districts in connection with the use of text books are contained in Sections 4446 et sequi of the code which authorize the school district to purchase text books adopted by the board and sell same at cost to the pupils of their respective districts; and Sections 4464 et sequi as amended by Chapter 100, Section 35, Laws of the Forty-third General Assembly, which provides for the purchase of text books by the board and the loaning of the same free to the pupils, subject to such regulations as the board may prescribe. This latter action requires authorization from the voters under Sections 4464 et sequi of the Code.

We are, therefore, of the opinion that, under the rules above set out and the sections of the statute cited, no board of education has the power or authority to enter into a contract such as you submit, which provides for the rental of text books to the board. Such contract, if entered into by the board of supervisors, would be ultra vires as to the school district, and the members would, therefore, be acting in their individual capacity and the members, themselves, would be liable on the contract, if any liability was incurred.

**ROADS AND HIGHWAYS:** (See opinion—Buchanan county.)

July 3, 1931. *County Attorney, Independence, Iowa:* We acknowledge receipt of request for an opinion of this department on the following question:

On June 23, 1927, Buchanan county authorized the board of supervisors to issue \$1,000,000.00 of county primary road bonds to pave the primary roads of the county, which roads were primaries No. 11 and No. 20. The project on said primaries was completed. It was necessary to issue all of the authorized bonds except \$75,000.00 worth. These bonds are still unissued. During the year 1931 the Highway Commission has added to the primary road system of this county two primary roads, No. 187 and No. 190. The Highway Commission is now proposing that the board issue the balance of the bonds in the sum of \$75,000.00 for the purpose of improving the added primary roads; said roads not being in existence at the time the voters authorized the issue.

Does the Osceola county case have any bearing on Buchanan county's situation?

May these bonds be issued and the funds used for the improvement of primaries No. 187 and No. 190 which were added after the bond election?

The Osceola county case (*Harding vs. Board, et al.*) holds in effect that the money received from the sale of bonds which the board was authorized to issue for the improvement of the *primary roads of the county* could only be expended on the primary roads of said county as they existed at the time of the election, and that none of the proceeds of said bonds could be used to improve a re-located primary road which was a material change in the primary road as it existed at the time of the election. The expenditure of any of the proceeds of such a bond issue on such re-located primary road or roads would be a diversion of the funds and illegal.

Of course, there is no question but that the board of your county may issue the balance of the unissued bonds, but what good would this do when the funds

received from the sale of the same could not be expended upon the added primary roads? Immediately upon the issuance of the bonds interest would start to run and the county would be unable to use the funds and would be paying interest thereon unnecessarily.

**ROADS AND HIGHWAYS:** A conditional approval construction program for a local county road, when the condition cannot be complied with, must be re-submitted to a new board of approval. (Chapter 20, Acts of the 43rd G. A.)

July 7, 1931. *County Attorney, Tipton, Iowa:* We acknowledge receipt of your letter under date of May 23, 1931, requesting an opinion of this department on the following question:

Where the board of approval, acting pursuant to the provisions of Chapter 20, Acts of the 43rd General Assembly, has provisionally approved the construction program on certain local county roads, said construction program for these roads being approved upon the condition that the property owners along said highways donate right of way and the property owners now refuse to do this; what is the correct procedure with respect to the matter?

In our opinion it would be necessary to convene the board of approval for the purpose of passing upon the program with respect to these particular highways.

**INSURANCE—FRATERNAL BENEFICIARY SOCIETIES:** See opinion. Chapter 198, Acts 44th G. A.) (Sections 8869-8880, Code 1927.)

July 8, 1931. *Commissioner of Insurance:* We acknowledge receipt of your letter under date of July 6, 1931, requesting an opinion of this department on the following question:

What is the effect of Chapter 198, Acts of the 44th G. A., upon the power of the Commissioner of Insurance of the State of Iowa with respect to any existing fraternal beneficiary society which desires to transform itself into a legal reserve level premium company doing business either as a mutual or stock company? Does the Commissioner, in view of said chapter, have any authority with respect to the matter?

Section 1, Chapter 198, Acts of the 44th G. A., provides in part as follows:

“\* \* \* Nothing in Sections 8869 to 8880, both inclusive, of Chapter 402 of the Code of Iowa, 1927, shall be construed to apply to any association organized solely for benevolent purposes and whose articles of incorporation, or constitution, rules or by laws provide that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation or guild.”

Clearly said chapter relieves any existing fraternal beneficiary society whose members belong to the same occupation or guild from complying with the sections of the Code of Iowa, 1927, named, to-wit:

8869-8880.

These are the sections of the code which give the Commissioner of Insurance authority with respect to the re-organization of fraternal beneficiary societies.

**INSURANCE:** Life insurance companies, under the law must deposit the securities representing the amount of the net cash value of all policies with the Insurance Commissioner. (Secs. 8655, 8737, Code 1927.)

July 8, 1931. *Commissioner of Insurance:* We acknowledge receipt of your letter of July 6, 1931, requesting an opinion of this department on the following question:

May the Insurance Commissioner of the State of Iowa, under any conditions, permit an insurance company, which is qualified to do business in this state and which is required to deposit the net cash value of all policies in force with the Insurance Department of the State, deposit the securities which represent the reserve in a private depository such as in the safety deposit vaults of a bank instead of in the vaults of the Insurance Department of the State of Iowa?

Section 8655 of the Code of Iowa, 1927, requires that the net cash value of all policies in force shall be deposited with the Insurance Commissioner, the amount of said deposits to be in securities such as are specified in Section 8737, Code of Iowa, 1927.

We are of the opinion that the net cash value of all policies of life insurance in force, represented by securities specified in Section 8737, Code of Iowa, 1927, must, under Section 8655, Code of Iowa, 1927, be deposited with the Commissioner of Insurance of the State of Iowa, and be under his control and his control only and that any arrangement or agreement made by the Commissioner with the company or anyone else to the contrary which would place said deposited securities in the joint control of any one else other than the Commissioner alone would be a violation of the statutes pertaining to the same. The placing of said deposit of said securities under the joint control of the Commissioner and the company and/or any one else would certainly be a violation of the law.

**CRIMINAL LAW—COUNTY ATTORNEY:** Statute of limitations applies to County Attorney's informations in same manner as to indictments.

July 10, 1931. *County Attorney, Osage, Iowa:* You have requested the opinion of this Department as to whether the limitations contained and expressed in Section 13444 of the Code would invalidate a charge so that a defendant who has not been apprehended could be prosecuted after the three year period has expired if he has been charged before the expiration thereof by a county attorney's information as provided in Chapter 634 of the Code.

Section 13444 of the Code contains the provisions limiting the time within which criminal prosecutions may be brought and reads as follows:

"In all other cases an indictment for a public offense must be found within three years after the commission thereof, and not afterwards."

Chapter 634 of the Code provides that criminal offenses of a certain described class may be prosecuted to final judgment "either on indictment, as is now or may be hereafter provided, or on information as herein provided, and the district and supreme courts shall possess and exercise the same power and jurisdiction to hear, try and determine prosecutions on information, as herein provided, for all such criminal offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of like prosecutions upon indictment." It would seem that this provision of law would extend to a county attorney's information the same considerations and rules as are applicable to indictments. This is especially true in view of the provisions of Section 13655 which undertake to make all provisions of law applicable to indictments, applicable also to county attorney's informations. It is provided also in Section 13655 that "all other proceedings in cases of indictments, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as nearly as may be, apply to information and all prosecutions and proceedings thereon."

We are, therefore, of the opinion that you may charge by a county attorney's information prior to the expiration of the three year period of limitations, and that said charge will be good and that a valid trial may be had thereunder even after the expiration of said period of limitation.

**CITIES AND TOWNS—WATER CONTRACTS:** Under Section 6132, Code of Iowa, 1927, the council of a city or town may on its own motion submit at a general or special municipal election any of the questions provided for in Section 6130, Code of Iowa, 1927, and the mayor must on petition signed by 50 property owners of an incorporated town submit said questions to an election.

July 10, 1931. *County Attorney, Des Moines, Iowa:* We acknowledge receipt of your letter under date of July 10, 1931, requesting an opinion of this department on the following question:

Under Section 6132, Code of Iowa, 1927, may the council of a city or town on its own motion submit at a general or special municipal election any of the questions provided for in Section 6130, Code of Iowa, 1927, or must there be a petition signed by fifty property owners of an incorporated town before such questions may be submitted at an election?

Clearly, under said Section 6132, Code of Iowa, 1927, the council may itself order any one or all of the questions provided for in Section 6130, Code of Iowa 1927, submitted to a vote of the legal electors of a city or town at a general or special municipal election. Under said Section 6132, where the council does not order one of the questions submitted, upon petition of fifty property owners of an incorporated town, the mayor of said town must submit the question. In other words, the council may on its own motion submit the question, and fifty property owners may petition the mayor to have the question submitted. Two ways are provided.

**COUNTIES—COURT EXPENSE FUND:** Under the provisions of Section 7172, Code 1927, any costs or expenses incurred in connection with any particular piece of litigation for which the county might be liable is taxable against the court expense fund but the ordinary expense for salaries and supplies in connection with the business of the court is not so taxable.

July 13, 1931. *County Attorney, Pocahontas, Iowa:* We have yours of July 2, 1931, wherein you ask, "what expenditures are properly taxable against the court expense fund as provided for in Code Section 7172, Code of 1927."

Said Section reads as follows:

"In any county where, by reason of extraordinary or unusual litigation the rates herein fixed for ordinary county revenue are found to be insufficient to pay the same, the board of supervisors may create an additional fund to be known as court expense fund, and may levy for such fund such rate of taxes as shall be necessary to pay all court expenses chargeable to the county. Such fund shall be used for no other purpose, and the levy therefor shall be dispensed with when the authorized levy for the ordinary county revenue is sufficient to meet the necessary county expenditures including such court expenses. Provided, further, that the levy for the purpose of providing an additional fund shall not exceed three mills on a dollar."

It is the opinion of this office that ordinary expenditures payable by the county for any purpose in connection with any particular piece of litigation, might be taxed against said fund, but that the cost of routine business of the court such as furnishing quarters therefor, equipment thereof, and such as the payment of salaries of court officials, would not be taxable against said fund.

**ACCOUNTANTS—REGISTRATION:** Under Section 15-d, Chap. 59, Acts of the 43rd G. A., it is necessary that all members of a firm be registered as certified public accountants under the laws of the state of Iowa before the firm may be registered.

July 14, 1931. *Iowa Board of Accountancy, Cedar Rapids, Iowa:* We acknowledge receipt of your letter under date of July 13, 1931, requesting an opinion of this department on the following question:

Section 15-d, Chapter 59, Acts of the 43rd G. A., provides for registration of firm, association, or corporate names. The question has arisen as to whether or not, where one member of a foreign firm of public accountants is registered to practice under the laws of this state, he may, under the provisions of Section 15-d, have the firm name with whom he is connected registered?

We call your attention to Section 12-c, Chapter 59, Acts of the 43rd General Assembly. We are of the opinion that all of the members of a firm, association, or corporation must be first registered as certified public accountants under the laws of the State of Iowa before the firm name may be registered as provided for in Section 15-d, Acts of the 43rd General Assembly.

**TAXATION—ELLIOTT BILL:** The requirements of Chap. 244, Acts of the 44th G. A., are met if the total fund raised by taxation is reduced by 5% less the amount raised by the 1930 levies. (See opinion.)

July 17, 1931. *County Attorney, Toledo, Iowa:* We acknowledge receipt of your letter under date of July 8, 1931, requesting an opinion of this department on the following question:

Does Chapter 244, Acts of the 44th G. A. (Elliott bill) require a 5% reduction in each fund or only a 5% reduction in the total amount of taxes levied?

We are of the opinion that, under Chapter 244, Acts of the 44th General Assembly (Elliott bill), all that is required is that the total funds raised by taxation be reduced by 5% less than the amount raised by the 1930 levies. Clearly, this being true, it would not make any difference as to whether a certain levy for a certain fund is eliminated and another levy substituted for another fund so long as the total funds raised by taxation are 5% less than those raised by the 1930 levies.

**FIRE MARSHAL:** See opinion. (Chapter 287, Acts 43rd G. A.; Section 1654, Code of 1927; Chapter 257, Chapter 12, Acts of the 44th G. A.)

July 17, 1931. *State Fire Marshal:* We acknowledge receipt of your letter under date of July 10, 1931, requesting an opinion of this department on the following question:

Section 1654, Code of Iowa, 1927, provides for the payment of fees for reporting of fires; also mileage to township clerks. Many of these reports were not received by this office until after July 30, 1931; on account of the fact that some of these reports were not received until after the biennium it makes it almost impossible to make payment from funds appropriated by the legislature for this expense.

Should the balance of the appropriation in Chapter 287, Section 17, Line 18, Acts of the 43rd G. A., be carried forward to the current appropriation in Chapter 257, Section 17, Line 16, Acts of the 44th G. A., and then all requisitions from July 1, 1931, be certified against the current appropriation, whether the fire was before or after July 1, 1931? Does Chapter 12, Acts of the 44th G. A., limit the mileage paid under the provisions of Section 1654, Code of Iowa, 1927, or not?

We are of the opinion that the balance of the appropriation made by Chapter

287, Acts of the 43rd G. A., should be carried forward and added to the current appropriations, as provided in Chapter 257, Section 17, line 16, Acts of the 44th G. A., and that all requisitions be paid out of the current appropriation, whether the fire was before or after July 1, 1931.

We are of the opinion that Chapter 12, Acts of the 44th G. A., does not in any manner affect the mileage paid pursuant to the provisions of Section 1654, Code of Iowa, 1927.

**FISH AND GAME:** Sec. 17, Chap. 57, Acts of the 43rd G. A., provides two ways for removing certain rough fish from the waters of the state; one is for the state to do the work itself, and the other for the state to advertise and receive bids and have them removed under a contract.

July 17, 1931. *Fish and Game Department:* We acknowledge receipt of your letter under date of July 13, 1931, requesting an opinion of this department on the following question:

Has the Fish and Game Commission authority under the law to remove rough fish from the waters of the state and to sell them for a profit, or must it be done by advertising for bids?

Section 17, Chapter 57, Acts of the 43rd G. A., so far as material to the question, provides in part as follows:

"It shall be the duty of the warden, so far as is possible, to remove from the inland waters of the state at any time and in any manner, provided that he shall do so with minimum injury to the lake or stream or the other fish, the following undesirable and injurious fish: carp, gar and dog fish. All gar and dog fish removed shall be destroyed or disposed of so as to eliminate them, so far as is possible, from the inland waters of the state. The proceeds, if any, from the sale of these fish shall be credited to the state fish and game protection fund.

"The warden may enter into written contract for taking by seine or net from the public waters of this state, buffalo, carp, quillback, dog fish, gizzard shad, and gar, but no other fish. All such contracts shall be let to the highest bidder. Bids shall be made in percentages of gross receipts for the sale of the fish so taken, to be paid to the state, but no contract shall be let until the warden shall have advertised for such bids once each week for two consecutive weeks in three newspapers of the state of Iowa for general circulation, and in three newspapers of general circulation in each of the following states: Minnesota, Wisconsin and Illinois. \* \* \*"

By the provisions of Section 14, Chapter 26, Acts of the 44th G. A., the powers and duties of the Fish and Game Warden have been transferred to the State Fish and Game Commission. It will be noted from reading Paragraph 1 of that part of Section 17 set out above, that the Warden, now State Fish and Game Commission, is granted the authority to remove from the inland waters of the state at any time and in any manner under certain restrictions, carp, gar and dog fish, and to sell and dispose of the same, and that the proceeds, if any, from the sale of these fish shall be credited to the State Fish and Game Protection Fund. Under this paragraph the State Fish and Game Commission has the authority to employ workmen on a per diem basis for the purpose of removing the undesirable fish mentioned from the waters of the state.

It will be noted that under Paragraph 2 of Section 17 above set out, that the Warden, now State Fish and Game Commission, may enter into written contract for the taking by seine or net from the public waters of this state, buffalo, carp, quillback, dog fish, gizzard shad, and gar, and that all contracts



shall be let to the highest bidder after advertising for bids in the manner provided in Section 17 of said chapter.

Thus it will be seen from what has been said that there are two methods under which the State Fish and Game Commission may remove undesirable fish from the public waters of the state; one is for the State Fish and Game Commission to employ someone to take the fish out and pay them for such services, and the other is to enter into contracts for said purpose.

**COUNTY OFFICERS:** Section 10430, Code of Iowa, 1927, with respect to the affidavit to be filed at the time the application for license is made was not changed, altered or amended by the provisions of Chapter 213, Acts of the 44th G. A.

July 17, 1931. *County Attorney, Knoxville, Iowa:* We acknowledge receipt of your letter under date of July 7, 1931, requesting an opinion of this department on the following question:

In view of the provisions of Chapter 213, Laws of the 44th G. A., and the provisions of Section 10430, Code of Iowa, 1927, should the clerk require the usual affidavit to be made by a third party as to the qualifications when one of the contracting parties makes the application, or should this affidavit be made and filed when the license is issued after the lapse of five days?

Chapter 213, Laws of the 44th G. A., in no way affected the provisions of Section 10430. We are of the opinion that at the time the application for a license is made the clerk should require the affidavit to be filed as provided for in Section 10430, Code of Iowa, 1927.

**ELECTIONS:** Since the effective date of Chapter 21, Acts of the 44th G. A., which was May 7, 1931, before any bond issue can carry it is necessary to have a 60% majority of those voting at said election.

July 17, 1931. *County Attorney, Greene, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following questions:

This county held an election since the effective date of Chapter 21, Acts of the 44th G. A. The question has arisen as to whether or not said election is governed by the provisions of Chapter 21, Acts of the 44th G. A. Is there anything unconstitutional or illegal in said act?

The question has also arisen as to whether or not there is any prohibition on the calling of another election at the will of the board of supervisors?

We are of the opinion that Chapter 21, Acts of the 44th General Assembly, applies to all elections called for the purpose of voting on bonds since the effective date of said chapter, which was May 7, 1931. There must be a 60% majority.

We do not find anything in the act which would contravene the Constitution of this state or of the United States.

We find no statute which would prohibit the board of supervisors calling an election immediately for the purpose of again submitting the question of whether or not the county should issue bonds for the improvement of the primary roads of the county.

**SECURITIES—REGISTRATION:** An issuing company whose stock is exempt from the provisions of Chap. 10, Acts 43rd G. A., who offers for sale or sells said stock in the state of Iowa must be registered either as an issuer-dealer or dealer under the provisions of Chap. 10, Acts of the 43rd G. A., before offering the same for sale, and all salesmen of said issue must be licensed.

July 17, 1931. *Secretary of State:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following questions:

(1) Under Chapter 10, Acts of the 43rd G. A., is it necessary for an issuing company, whose stock is exempt by reason of its listing on the Chicago, Boston, or New York stock exchanges, or any other exemptions under Section 4, to register with the Securities Department as a dealer in securities before they can sell their own securities?

(2) Under Chapter 10, Acts of the 43rd G. A., is it necessary for salesmen selling the securities of an issuing company whose stocks are exempt by reason of the same being listed on an exempt stock exchange to register as a salesman for the issuing company?

(3) If a salesman must be licensed, irrespective of whether or not the stock he is selling is exempt from the provisions of Chapter 10, Acts of the 43rd G. A., must the issuing company have a dealer's license?

Your attention is directed to Section 3, Paragraph 6, Chapter 10, Acts of the 43rd G. A., which reads as follows:

“(Salesman’ shall include every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer, to sell securities in any manner in this state. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer shall not be salesmen within the meaning of this definition.”

Your attention is next called to Section 11, of the same chapter, which in part reads as follows:

“No dealer or salesman shall engage in business in this state as such dealer or salesman or sell any securities *including securities exempted in section 4 of this act*, except in transactions under section 5 of this act, *unless he has been registered as a dealer or salesman in the office of the secretary of state pursuant to the provisions of this section.* \* \* \* ”

Next you are referred to that part of Section 11, Chapter 10, Acts of the 43rd G. A., which reads as follows:

“\* \* \* Upon the written application of a registered dealer and general satisfactory showing as to good character and the payment of the proper fee the secretary of state shall register as salesmen of such dealer such natural persons as the dealer may request. Such registration shall cease upon the termination of the employment of such salesman by such dealer. \* \* \* ”

It will be noted from reading that part of Section 3 above set out, that a salesman is a natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer to sell securities in any manner in this state, and that under that part of Section 11 set out above no salesman shall engage in business in this state as such unless he has been registered as a salesman.

Under Section 11 no salesman shall engage in business in this state as a salesman, even though the security is exempt under Section 4, unless he has been registered as a salesman. This being true, all salesmen must be registered with the Secretary of State.

There is no provision in Chapter 10, Acts of the 43rd G. A., for the appointment or designation of a salesman by anyone except a dealer.

We are, therefore, of the opinion that under Chapter 10, Acts of the 43rd G. A., issuers of securities, whether the same are required to be qualified or not, who offer for sale and sell securities in the State of Iowa, must be registered as an issuer-dealer if the security is one which must be qualified under

the provisions of Sections 7 or 8, and as a dealer if the security is one within the exemptions contained in Section 4 of said act.

**INSURANCE—FRATERNAL BENEFICIARY SOCIETIES:** (Order of Railway Conductors.) (Chapter 402, Code of Iowa 1927; Chapter 109, Acts 44th G. A.)

July 17, 1931. *Commissioner of Insurance:* Pursuant to your request we herewith render you an opinion on the following question:

Is the Order of Railway Conductors of America, located at Cedar Rapids, Iowa, a fraternal beneficiary association within the meaning of the definition contained in Chapter 402, Code of Iowa, 1927?

We find that the Railway Conductors of America dissolved their corporation about the year 1907, said corporation was an Iowa corporation. We also find that there is no record in the office of the Secretary of State with respect to their qualifying as a foreign corporation, so we, therefore, assume that said Order of Railway Conductors is now a voluntary association or society.

We find from examining the constitution, statutes, and rules of order that the mutual benefit department is carried for the sole benefit of its members and their beneficiaries, and that they have a lodge system with a ritualistic form of work and a representative form of government.

We are, therefore, of the opinion that said Order of Railway Conductors is a fraternal beneficiary association within the meaning of the definition as contained in Chapter 402, Code of Iowa, 1927, and as such must comply with the provisions of said chapter, except as provided in Chapter 198, Acts of the 44th General Assembly.

**INSURANCE—TAXATION:** See opinion. (Section 7025, Code of Iowa 1927.) (Chapter 404, Code of Iowa 1927.)

July 17, 1931. *Commissioner of Insurance:* Pursuant to your request we herewith render you an opinion on the following question:

We have a company organized under the laws of this state, authorized to do business in accordance with the provisions of Chapter 404 of the Code of Iowa, 1927. This company is engaged in the casualty business; solicits its business by mail, having no agents or offices in other states. Most of the business is received from without the state of Iowa.

The question has arisen as to just how the business of said company should be taxed in accordance with the provisions of Section 7025, Code of Iowa, 1927.

It would appear from reading the provisions of Section 7025, Code of Iowa, 1927, that such a company is to pay the Treasurer of State, as a privilege, occupation, or excise tax, a sum equivalent to 1% of the gross receipts on premiums, assessments, fees, and promissory obligations for business done within this state, that is, on business arising or originating within the state, after deducting the amount actually paid for losses on property located within the state or on claims arising within the state, and the amount returned on canceled policies and rejected application covering property situated or on business done within this state. In our opinion no tax can be imposed on the receipts from business originating without the State of Iowa.

**POOR RELIEF—COUNTIES:** Poor persons who are employed in road work, must be paid out of the road funds and if they are indebted to the county for poor relief on their notes said warrants may be credited back to the poor fund.

July 17, 1931. *County Attorney, West Union, Iowa:* We beg to acknowledge receipt of your letter under date of May 26, 1931, requesting an opinion of this department on the following question:

Fayette County has a number of men out of work and their families are being supported by the county. When aid is granted to these men from the poor fund a note is taken signed by the head of the family. A number of these men are willing to work for the county and have the labor credited on their notes. The question has arisen as to whether or not said men can be put on the county pay-roll for working on the road and given credit for the work they do on their notes without actually issuing warrants on the county road fund and making a transfer of said funds over to the poor fund.

We are of the opinion that where these men are employed to work on the roads that warrants must be issued against the county road fund for said work and endorsed back to the county and deposited to the credit of the poor fund.

**POOR—SUPPORT:** Where the relatives of a poor person who is liable for the support of said person under the provisions of Section 5302, Code of Iowa, 1927, and the following sections relative thereto, resides in another county other than the county of the poor person the procedure to be followed is that found in Section 5309, Code of Iowa, 1927.

July 17, 1931. *County Attorney, Corydon, Iowa:* We beg to acknowledge receipt of your letter of May 26, 1931, requesting the opinion of this department on the following question:

There is a widow residing in this county. She has lived here a number of years. She has several children who are dependent upon her for support. She is unable to properly support her family. Her husband has been dead a number of years. Her father lives in Decatur County and has sufficient property so that he could assist in taking care of these children without manual labor. We desire to compel this father (grandfather) to assist in support of these minor children. In what county would the venue of the action be and what is the proper procedure?

You are advised that Section 5302 and the following sections are only applicable, in our opinion, to cases where the relative is a resident of the county wherein the poor person resides, and that no action could be brought under those sections to compel a relative who is a resident of another county, to support such poor person.

In our opinion your procedure should be in accordance with the provisions of Section 5309, Code of Iowa, 1927. Under this section it would mean that the county would have to grant relief and then before the two year period of limitation was up commence an action in Decatur county against the father (grandfather).

**ROADS AND HIGHWAYS—DRAINAGE DISTRICTS:** Where a petition is received in accordance with Sec. 4746, Code of Iowa, 1927, before its amendment by the 44th G. A., but no action is taken on the same by the board until after the effective date of Chapter 104, Acts of the 44th G. A., it would be necessary before the board could act that the petition contain 35% of the owners of land within the district.

July 17, 1931. *County Attorney, Boone, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

The last Legislature passed what is known as Chapter 104, Acts of the 44th G. A. This act amended Section 4746, Code of Iowa, 1927, by striking "25%"

in line 13 of said section, and inserting in lieu thereof "35%". The question has arisen as to whether or not the board of supervisors would have a right to establish a district after the effective date of the act upon petitions received before the effective date when said petitions only contained 25% of the owners of land within the district.

We are of the opinion that if the board had not acted upon the petitions before the effective date of the amendment to Section 4746, Code of Iowa, 1927, that the board could not establish a district after said effective date unless the petitions contained 35% of the owners of the land within the district.

The question as to when the petitions were received would not make any difference, the determining factor being the time when the board acts upon the petitions.

**TAXATION:** There is no authority in the statute which would authorize any city or town wherein state property is located to spread and levy an assessment on state property for the cost of construction of a sewer which passes along or adjacent to said property.

July 17, 1931. *Executive Council:* We acknowledge receipt of your letter under date of May 20, 1931, requesting an opinion of this department on the following question:

Whether or not, under the law, the City of Des Moines has power to spread an assessment against State property for installation of a sewer in the street abutting upon State property.

We beg to advise that we find no statute which would authorize the City of Des Moines or any other city wherein State property is located to spread and levy an assessment against State property for costs of construction of a sewer which passes along and adjacent to State property.

**ROADS AND HIGHWAYS:** The question of whether or not a city controls its own bridge levies is one of fact. Failure to make a levy for such purposes in any one year would not change the fact. (Sec. 7, Chap. 20, Acts of the 43rd G. A.)

July 17, 1931. *County Attorney, Dubuque, Iowa:* We acknowledge receipt of your letter under date of July 7, 1931, requesting an opinion of this department on the following question:

Has the board of supervisors, under Section 7, Chapter 20, Acts of the 43rd G. A., authority to make a levy of two mills on all the taxable property in the county, including the City of Dubuque when the City of Dubuque has failed to make a levy for bridge purposes?

Your attention is called to Section 7, Chapter 20, Acts of the 43rd G. A., which reads as follows:

"Mandatory construction levy. The board of supervisors shall, annually, at the September session of the board, commencing in 1929, levy, for secondary road construction purposes, a tax of two mills on the dollar on all the taxable property in the county, except on property within the cities which control their own bridge levies."

It will be noted from reading this section that the mandatory construction levy of two mills is to be levied on all the taxable property of the county except on property within cities which control their own bridge levies.

The question, therefore, is: does the City of Dubuque control its own bridge levy; If so, then the board of supervisors has only authority to make a levy on all the property of the county except the property within the City of Dubuque.

This is a question of fact. Whether or no the city of Dubuque makes a levy this year for bridge purposes would not control in any way.

**TAXATION—BOARD OF SUPERVISORS:** Board of Review to receive \$1.00 a session and not more than one session per day.

July 17, 1931. *County Attorney, Pocahontas, Iowa:* Replying to your letter of May 25, 1931, which is as follows:

"Where the Board of Review of the city or township hold Board of Review meetings one in the forenoon, one in the afternoon and one in the evening of the same day, is the Board of Supervisors within their authority in paying the members of the Board for more than one three hour session?"

"Is the Board of Supervisors within their authority to pay for extra clerk help hired by the Board of Review to assist in the work of the Board?"

"Where the Board of Review met 21 consecutive days on Board of Review matters and on many days were in session nine hours, are the members of the said board of review entitled to more than \$1.00 for their day's work or may they be paid \$1.00 for each three hours?"

—beg to advise that we are of the opinion that there is no provision which would permit the Board of Supervisors to pay for extra clerk help hired by the Board of Review; and that the members of the Board of Review should receive an amount not exceeding \$1.00 for each session of not less than three hours; but this statute does not contemplate payment for more than one session per day. The Board of Review should be paid \$1.00 for each day where they held a meeting of more than three hours.

**CITIES AND TOWNS—TAXATION:** Not necessary that a subsequent election be held where band tax had been previously authorized by electors. (Chap. 296, Code of 1927; Sections 5835-6, Code of 1927.)

July 17, 1931. *County Attorney, Waterloo, Iowa:* This will acknowledge receipt of your request of July 3, 1931, which is as follows:

"The City of Waterloo, being a city of under forty thousand population, voted on March twenty-sixth, 1928, to levy a tax for the purpose of furnishing a band fund, as provided in Chapter 296 of the Iowa Code of 1927. Accordingly, a tax of approximately .78 mills was duly levied.

"Thereafter, about January first, 1931, said city was declared to be a city of over forty thousand population, as shown by the United States census for 1930. Section 5835, Chapter 296, contains no provision for a band tax levy for any amount in cities of over forty thousand.

"In April, 1931, the Iowa legislature, 44th G. A., amended Section 5835 by adding thereto a clause providing that cities over forty thousand and under one hundred twenty-five thousand population, may vote a band tax levy not to exceed one-half mill,—this law to go into effect July 4, 1931. The City of Waterloo, under the census of 1930, is a city of over forty thousand and under one hundred twenty-five thousand.

"May the City Council of Waterloo now levy a band tax, not to exceed one-half mill, under Section 5835 as amended by the 44th G. A., without the question being again submitted to the voters as provided by Section 5836?"

In reply we would say that we are of the opinion that under the above quoted facts as given by you, the city council of Waterloo, Iowa, could now levy a band tax without the question again being submitted to the voters, as provided by Section 5836 of the Code of 1927, as the question having been previously submitted to the electors of the city and they having acted upon it, would be sufficient authority for the present council to levy the municipal band tax.

**CITIES AND TOWNS—CONSTITUTIONAL LAW:** Where the payment of bonds for the construction of sanitary sewers and disposal plant is to be

paid for from the earnings of the plant, the issuance of the bonds would not fall within the constitutional limitation. (Chapter 157, 44 G. A., Sec. 6261, Code of 1927.)

July 17, 1931. *Commissioner of Health*: This will acknowledge receipt of your request of July 13, 1931, which is as follows:

"Chapter 157 of the Session Laws of the Forty-fourth General Assembly provides for the financing of sanitary utilities by sewer rental charges. Under this chapter municipalities may by ordinance establish rentals for sewers and apply such charge for the construction, operation or maintenance of sanitary utilities. They may also use such funds for meeting interest or principal payments on bonds legally authorized for financing such sanitary utilities.

"If a municipal council issued bonds for the purpose of constructing a sewage disposal works or other sanitary utility as defined in this chapter and if they provided for the payment of interest and for the retirement of such bonds from such funds as collected from sewer rentals under the provision of this chapter, could such a bond issue be legally made in excess of the limitation of five per cent of the assessed valuation placed by the constitution on municipal indebtedness?"

In reply we desire to quote from the case of *Swanson vs. City of Ottumwa*, 118 Iowa, at page 161, wherein it is said that:

"A city expressly authorized by statute may levy a special tax for a public purpose and pledge or appropriate the same for a series of years, and if, in a contract for making the public improvement for which such tax is levied, the city limits its liability to the mere duty of levying and collecting such tax, no municipal indebtedness is incurred within the meaning of the constitution."

We are, therefore, of the opinion that under the holding of the above quoted case, a city council might issue bonds for the purpose of contracting a sewage disposal works or other sanitary utility, and where the payment of the bonds was provided for from the earnings of the utility the constitutional limitation of five per cent on municipal indebtedness would not apply.

I might also bring to your attention the provisions of Section 6261 of the Code of 1927 as amended by Chapter 179 of the Acts of the Forty-third General Assembly, which provide for the anticipation of special taxes for the construction fund of sewer utilities and purifying plants and for the construction and maintenance of interception sewers and disposal works.

COUNTY OFFICERS: (See Opinion).

July 17, 1931. *County Attorney, Sigourney, Iowa*: This will acknowledge receipt of your request of April 29, 1931, which is as follows:

"As you know, the Legislature amended Section 10429 of the 1927 Code. The amendment has caused some confusion in the law, and while the law does not go into effect until July, the Clerk of the Court has asked for an interpretation of this law, as it is somewhat confusing when taken in connection with Section 10430.

"This amendment to the marriage license law is of interest to ninety-nine clerks, and believe an interpretation by your office will be of great benefit to all.

"First—The first question is: Does the fifth day, as set out in Paragraph One of Senate file 148, mean the fifth day, counting the day of the application, as the first day, or does it mean the fifth day counting the first day after the application was made? In other words, if an application was made on the first day of a month, would the fifth day mean the fifth day of that month, or does it mean the sixth day of that month?

"Second—You will note that Section 10430 provides that at least one affidavit from some competent and disinterested person be made, stating the age and qualification of the parties, shall be made at the time of the application.

Under the amendment, is it necessary to have a witness at the time the license is issued? For example, if the application was made in a county other than this county, and then a certificate issued by the Clerk of that county were presented to the Clerk of this county, would it be necessary that before issuing the license, the Clerk requires a witness, and in case the certificate issued by the Clerk of the other county did not show that there had been a witness to the application, could the Clerk of this county refuse the issuance of a license on that ground?

"Third—Can the Clerk of the Court charge a fee for taking the application and issuing a certificate and can he also charge a fee for issuing the license, that is, if one Clerk issues the certificate, and one issues the license to whom is paid the fee?

Replying to your first question, we are of the opinion that "the fifth day after application has been made" would require counting the day the application is made as the first day so that where an application was filed on the first day of the month, a license might be issued on the fifth day of the month.

As to your second question, will say that there has been no repeal of Section 10430 and there being no provision in Chapter 213, Acts of the Forty-fourth General Assembly for a witness to the application, it would, therefore, be necessary that a witness be present and sign the affidavit required at the time of the issuance of the license.

Taking the third question, referring to Chapter 213, Acts of the Forty-fourth General Assembly, there is no provision made in the amendment for a fee to the clerk who takes the application, so that a fee for the issuance of a license would be paid to the clerk issuing same, but there would be no charge for acceptance of application and issuance of certificate.

**SCHOOLS AND SCHOOL DISTRICTS—COUNTY OFFICERS—BOARD OF SUPERVISORS:** Cannot enter into contract to pay county superintendent specified sum for salary, deputy and expenses without filing verified statement of expense account.

July 21, 1931. *County Attorney, Leon, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following proposition:

"The county superintendent has entered into an agreement with the board whereby the county superintendent is to run the office for \$2,700 and pay his own deputy and traveling expenses therefrom under which arrangement it was not considered necessary for the county superintendent to file monthly statements of mileage and expense."

You inquire whether this arrangement complies with the statute.

We are constrained to hold that this contract is void and contrary to the statutes as well as contrary to public policy. It amounts to payment of expenses without the verified claims filed as provided by statute and would encourage office holders to neglect necessary traveling in order to keep their traveling expenses at a minimum as all in excess of traveling expenses would inure to their benefits. It also removes control of the board of supervisors which is charged with the duty of supervision of the office and is in our opinion illegal and void. Under the provisions of section 5233 of the code of 1927, it is the mandatory duty of the county superintendent in order to be entitled to expenses to file each month with the county auditor, an itemized and verified statement of his actual and necessary expenses incurred during the previous month in the performance of his official duties within his county. Under no other conditions can the county superintendent draw traveling or other expenses.



**SCHOOLS AND SCHOOL DISTRICTS:** Transportation not required in consolidated school where operated with original rural school building. Sec. 4178 Code, 1927. Sec. 4179 Code.

July 22, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"In a regularly established consolidated school district, as provided in chapter 209 of the code, where no central school building has been constructed and where the old one room schools are still maintained in their original locations, is the school board of the consolidated school district required to furnish transportation for pupils living a mile or more from these one room schools they maintain in lieu of a central school, as required in Section 4179, Code of 1927?"

We are of the opinion that the requirement for transportation applies only when a central school building is established and that such requirement would not apply where the district continues to operate its schools in the rural schools originally established.

The location of the building or school site is specified in section 4178 of the code, 1927, and clearly contemplates one central building. The provisions for transportation are found in section 4179 of said code and requires transportation for all children of school age living within said corporation and more than a mile from such school. We are clearly of the opinion that this refers to the centrally located school building and not to the smaller rural school building scattered throughout the district.

**FISH AND GAME:** State Game Warden has authority to appoint deputy game wardens subject to the approval of the State Fish and Game Commission. State Fish and Game Commission has authority to fix the salaries of employees of the State Fish and Game Department within the limitations of Section 54, Chapter 257, Acts of the 44th G. A. Said section would also govern with respect to the number of deputy game wardens to be employed. The State Fish and Game Commission has power to distribute fish and game for the purpose of propagating the same either for private or public owned waters or lands.

July 23, 1931. *Fish and Game Commission, Council Bluffs, Iowa:* We acknowledge receipt of your letters under dates of May 28th and June 1, 1931, respectively, requesting an opinion of this department on the following questions:

(1) Under Chapter 26, Acts of the 44th G. A., who is authorized to appoint deputy game wardens and other employees of the fish and game department?

(2) Has the fish and game commission authority to determine and fix the salaries of the department within the maximum limit established by Chapter 26, Acts of the 44th G. A.?

(3) Has the fish and game commission power to determine the number of technical or administrative assistants or deputy wardens needed provided that the expenditure does not exceed the amount provided by the budget?

(4) Is the provision of Section 8, to the effect that the commission may make rules and regulations having the effect of law, a delegation of legislative authority which is of doubtful validity?

(5) Has the commission the power of removing unsatisfactory deputies or assistants who have been appointed by the warden whether prior to or after the creation of the commission?

(6) Has the commission power to distribute fish and game irrespective of whether such distribution is to private or public owned waters or lands?

(1)

We are of the opinion that, under Chapter 26, Acts of the 44th G. A., the deputy game wardens are to be appointed by the state game warden, subject, however,

to the approval of the Commission. This authority does not, however, apply to the deputy game wardens who were such at the time of the effective date of said chapter. It would only apply to the deputy game wardens appointed after April 16, 1931.

You are referred to Section 54, Chapter 257, Acts of the 44th G. A., and advised that this section would govern the fish and game department with respect to the number of deputy game wardens, assistants, and employees of the state fish and game department and the maximum salaries which may be allowed.

(2)

We are of the opinion that it is within the province of the Commission to determine and fix the salaries of all employees of the state fish and game department within the limits provided for in Section 54, Chapter 257, Acts of the 44th G. A.

(3)

We are of the opinion that the State Fish and Game Commission has the power to fix the salaries of technical and administrative assistants and employees of the state fish and game department, and has the authority to approve or disapprove the appointments made by the warden.

(4)

Section 28, Chapter 26, Acts of the 44th G. A., is valid so long as the rules and regulations adopted by the Commission are not in derogation of any statute and are in harmony with the statutes.

(5)

We do not find any power or authority granted to the Commission to remove employees of the fish and game department. There is, however, a general statute which provides for ouster in certain specified cases.

(6)

We are of the opinion that the State Fish and Game Commission has the power and authority to distribute fish and game for the purpose of propagating the same, either for private or public owned waters or lands.

**BOARD OF SUPERVISORS—ROADS AND HIGHWAYS:** Expense of destroying noxious weeds specified in section 1, chapter 111 laws of the forty-fourth general assembly should be paid by the county from the secondary road maintenance fund.

July 29, 1931. *County Attorney, Fort Dodge, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following question:

“Are the costs of the destruction of noxious weeds under section 4819 code as amended by section 1, chapter 111, laws of the forty-fourth general assembly to be paid by the abutting land owners, or by the county, and if by the county from what fund?”

We are of the opinion that under this section as amended, the cost of destroying these weeds cannot be assessed to the abutting property owner since the act specifically places the responsibility for destroying such weeds upon the board of supervisors on the roads under their control.

We are also of the opinion that this cost should be paid from the secondary

road maintenance fund as the destruction of these weeds under the present statute, is in fact, a part of the maintenance of the road. The work can best be done by those who are already maintaining the roads and the purpose of the legislature in placing this responsibility upon the county was in the interest of road maintenance rather than in the interest of the prevention of the spread of the weeds. Otherwise the responsibility would have been left on the adjoining property owner.

**BOARD OF CONSERVATION:** Board of Conservation has no authority to offer a reward for the arrest and conviction of one committing a crime within state parks.

July 31, 1931. *Board of Conservation:* This will acknowledge receipt of your request of July 21, 1931, which is as follows:

"The Board of Conservation requests an opinion as to the right of the Board to offer a cash reward, out of the Board's appropriation, for the arrest and conviction of any persons committing a crime within the parks."

In reply we would say that the right to offer a cash reward for the arrest and conviction of any persons committing a crime within the parks in this state rests solely with the Governor, and that the Board of Conservation would not have the right to offer a reward for any person committing any crime in the parks.

**PEDDLERS:** Merchants operating bread and grocery wagons throughout the county should have a peddlers' license, unless they are selling their own work or a production of either themselves or their employer. (Section 7177, Code of 1927.)

July 31, 1931. *County Attorney, Greene, Iowa:* This will acknowledge receipt of your request of July 22, 1931, which is as follows:

"There is a practice by some of our merchants in this county to operate bread and grocery wagons throughout their trade territory in the county. They sell and collect cash for their goods as they are delivered and solicit business. A number of them have taken out peddlers' license as provided for in Section 7177 of the 1927 Code of Iowa.

"There have been conflicting opinions rendered on this question prior to my term of office and I would appreciate it very much if your office would favor me with an opinion on whether or not a license is needed in the above stated cases."

In reply we beg to state that the merchants operating, under the facts as set out by you in your letter, should secure peddlers' licenses, unless they fall within the exceptions of Section 7177, that is, unless they were transient vendors of drugs, or persons running huckster wagons, or selling and distributing fresh meat, fish, fruit, or vegetables, or selling their own work or production.

**BOARD OF EDUCATION—INDIGENT PERSONS:** Where an indigent person dies at either the Psychopathic Hospital or the general hospital, the cost of embalming, preparation for burial and transportation charge should be paid by the State University, which will later be reimbursed by the state. (Secs. 3989 and 3990, Code of 1927.)

July 31, 1931. *State Board of Education:* This will acknowledge receipt of your request of July 22, 1931, relative to the expense to be borne of patients who have died in the general hospital, and in which you submit the following question:

"Does Chapter 199 of the Code, 1927, entitled *Medical and Surgical Treatment*

of *Indigent Persons*, authorize the State University of Iowa, or the hospital, to pay funeral expenses including the cost of embalming and a casket for a committed patient who died while in the hospital?"

In reply we would state that while Chapter 199 does not provide for the State Hospital to pay the funeral expenses, that is, the cost of embalming and a casket for a committed patient who was an indigent and died in the hospital, we are of the opinion that Sections 3989 and 3990 of the Code, 1927, does provide that the State of Iowa should pay this cost for a committed public patient or a voluntary public patient, or a committed private patient at either the Psychopathic Hospital or the general hospital of medicine. Where an indigent patient died and the embalming and cost of casket and transportation charge were paid by the State University they should be reimbursed by the State.

**SOLDIERS AND SAILORS—SCHOOLS AND SCHOOL DISTRICTS:** Where a person asks for free tuition on the grounds of discharge from the Army the school authorities are governed entirely by whether or not the party has an honorable discharge from the Army or whether he has a release from the induction into the draft. (Chapter 287, Sec. 47, Laws, 43rd G. A.)

July 31, 1931. *State Board of Education:* This will acknowledge receipt of your request of July 22, 1931, which is as follows:

"Chapter 287, Section 47, Sub-Section 9, Page 368, Laws of the 43d G. A., is as follows:

"The sum of twenty thousand dollars (\$20,000.00), or so much thereof as may be necessary, for the biennium beginning July 1, 1929, and ending June 30, 1931, for the payment of tuition for honorably discharged soldiers or sailors of the United States who are citizens of Iowa, who enroll in any division of the state university, at Iowa City, or the college of agriculture and mechanic arts, at Ames, said payment being fixed at twenty dollars (\$20.00) for each such student for each semester and each summer school."

"Mr. Merle E. Makeever is a student in the State University of Iowa. He is petitioning for a reduction of tuition for the 1931 summer session because of two days' service as a soldier in the United States army between November 12, 1918, the date that he was inducted into service, and the date of his release, November 14, 1918. A part of his petition is as follows:

"My enlistment in the army was in late September, 1918, but I was told by the Examiner that he would notify me when another mobilization was to be made at Camp Meade, Md. My induction papers read that I was in the army at 10 A. M. November 12, 1918. All calls were held up with the signing of the Armistice and on November 15, I received a release, dated November 14, 1918."

"I shall appreciate your answer to the following question: Is Mr. Merle E. Makeever, who is a student in the State University of Iowa, entitled to a refund of tuition under the provisions of Chapter 287, Section 47, Sub-Section 9, Page 368, Laws of the 43rd G. A.?"

The status of Mr. M. E. Makeever rests solely upon the question as to whether or not he has an honorable discharge from the United States army or whether he has a discharge from the draft. In the event he has an honorable discharge from the United States army, he would be entitled to come within the provisions of Chapter 287, Laws of the 43rd G. A., but if he only has a release from his induction into the draft, he is not entitled to the provisions as he is not an honorably discharged soldier of the United States army.

**COUNTY OFFICERS:** Provisions of Chapter 47 of the Acts of the 44th G. A., do not change the statutory requirements of Section 2322.

July 31, 1931. *County Attorney, Fort Madison, Iowa:* This will acknowledge receipt of your request of July 22, 1931, which is as follows:

"I desire to direct your attention to Chapter 47 of the laws of the 44th General Assembly of Iowa amending Section 2322 of the Code and other sections.

"Under the law as amended, it is my opinion that where a person dies as the result of an accident, for instance a drowning or automobile accident, the case shall be reported to the coroner and only the coroner can make the death certificate. In other words, even though a doctor has been called and makes an attempt to resuscitate any drowning case or gives some attention shortly before the death to a person injured in an accident, the case must be presented to the coroner and the coroner and not the doctor must make the death certificate.

"I should like to be informed whether or not you concur with me or whether you would accept a death certificate made by a doctor under such circumstances."

In reply I would say that we are of the opinion that the amendment made by the 44th General Assembly does not change the provisions of Section 2322, Code of 1927, in that where there has been medical attention given the injured person prior to death, the physician so attending would be entitled to make the death certificate.

**COUNTY OFFICERS—SOLDIERS:** County auditor not authorized to issue warrants against an exhausted fund of the Soldier's Relief Commission.

July 31, 1931. *Auditor of State:* This will acknowledge receipt of your request of July 22, 1931, in which you submit the following question:

"May the Soldier's Relief Commission grant aid and the County Auditor legally issue warrants for such aid on the Soldier's Relief Fund, when the entire anticipated revenue for the year is exhausted?"

In reply we would say that there is no provision for the county auditor to issue warrants against the anticipated revenue of the Soldier's Relief Fund that has been exhausted, and he would not be authorized to issue any warrants until such time as the board of supervisors had made the levy for the coming year.

**CITIES AND TOWNS—CIGARETTE TAX:** Where the cigarette tax was not paid on or before July first the cigarette license is automatically cancelled and the state revenue department should not sell stamps to the former license holder. (Sec. 1563, Code of 1927.)

July 31, 1931. *Treasurer of State:* This will acknowledge receipt of your request of July 24, 1931, which is as follows:

"The question has come up now, 'Can the City Council cancel a cigarette permit for the non-payment of tax after July first, the year following the date of its issuance.' Should this department refuse the sale of stamps to such persons not paying tax, after the City Clerk certifies to this department the non-payment of tax."

We are of the opinion that under the provisions of Section 1563, Code of 1927, the permit automatically becomes null and void if the holder thereof fails to pay the mulct tax on or before July first. This is borne out by the last paragraph of Section 1563 which reads as follows:

"All permits shall become null and void if the holder thereof shall fail to pay a maximum mulct tax on or before July first each year thereafter for the year then beginning."

Your department should refuse to sell cigarette stamps to such persons as the city clerks certify have failed to pay the tax on or before July first.

**DEPARTMENT OF AGRICULTURE:** Appropriation made under provisions of

Chap. 266, Acts 44th G. A., may be expended for the purpose of eradicating grasshopper crop pest.

July 31, 1931. *Secretary of Agriculture*: I have your communication of the 30th in which you propound the following question:

"The grasshopper invasion in western Iowa is a serious menace at this time. Would it be possible to use the appropriation made in Chapter 263 of the Forty-fourth General Assembly to combat this menace?"

The 42nd General Assembly passed what is known as The Iowa Crop Pest Act, which is Chapter 68, Acts 42nd General Assembly. The 42nd, 43rd and 44th General Assemblies each made an appropriation to be expended under the provisions of Chapter 68, Acts of the 42nd General Assembly.

It is the opinion of this Department that the appropriation made under Chapter 263, Acts of the 44th General Assembly, may be expended for the purposes indicated in your letter. I would suggest however, as a matter of precaution, that you get the approval of the Governor and the Director of the Budget conforming to the provisions of Section 61 of Chapter 257, Acts of the 44th General Assembly.

**CITIES AND TOWNS:** Cities and towns have the power to purchase materials and repair streets by day labor without advertising and receiving bids. (Secs. 5938, 5945, Code 1927.)

August 3, 1931. *Auditor of State*: We acknowledge receipt of your letter under date of July 27, 1931, requesting an opinion of this Department on the following question:

Has a city or town, under the laws of this State, a legal right to buy materials and repair the streets by day labor?

Cities and towns have such powers as are granted to them by the legislature and as are expressed in the statutes of this State, and such powers as are necessarily implied from those powers granted and incident to municipal corporations.

Section 5938, Code of Iowa, 1927, grants unto cities and towns the power to establish, lay off, open, widen, straighten, narrow, vacate, extend, improve, and repair streets, highways, avenues, etc., within their limits.

Section 5945, Code of Iowa, 1927, makes it the duty of the city and town to care for, supervise and control all public highways, streets, avenues, alleys, etc., within the city, and require the city to keep the same open and in repair and free from nuisances.

Our Courts have sustained judgments against cities and towns for damages sustained by reason of injuries received because of defects or holes in the pavement, that where a defect or holes exists in the pavement for four or five days, the city or town is chargeable with notice of such defect, and is liable for injuries sustained on the ground of the negligence of the city or town.

We are, therefore, of the opinion that a city or town has authority, under the laws of this State, to buy materials for use in repairing the streets of such city or town without advertising for bids and may do said repair work by day labor.

August 3, 1931. *Auditor of State*: Supplementing our opinion to you under date of August 3, 1931, we beg to advise that the statutes do not specify any particular form of contract that must be used in connection with the purchase of materials, and that the form of contract attached to your request under date of

July 27, 1931, appears to be in proper form. It is simply a statement of the terms and conditions under which the material is to be bought.

Having held that the Council has authority to purchase materials for repairing the streets without advertising for bids, the question as to what form of contract, or what kind of contract shall be entered into is one for the Council to determine.

**ROADS AND HIGHWAYS:** The provisions of Section 43, Chapter 20, Acts of the 43rd General Assembly construed. (See Opinion.)

August 7, 1931. *State Highway Commission, Ames, Iowa:* We acknowledge receipt of your letter of July 17, 1931, requesting an opinion of this department on the following questions:

(1) The secondary road construction program for a county as adopted by the county officials and approved by the Highway Commission involves bridge construction work estimated to cost \$15,000.00, no one structure of which is estimated to cost more than \$1,500.00.

a. Should this construction work be advertised and let at a public letting?

b. If a letting is held and all bids rejected and the work undertaken on a day labor basis what happens if the total cost of construction is in excess of the low bid received at the advertised letting?

c. Suppose all materials used in this construction work, such as sand, gravel, lumber, piling, cement and reinforcing steel, are bought at an advertised letting; would the county be within its legal rights in going ahead on the construction work on a day labor basis? The cost of all materials seldom exceeds 50% of the total cost of the completed work.

(2) The secondary road construction program for a county as adopted by the county officials and approved by the Highway Commission involves grading construction work estimated at a cost of \$15,000.00 of which no one mile is estimated to cost \$1,500.00.

a. Should this construction work be advertised and let at a public letting?

(3) A county has a day labor crew repairing wood bridges and is paying for such work from the maintenance fund. It is occasionally found to be more economical to entirely re-build a bridge than to repair it. Can the cost of this new construction work be paid from the maintenance fund?

(4) Where the county is desirous of buying road machinery does the county board have to have a letting and advertise and receive bids?

(5) Where the board has let a contract and then desires to add additional miles may it do so without advertising for bids where the cost of the additional mileage does not exceed \$1,500.00?

(6) Where the county is putting to permanent grade county roads and roads other than primary, and has its own equipment to do so, is it imperative that it advertise for bids then reject them all and go ahead with the county machinery?

Section 43, Chapter 20, Acts of the 43rd General Assembly provides as follows:

"Advertisement and letting. All contracts for road or bridge construction work and materials therefor of which the engineer's estimate exceeds fifteen hundred dollars (\$1,500), except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting. The board may reject all bids, in which event it may re-advertise, or may let the work privately at a cost not exceeding the lowest bid received, or build by day labor."

(1)

The fact that the secondary road construction program for a county, as adopted by its board and approved by the Highway Commission, involves a program of bridge construction work estimated to cost \$15,000.00 has nothing to do with the question of whether or not all of said bridge construction included in

the program should be advertised and let at a public letting. The question is, what is a *project* or job?

A *project*, when used in connection with construction work, is a completed structure or job.

The purpose of Section 43, Chapter 20, Acts of the 43rd General Assembly, is to insure that the county gets a good price for the work to be done through competition. With respect to the construction of bridges it is largely a matter of discretion with the county board as to whether or not one or more bridges shall be included within a project. The board must proceed in good faith in determining the question. The best interests of the county must be kept in mind at all times so that the county will get the work done for a fair price. The only mandates upon the board are that if the project, as estimated by the engineer, will cost to exceed \$1,500.00, then the board must advertise and receive bids and if it is of the opinion that said bids are too high it may reject the same, re-advertise, or may let the work privately at a cost not exceeding the lowest bid received, or may build by day labor.

Where the board rejects all bids and does the construction work by day labor it must exercise extraordinary care and see to it that the cost of the project when done by day labor will not exceed what it could have been done by under a contract. If the cost of the construction work when done by day labor should exceed the cost that the work could have been done for under a contract such a procedure might be construed to be unlawful.

It would not make any difference, so far as a project is concerned, whether or not the county had purchased the materials by contract after advertising and receiving bids. If the cost of the project as estimated by the engineer exceeded \$1,500.00 then the provisions of Section 43, Chapter 20, Acts of the 43rd General Assembly, must be complied with.

(2)

The question of what is to be considered a project in connection with grading construction work is quite different from that in connection with bridge construction work. The board, of course, has some discretion as to just what shall be considered a project, but the board cannot arbitrarily cut the work up into projects so as to avoid complying with the provisions of Section 43, Chapter 20, Acts of the 43rd General Assembly.

Where there is a five mile stretch of road which is to be graded the board could not in good faith and without violating the provisions of Section 43, Chapter 20, Acts of the 43rd General Assembly, divide the five mile stretch up into five different projects, no one project to cost in excess of \$1,500.00. This would be a direct attempt to avoid the provisions of Section 43, would be bad faith, and unlawful.

If the board has road grading construction work which is to be done immediately and said work could be done conveniently and completed within the time limits reasonably required by the board by one contractor, said work should be considered as one project, and if the cost exceeded \$1,500.00 it must be advertised and bids received and if the board were of the opinion that the bids received were too high it could reject all bids, re-advertise, or let by private contract for a price not in excess of the lowest bid, or build by day labor. (See *State, ex rel, vs. Garretson*, 207 Iowa, 627.)



(3)

Where a county maintains a day labor crew for the purpose of repairing wood bridges and is paying for the same out of the maintenance fund, if it is found to be necessary to build a new wood bridge the cost of the same would have to be paid out of the construction fund, for this would be considered construction work and the payment of the same out of the maintenance fund would be contrary to Chapter 20, Acts of the 43rd General Assembly.

(4)

It is a question of policy for the board to determine as to whether or not it will advertise and receive bids for the purchase of road equipment and machinery.

(5)

The question as to whether or not the board may, after the contract has been let for grading a certain mileage of road, add additional miles without advertising for bids where the cost of the additional mileage does not exceed \$1,500.00 is largely a matter of good faith on the part of the board in determining in the first instance what is or what is not a project.

If the board in letting the original contract for grading construction work acted in good faith and it was not contemplated at the time of the original letting to improve the additional miles during that year, but later it was determined to include said additional miles in the program for the year, then we think that the board may add the additional miles without advertising provided, of course, the cost of the grading construction work on said additional miles did not exceed the engineer's estimated cost of \$1,500.00. Any arbitrary action on the part of the board in connection with such improvement would be contrary to the provisions of Section 43, Chapter 20, Acts of the 43rd General Assembly, and unlawful.

(6)

Where the county owns its own road equipment and machinery and is putting to permanent grade the secondary roads of the county the board must comply with the provisions of Section 43, Chapter 20, Acts of the 43rd General Assembly.

**ROADS AND HIGHWAYS:** Where parts of a primary road have been abandoned they revert to the secondary road system if they were originally a part of the said system. The question of vacating a road is one for the determination of the county board of supervisors. There is no duty imposed upon the board of supervisors or the highway commission to provide an outlet for property owner who, by reason of a change in the road, is no longer adjacent to the highway. (Sec. 4755-b2—Chap. 237—Code 1927.)

August 8, 1931. *County Attorney, Maquoketa, Iowa:* We acknowledge receipt of your letter under date of June 22, 1931, requesting an opinion of this department on the following questions:

"A certain highway in Jackson County, Iowa, was a few years ago designated as a primary road. At the time of the designation as such the primary road followed the original course of the former county road. Subsequent thereto certain improvements were made on this highway such as grading and the elimination of certain curves. By reason of the elimination of numerous curves there are several portions of the old road which has been abandoned by the highway commission and which in turn has placed several property owners off the present primary road.

"(1) Does that portion of the highway abandoned, such as curves, revert back to the County?"

"(2) Is it incumbent upon the Board of Supervisors to vacate (providing said portions are no longer used,) said abandoned curves as set forth in Chapter 237 or is said duty placed upon the State Highway Commission?"

"(3) Is it the duty of the Board of Supervisors or the State Highway Commission to provide an outlet for a property owner who, by reason of said change, is no longer adjacent to said highway?"

(1)

You attention is called to Section 4755-b2, Code of Iowa, 1927, part of which reads as follows:

"\* \* \* Any portion of said primary system so eliminated by any changes shall revert to and become a part of the system from which originally taken. \* \* \*"

It would, therefore, follow that if the road which was designated as a primary road was originally a part of the secondary road system, then any portions of said road which have been abandoned would revert to the secondary road system.

(2)

If the abandoned portion of said primary road system reverts back to the secondary road system of the county, then, under Chapter 237, Code of Iowa, 1927, it is up to the board of supervisors as to whether or not said abandoned portion shall be vacated or not; the board of course, must proceed in accordance with the provisions of Chapter 237.

Section 4621, Chapter 237, Code of Iowa, 1927, provides specifically in effect that none of the provisions of Chapter 237 shall be construed as compelling the board to abandon any part of a highway already established.

(3)

By the provisions of Chapter 237, Code of Iowa, 1927, boards of supervisors are given the right to establish, vacate or alter a county road. In the event the board of supervisors on its own motion or upon petition, should determine to vacate a county road already established, the board must proceed strictly in accordance with the provisions of said chapter.

A land owner on the highway which it is proposed to vacate, has the right to appear and object to vacation and file a claim for any special damages which he may sustain by reason of the closing of said road. There is no mandatory duty imposed upon the board of supervisors to provide an outlet for a property owner who is adjacent to a highway which the board, by proper action, has determined to vacate. The property owner's only recourse is that if he is not satisfied with the damages awarded, if any, he may appeal from the decision of the board, unless, of course, the board has proceeded in connection with the vacation illegally, then, of course, he has a remedy. When a land owner's outlet to a highway has been taken away by reason of a vacation of said highway, the land owner has authority, under paragraph 4 of Section 7806, Code of Iowa, 1927, to secure a right of way by condemnation.

The Supreme Court of this State in the case of *Henry vs. Roberts*, 186 Iowa, 61, has considered the question of vacation very completely, and you are referred to this case.

**COUNTY OFFICERS:** Where a real estate mortgage creates an encumbrance on personal property the same, under the provisions of Sec. 10032, Code 1927,

must be indexed in the chattel mortgage index book after it has been recorded as a real estate mortgage.

August 8, 1931. *County Attorney, Emmetsburg, Iowa*: We acknowledge receipt of your letter of July 13, 1931, requesting an opinion of this department on the following question:

Section 10032, Code of Iowa, 1927, provides that where a real estate mortgage creates an incumbrance on personal property that the same shall, after being recorded, be indexed in the chattel mortgage index book. In some counties it has been the practice of the county recorder to keep a special book in which to index liens on crops, real estate mortgages which create a lien on crops, and the profits from real estate.

The question has arisen as to whether or not this would be a compliance with Section 10032, Code of Iowa, 1927, and whether or not such indexing would be sufficient to charge notice of such lien.

We are of the opinion that, under Section 10032, Code of Iowa, 1927, a real estate mortgage which creates a lien upon the rents and profits must be indexed in the chattel mortgage index book and that any indexing in any other record would not be a compliance with the statute.

It might be a convenience to index such instruments in a separate book but such a record is not recognized by statute.

**FISH AND GAME:** The Indians at Tama have only such fishing rights as do other members of the public.

August 8, 1931. *Fish and Game Commission*: We acknowledge receipt of your letter under date of April 30, 1931, with respect to the fishing rights of Indians living at Tama, Iowa. To begin with, the Indians at Tama do not reside upon a Federal Indian Reservation. They are the owners of their own land by right of purchase; they are wards of the Federal government. So far as fishing rights are concerned they have no greater rights to fish and hunt in this state than do the citizens of this state. They do not have any right to use seines or fish in any other manner than do the citizens of this state.

The Legislature of the State of Iowa has not granted them any special privileges and they are not in the same position as are Indians residing on Federal Reservations in the states where there has been reserved such land by the Federal Government for the benefit of the Indians residing and certain fishing and hunting privileges which are not enjoyed by the other citizens of the states.

**BOARD OF EDUCATION—JUDGES:** Judges of the district court cannot draw compensation from the state for delivering a series of lectures to students at the College of Law at the State University of Iowa.

August 8, 1931. *State Board of Education*: We acknowledge receipt of your letter under date of June 19, 1931, requesting an opinion of this department on the following question:

Is there anything in the law which would prohibit the Iowa State Board of Education securing a district judge to deliver a series of lectures to the students at the College of Law, at the State University of Iowa, and pay him for said services a small stipend?

We are of the opinion that inasmuch as judges are elected by the people, and under the law are required to devote their entire time to the business of the courts and are paid compensation for the same by the state, that they cannot

receive or draw any compensation from any other sub-division of the state for any services rendered.

**FISH AND GAME—COUNTY RECORDER:** Where licenses have been lost through the mail the county recorder may re-issue license. (Sec. 8, Chap. 57, Acts 43rd G. A.)

August 8, 1931. *County Attorney, Marengo, Iowa:* We acknowledge receipt of a letter under date of July 16, 1931, from your County Recorder requesting an opinion of this department on the following question:

The County Recorder's office of this county has issued hunting and fishing licenses which were lost in the mail.

The question has arisen as to whether or not the County Recorder may issue duplicate licenses for those lost in the mail, or must she pay for any licenses and deliver to the applicants?

We are of the opinion that where a County Recorder has, upon application, issued hunting and fishing licenses mailing them to the applicants, and the licenses are lost in the mail, that the applicants are entitled to demand and have issued to them licenses without paying any additional fee, and that the County Recorder, if she can establish the fact that the licenses were mailed, will not have to account for the fees for the lost licenses. Of course, it would be necessary for the applicants to establish the fact that they did not receive the licenses.

The issuance of new licenses for the lost licenses which were lost in the mail would not be the issuance of a duplicate license within the meaning of Section 8, Chapter 57, Acts of the 43rd General Assembly.

**DRAINAGE—BOARD OF SUPERVISORS:** There is no duty or obligation to keep in repair a private bridge erected across an open drainage ditch.

August 8, 1931. *County Attorney, Boone, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Is it the duty of the board of supervisors, acting as a drainage board, to maintain and keep in repair private bridges erected across an open drainage ditch, said bridge not being across or on the public highway?

We are of the opinion that there is no duty imposed upon the board of supervisors to maintain and keep in repair a private bridge across an open drainage ditch. The cost of the bridge and the maintenance of the same are a part of the damages taken into consideration when the drainage district was established, and the owner of the land is the owner of the bridge the same as he is of the buildings on his premises.

**COUNTIES:** All bequests to the county for the purchase of a county public hospital should be deposited with the county treasurer. (Sec. 5358, Code 1927.)

August 8, 1931. *County Attorney, Fairfield, Iowa:* We acknowledge receipt of a letter under date of July 20, 1931, from the secretary of the Board of Hospital Trustees of your county requesting an opinion of this department on the following question:

In this county certain bequests have been made for the benefit of the county public hospital. These bequests total about \$12,000.00. It has been the practice for the secretary of the Board of Hospital Trustees to take charge of these funds for safe-keeping. The question has arisen as to whether or not there

is any authority in the law authorizing the secretary, or making it his duty, to take charge of these funds.

We find no statute which would make it the duty of the secretary of the Board of Hospital Trustees to take charge of such funds, and neither do we find a statute requiring the secretary to give any kind of a bond.

Section 5358, Code of Iowa, 1927, specifically provides that the county treasurer shall receive and disburse all funds under the control of the board of hospital trustees. Said funds only to be drawn out upon warrants drawn by the county auditor.

We are, therefore, of the opinion that the funds now in the hands of the secretary which were received from bequests for the benefit of the county public hospital should be immediately turned over to the county treasurer and deposited with him subject to the conditions under which they were received and segregated by him to a separate fund.

**GENERAL ASSEMBLY:** Committee on reduction of expenditures has authority, under Chapter 336, Acts 44th G. A., to incur any and all expenses that may be reasonably necessary to carry out the proposals of the act and may, if in its judgment it is necessary, employ clerks, stenographers, and other help.

August 8, 1931. *Auditor of State:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Chapter 336, Acts of the 44th G. A., provided for the appointment of a committee on reduction of expenditures and appropriated out of the state treasury, from funds not otherwise appropriated, the sum of \$10,000.00 or as much more of same as may be necessary to carry out the proposals of this act. The question has arisen as to whether or not said committee has authority to employ clerks, stenographers, and other help, buy supplies and equipment and establish an office and incur any expenses thought necessary by the committee to carry out the provisions of the chapter.

We are of the opinion that said committee has authority to incur and all expenses that may be reasonably necessary to carry out the proposals of the act, and that if the employment of clerks, stenographers, other help, etc., is necessary that said committee has that power.

**DRAINAGE DISTRICTS:** Where drainage bonds have been issued and the assessment made is not sufficient to pay all of the principal and interest the county board has the right to make a deficiency levy against all of the property within the drainage district on the same basis as was the original levy made, this notwithstanding the fact that some of the landowners paid the assessment in full before bonds were issued. (Sec. 7509, Code 1927.)

August 8, 1931. *County Attorney, Spirit Lake, Iowa:* We acknowledge receipt of your letter under date of April 24, 1931, requesting an opinion of this department on the following question:

In a certain drainage district of this county an assessment was levied and spread on the lands within the district. Part of the assessments were paid in accordance with the provisions of Section 7483, Code of Iowa 1927, and part were paid in installments in accordance with the provisions of Section 7484, Code of Iowa 1927, and bonds were issued. In spreading the levies interest on the bond issue was figured at 5½% and bonds were sold bearing interest at the rate of 6%. There is now a deficiency and the question has arisen as to whether or not the assessment to take up this deficiency should be spread and levied upon all the lands in the district or only upon those lands where the taxes were paid by installment.

You are referred to Section 7509, Code of Iowa 1927. We are of the opinion that under this section the board of supervisors, acting as a drainage board, has power and authority to levy and spread a deficiency assessment for the purpose of paying the deficiency. The fact that some of the landowners in the district paid their assessments in full before the bonds were issued has nothing to do with the right of the board to make a deficiency levy.

**TAXATION:** Under Chapter 244, Acts 44th G. A., it is the duty of both county board of supervisors and the auditor to see that the provisions of said chapter are carried into effect.

August 8, 1931. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter of July 24, 1931, requesting an opinion of this department on the following questions:

(1) Does the word "raised" in line six (6), Chapter 244, Acts of the 44th G. A., mean the total funds levied?

(2) Whose duty is it to carry into effect the provisions of Chapter 244, the county board of supervisors, the auditor, or both?

(3) Is a rate fixed by law reduced by the Elliott Bill, so that in case the full rate is levied it would in fact be an illegal rate and a misdemeanor if carried on the tax lists?

(4) Supposing that the amount of taxes for mandatory levies or payments was \$70,000.00 and that \$50,000.00 was optional as to the amount. Should the reduction of 5% be figured upon the \$120,000.00 or upon the optional levies only?

(1)

We are of the opinion that the word "raised" in line six (6), Chapter 244, Acts of the 44th G. A., means the total amount of funds levied.

(2)

We are of the opinion that under Chapter 244, Acts of the 44th G. A., it is both the duty of the county board of supervisors and the county auditor to carry into effect the provisions of said chapter, this in view of Section 7169, Code of Iowa, 1927.

(3)

For answer to your third question we would suggest that the 5% reduction applies to the total funds raised by taxation other than by mandatory levies.

(4)

Your attention is called to lines 11 to 16, inclusive, Chapter 244, Acts of the 44th G. A. It will be seen that the 5% does not apply to mandatory levies or payments but only to optional levies or payments.

**CITIES AND TOWNS:** In order to eliminate entirely the band levy it would be necessary to comply with the provisions of Section 5859, Code of Iowa 1927.

August 8, 1931. *County Attorney, Eldora, Iowa:* We acknowledge receipt of your letter under date of July 27, 1931, requesting an opinion of this department on the following questions:

(1) Under Chapter 296, Code of Iowa, 1927, after the council has been authorized by a vote of the people to levy the tax for band purposes may the council cut out the levy entirely upon its own action or must it proceed in accordance with Section 5839, Code of Iowa, 1927?

(2) Would Chapter 244, Acts of the 44th G. A. authorize the city council to eliminate the band tax levy?

(1)

We are of the opinion that the city council must, under Chapter 296, Code of Iowa, 1927, after the voters have authorized the levy of a tax for band purposes make a levy for said purpose. However, they have a discretion as to the amount of the levy within the limits of two (2) mills.

It would be necessary that the provisions of Section 5859, Code of Iowa, 1927, be complied with in order to eliminate any levy for said purpose.

For your information we are enclosing copies of opinions rendered to Oscar Anderson, Director of the Budget, under date of May 21, 1931; Iowa State Highway Commission, under date of June 5, 1931, and to Vernon F. Kepford, County Attorney, Toledo, Iowa, under date of July 17, 1931, relating to the Elliott Tax Law.

**ROADS AND HIGHWAYS:** It is the mandatory duty of the county board of supervisors, under Chap. 121, Acts 44th G. A., to furnish, erect, and maintain standard signs as therein provided.

August 8, 1931. *County Attorney, Manchester, Iowa:* We acknowledge receipt of a letter from your County Engineer requesting an opinion of this department on the following question:

Is it mandatory, under Chapter 121, Acts of the 44th G. A., for the county board of supervisors to erect the signs therein provided for?

We are of the opinion that it is mandatory—upon the county board of supervisors to furnish, erect, and maintain standard signs as provided in Chapter 121, Acts of the 44th General Assembly.

**INSURANCE:** See Opinion. (The National Automobile Association, Inc.)

August 8, 1931. *Commissioner of Insurance:* We acknowledge receipt of a letter under date of June 4, 1931, from the then Commissioner of Insurance requesting an opinion of this department on the following question:

The National Automobile Association, Inc., of Omaha, Nebraska, is offering to the public a contract such as is enclosed in this letter. Is such contract an insurance contract and would it be necessary for said company to secure a permit under the laws of this state to write insurance.

We are of the opinion that the contract which you enclosed is an insurance contract, and that said company must secure a license or permit before it may offer said contract to the public.

**POOR—CARE OF—INDIANS:** No duty upon Tama County to provide poor relief for the Tama Indians.

August 8, 1931. *County Attorney, Toledo, Iowa:* We acknowledge receipt of your letter under recent date requesting an opinion of this department on the following question:

Is it incumbent upon this county to support and provide poor relief for poor Indians?

Your attention is called to the fact that most of the land which is occupied by the Indians in Tama County was purchased by the Indians, and a small amount granted to them by the State of Iowa. The State of Iowa by an act of the Legislature ceded jurisdiction of this land and of the Indians to the Federal

Government, reserving only the right to exercise police power and the right to levy taxes for *general and road purposes*. The land is now held in trust by the United States and is taxed only for general, state, and county purposes, and for road purposes. No school tax, court expense tax, poor relief tax, or other tax is levied against this land.

The Indians are wards of the Federal Government and we are of the opinion that they are not entitled to poor relief from the county for the reason that they are wards of the Federal Government and they pay no taxes for poor relief as do other property owners residing within the county.

**COSMETOLOGY—LICENSES:** An unlicensed cosmetology expert may meet patrons and advise with them but cannot direct and supervise the work by licensed operators.

August 10, 1931. *Commissioner of Health:* This will acknowledge receipt of your request of May 9, 1931, which is as follows:

“Can a cosmetology expert without an Iowa license legally direct, analyze, and supervise the work of an Iowa licensed operator in cosmetology?” As an illustration: ‘Could a shop owner employ or bring into an establishment a very noted unlicensed cosmetologist to meet their patrons and advise them what they should have as to their needs and direct the Iowa licensed operators how to do their work?’ ”

In reply we would say that we are of the opinion that the opinion rendered to you under date of May 6, 1931, answers your question with the exception of one phase of this request relative to an unlicensed expert directing Iowa licensed operators. We are of the opinion that an unlicensed cosmetology expert would be authorized to meet patrons and advise with them, but would not be authorized to direct or supervise the actual work by licensed operators.

**CITIES AND TOWNS:** A city may not require an artisan to secure a license before he can work upon a state project on state property within their city.

August 10, 1931. *Board of Control of State Institutions:* This will acknowledge receipt of your oral request which was as follows:

May a city having an ordinance requiring the licensing of an electrician demand that an electrician working for the State of Iowa on a state institution on state property first secure a license before proceeding with the work under contract?

We are of the opinion that a city cannot require one who is working for the State of Iowa on state property to secure a license under a city ordinance, inasmuch as the State of Iowa is standing in the parental position and all the powers which are vested in a city have been secured through and from the State of Iowa, and also due to the fact that the Legislature has never granted to cities the right to pass ordinances governing employees or agents of the State in the proper conduct of their employment. We are of the opinion that a city has no authority to require an agent or employee of the state to secure a license under a city ordinance to carry on work for the state on state property.

**SCHOOLS AND SCHOOL DISTRICTS—COUNTY SUPERINTENDENTS:** County superintendent has discretion under chapter 102 laws of the forty-third general assembly to determine whether territory to be detached is so located as to make a rural school practicable; has no jurisdiction to act upon such petition if there are no rural schools being operated in the territory covered in the petition.

August 11, 1931. *Superintendent of Public Instruction:* This will acknowl-



edge receipt of your letter of recent date requesting the opinion of this Department on the following propositions:

"1. When a petition has been received by the county superintendent, as provided for in Chapter 102, Acts of the 43rd General Assembly, has the county superintendent discretion to decide if it is practicable to operate a country school in territory wholly outside the corporate limits of such town?

"2. Has the county superintendent jurisdiction to act upon such petition when there is no country school in such outlying territory?"

This chapter provides that whenever a petition describing sections of land lying in close proximity to each other as shall make the operation of a country school practicable, and meeting certain other conditions, the superintendent shall detach the territory described in the petition and attach it to adjoining districts. It would therefore be a question of discretion for the county superintendent to determine whether the land described in the petition was composed of sections of land lying in such proximity to each other as would make the operation of a rural school practicable. Of course if all of the conditions were met, then there would be no discretion with the county superintendent as the language of the statute, the conditions being present, is mandatory.

In reply to your second question, we shall say that unless there are already one or more country schools in operation on the territory described in the petition seeking detachment, the county superintendent would have no jurisdiction to act on the petition and it should be dismissed. The jurisdiction of the county superintendent to act exists only when the conditions outlined in the statute are present. One of the conditions is that "upon which territory there already being one or more country schools."

As to the division of the assets and liabilities, the provisions of section 4137 would govern. It naturally follows that if there were a dispute, the provisions of section 4138 would govern, and the costs should be paid jointly by the two boards.

**SCHOOLS AND SCHOOL DISTRICTS:** A school district in entering into a contract under Section 3942 for four years of high school instruction is maintaining a four year high school course.

August 11, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following proposition:

"Where the State Teachers College, the State University of Iowa, or the College of Agriculture and Mechanic Arts enters into a contract with a particular school district to furnish instruction for the pupils of that district, as provided for in section 3942, and such contract includes instruction in all grades from kindergarten to the twelfth grade inclusive, is such district offering a four-year high school course?"

We are of the opinion that such school is offering a four-year high school course just as much as though it were maintaining the high school. Section 3942 specifically authorizes such contract and there is no limitation upon the number of grades to be taught. The discretion as to the number of grades to be offered by a school corporation is vested in the board. This being true, we are of the opinion that a board contracting with any of the institutions as described in Section 3942, could furnish this instruction.

**BOARD OF HEALTH—CORPORATIONS:** A corporation cannot lease space and advertise that it is operating an optometry department in its own name.

August 11, 1931. *Commissioner of Health*: This will acknowledge receipt of your letter of August 4, 1931, in which you ask the following question:

Can a corporation lease space in a store to a licensed optometrist for an optometrical department and advertise in its own name that it maintains such a department and is it by so doing practicing optometry, even though in its advertisements it states that the department is in charge of a licensed optometrist?

In reply we desire to cite to you the recent case of *State vs. Bailey Dental Company*, 234 N. W., 260, at page 262, wherein it is said:

"There are certain fields of occupation, which are universally recognized as 'learned professions.' Proficiency in these occupations requires long years of special study and of special research and training and of learning in the broad field of general education. Without such preparation proficiency in these professions is impossible. The law recognizes them as a part of the public weal and protects them against debasement and encourages the maintenance therein of high standards of education, of ethics and of ideals. It is for this purpose that rigid examinations are required and conducted as preliminary to the granting of a license. The statutes could be completely avoided and rendered nugatory, if one or more persons, who failed to have the requisite learning to pass the examination, might nevertheless incorporate themselves formally into a corporation in whose name they could practice lawfully the profession which was forbidden to them as individuals. A corporation, as such, has neither education, nor skill, nor ethics. These are sine qua non to a learned profession."

And inasmuch as the Legislature of this state has placed the practice of optometry on the present high plane wherein they require at least four years' study in an accredited high school, the presentation of a diploma of an accredited school of optometry and the passage of an examination on a number of subjects, all of which are necessary to the satisfactory practice of optometry, it would seem that there is no question but what it was the intention of the Legislature to place the practice of optometry under such restrictions as would sufficiently protect the people of this state from unskilled and unethical practitioners. None of the requirements above cited can be met by a corporation; and there can be no question but that optometry is closely connected with the health of mankind. Inasmuch as the Supreme Court of this state has held that the practice of a profession is not a right but a privilege granted by the state, it cannot be contended that the Legislature was not within its province when it required any practitioner of optometry to first meet the qualifications specified by statute.

We are, therefore, of the opinion that your question must be answered in the negative, and that a corporation may not advertise that it maintains an optometrical department, as by so doing it would, in fact, be practising optometry in violation of the present statutes and rule laid down in the case of *State vs. Bailey Dental Company*, even though the department is in charge of a licensed optometrist.

**BOARD OF HEALTH:** Necessary funds expended for securing of evidence by the inspectors may be included in their expense accounts. (Chapter 64, Acts of 43rd G. A., as amended by 44th G. A.)

August 11, 1931. *Commissioner of Health*: This will acknowledge receipt of your request of August 5, 1931, in which you submit the following question:

"May expense money provided for by the 43rd General Assembly for inspection work of our Law Enforcement Division be used to include the necessary

funds for the securing of evidence by the inspectors in connection with their law enforcement duties?"

In reply we desire to quote Chapter 64, Acts of the 43rd General Assembly as amended by the 44th General Assembly.

"Section 1. There is hereby created the position of health department inspector and assistant who shall be attached to the state department of health and who shall be appointed by the commissioner of health of the state of Iowa. The health department inspector's duties shall consist of investigating all violations of title VIII, code of Iowa, 1927, securing all available evidence and reporting to the department of health.

"Sec. 2. The health department inspector and assistant shall receive such salary as the executive council shall approve, and be paid out of any money in the state treasury not otherwise appropriated, provided that the entire cost of the administration and enforcement of this title shall not exceed in any year the receipts by virtue of this title for such year."

We are of the opinion that inasmuch as the inspector's duties consist of investigating violations of the so-called practice acts and securing all available evidence that such funds as must necessarily be expended in the securing of evidence would be a legitimate expense.

**CITIES AND TOWNS:** The salary of a city clerk may be increased by the city council when such clerk is employed by the city from month to month and not for a definite term or period.

August 11, 1931. *Auditor of State:* We have yours of August 10, 1931, wherein you ask:

May the salary of the city clerk be increased by the city council when that clerk is employed by the city from month to month and not for a definite term or period.

Code Section 5672 provides as follows:

"No member of any city or town council shall, during the time for which he has been elected, be appointed to any municipal office which has been created or the emoluments of which have been increased during the term for which he was elected, nor shall the emoluments of any city or town officer be changed during the term for which he has been elected or appointed, unless the office be abolished. No person who shall resign or vacate any office shall be eligible to the same during the time for which he was elected or appointed, when during the time, the emoluments of the office have been increased."

There is no provision of the Code creating a "term" for which a clerk of a city is employed.

It is therefore the opinion of this office that the salary of a city clerk who is employed from month to month by the city may be increased by proper action of the city council, provided such increase in salary is not retroactive so as to affect compensation previously provided for and paid.

**SCHOOLS AND SCHOOL DISTRICTS:** Board cannot deal with corporation for purchase of coal or other supplies where members of the board are also stockholders or directors of the corporation.

August 12, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in regard to the question whether a school board can purchase coal or other supplies from, or otherwise contract with a corporation where a member of the school board is also a stockholder, managing officer or director of the corporation.

We are of the opinion that a school board cannot thus deal with a corporation

whose officer is a member of the school board. We refer not only to section 4468 of the code, but also to the case of *James vs. City of Hamburg*, 174 Iowa, 301, where the court held that a contract with a public official, under which his private interest may conflict with the interest of the public which he is serving, and under which he may be tempted to violate his duty to the public, is against public policy and void. In the cited case, one Baldwin was cashier of a bank which was interested in the contract and was also a member of the city council. Speaking of his position, the Court said:

"He was called upon to serve two masters; one with which his interest financially was bound up; the other, in which was involved his public duty as an officer of the city. He was bound, therefore, to serve both faithfully—the bank of which he was an officer and in which he was financially interested, and the city, of which he was also an officer and servant. It is an old saying that a man cannot serve two masters, but we think the case here is even stronger than that. He was called upon practically to serve himself in a transaction in which his duty called him to serve another. These interests might be antagonistic. He might be called upon to say which he would serve—himself or the one to which he owed a public duty. If the contract had not been performed by the construction company as required by its contract, and was presented to the city in an unfinished condition, or in a condition not in compliance with the contract, a temptation would be offered to the intervener, represented by Baldwin, to disregard his public duty, and yield to the temptation of personal interest. It is this that the law guards against. It is this sort of a condition that the law is intended to avoid. It is not necessary that there be evidence of dereliction of duty on the part of a public officer to bring these contracts within the inhibition of the law. The inhibition applies when the contract is of such character that, in the very contract and in the making of it, a temptation to dereliction of duty is created. The law intends that these public officers should, like Caesar's wife, be above suspicion and temptation."

The Court in the cited case, quoting from *Bay vs. Davidson*, 133 Iowa, 668, also said:

"Now, by general law, contracts of sale as here shown cannot be upheld because they are not only violative of the fundamental law of agency, *but are contrary to public policy*. The defendant Binning was an officer and agent of the town, and the duty and obligation which the law cast upon him in such relation forbade him from acting in any transaction for himself as an individual on the one part, and as an officer and agent of the town on the other part. And it can make no difference that in the particular transaction, he refrained from voting for the purchase of goods as made. It was his duty to vote, and he could not reap an advantage by avoiding that duty."

Further, the Court said:

"It is the universal holding of the courts that, in determining the validity of contracts such as we are dealing with, it is not necessary, to avoid the contract, that it be adjudicated and determined that the parties stipulated for corrupt action. It is enough for the court to know that the contract tends to those results, and furnishes a temptation to the plaintiff to resort to corrupt means or improper influences to accomplish the result. It is the general tendency of the decisions of the courts of this country to frown upon all attempts and all contracts and all actions on the part of public officers which tend to place them in a position where they will be tempted to act from motives other than a fair and honest discharge of their public duty; and where it appears from the contract sought to be enforced that the tendencies of such contract, if allowed, will be to place the public officer in such a position that his personal interests conflict with his public duty, in all such cases the contract will be held illegal, and the courts will leave the parties in the position in which they placed themselves."

We are therefore of the opinion that such contracts are not only violative of the statutes, but that they are, as our Court has said in the cited cases, contrary to public policy, and void.

We are also of the opinion that the same rule would apply to a member of a partnership who serves on the board of education. The rule, however, would not apply to a stock holder in a corporation who was not a director or who had no active part in the management of the corporation.

**COUNTY OFFICERS—BOARD OF SUPERVISORS:** A county board of supervisors may not lease a part of the county court house to a private individual.

August 12, 1931. *Auditor of State:* We have your letter of August 12, 1931, wherein you ask:

“May a county board of supervisors lease a part of the county court house to a private individual for use as an abstract office when the occupancy of the space so leased is not necessary for the use of county business?”

Our supreme court has recently passed upon this proposition and has construed Section 5130, Code 1924, in the case of Hilgers vs. Woodbury county, 200 Iowa 1318.

That case is authority for the proposition that a board of supervisors does not have the power to enter into a private contract for the leasing of a portion of a court house to such party, and this office so holds.

**CIGARETTES:** Person taking order on one call and delivering upon a subsequent call must have a permit.

August 14, 1931. *Treasurer of State:* You have requested the opinion of this Department upon the following propositions:

“1. Can a salesman from another State, take orders from consumers in the State of Iowa for cigarettes, mailing these orders to the home office outside of the State of Iowa and on the following trip, deliver the cigarettes to these parties from his car?

“2. Would salesman be acting as the agent for the consumer if he was paid for the cigarettes at the time the order was given? In this particular case, we are not certain whether or not the salesman makes the collection at the time he takes the order or at the time he delivers the cigarettes on the following trip.”

1.

Section 1557 of the Code provides that no person shall sell cigarettes or cigarette papers without first obtaining a permit therefor in the manner provided by the chapter in which that section appears. The individual who takes orders for cigarettes and then on a subsequent visit delivers those cigarettes to the buyer thereof, is engaged in the business of selling cigarettes in this State and must have a permit therefor under the provisions of the law just referred to.

This question does not involve Interstate Commerce for the reason that the cigarettes are not sold and delivered by any transportation agency in Interstate Commerce. In any event, under the circumstances as described by you, it seems to this Department that even though the offending parties may claim that they are engaged in Interstate Commerce, the facts indicate that they are not delivering the original packages, but broken packages, and are, therefore, not protected by the Commerce clause.

2.

Under the circumstances described, and in the light of what we have said in answer to your first question, you are advised that the seller of these cigarettes is not the agent of the consumer.

The Courts would not permit any such contention to be sustained as a defense, for to do so would permit a plain, palpable evasion of the requirements of the law.

**STATE BOARD OF EDUCATION:** May make temporary lease of real estate at institutions without approval of the Executive Council; but not long term lease; record of all leases must comply with Section 3923, Code 1927.

August 15, 1931. *State Board of Education:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following propositions:

"1. In order to rent a residence belonging to any one of the state educational institutions to a tenant must the Iowa State Board of Education secure the consent of the Executive Council?

"2. In order to make a lease for land or other property for a term of one or more years for the use of any one of the state educational institutions must the Iowa State Board of Education secure the consent of the Executive Council?

"3. In order to rent a residence belonging to any one of the state educational institutions to a tenant, must the Iowa State Board of Education adopt a resolution by an aye and nay vote?"

The statute authorizes the Iowa State Board of Education to sell with the approval of the Executive Council real estate belonging to institutions under its control when not necessary for its purposes. Section 3921 (5) Code of Iowa, 1927.

We are of the opinion that the ordinary short time lease would not be a sale and would not require the approval of the Executive Council. We are further of the opinion that a long time lease of this property would require the approval of the Executive Council.

On the question of handling these properties, the statute, Section 3923 of the Code provides as follows:

"All acts of the board relating to the management, purchase, disposition or use of lands and other property of state institutions shall be entered of record which shall show the members present and how each voted on each proposition."

We are of the opinion that the record should comply with the above section. Leasing the property amounts to management or use thereof. All leases should, therefore, be made subject to the approval of the board in the manner set out in the statute above cited.

**ROADS AND HIGHWAYS:** Where a secondary road has been established by the board of supervisors and there is nothing in the proceedings with respect to the establishment to show the width, said highway is established as of the statutory width of 66 ft.

August 31, 1931. *County Attorney, Boone, Iowa:* We acknowledge receipt of your request for an opinion of this department on the following question:

In this county a county road was laid out and established in the year 1864 in accordance with the statutes then pertaining to such matters. It now appears that this highway had been graded and worked and that the width between fence lines is from 41 to 52 feet. There is nothing in the records of this county to show at just what width the road was established, although the petition

requested that a 40 foot road be laid out. The law, as it stood at the time said road was established, provided that all highways should be 66 feet in width in the absence of any other width being fixed by the order establishing same.

The question has arisen as to just what width should govern as to this particular highway.

You are referred to the cases of *The State vs. Wagner, et al.*, 45 Iowa, 482, and *Clarcken vs. Lennon*, 203 Iowa, 359. From an examination of these cases and other cases in them cited it would appear that in the absence of a specific order establishing a highway at a different width than that provided by statute, the statutory width of 66 feet would govern.

It might be suggested from the facts stated that it appears that no order was entered specifying any particular width. The statutory width would, therefore, govern.

The Court said, with respect to a request in the petition for a particular width, in the case of *State vs. Wagner, et al.*, 45 Iowa, 482, at page 484, as follows:

"It is, however, urged that the petition asked the establishment of a road only forty in width, and the commissioner having reported in favor thereof, and the auditor having established the highway, it must be presumed such a width is all that was required. This, however, is not satisfactory, because 1. The petitioners have no right to ask for the establishment of a highway of any particular width. \* \* \* Their having done so makes that much of the petition surplusage. Besides this, it is not for them to determine what is sufficient for the public in this respect."

**COUNTY OFFICERS:** Vacancy in the clerk's office filled by appointment by the court.

September 4, 1931. *County Attorney, Spencer, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following proposition:

"Where a vacancy is created in the office of the clerk of the district court, who has authority to fill such vacancy?"

We are of the opinion that sub-section 6 of Section 1152 would govern and that the vacancy would be filled by appointment by the court or a judge thereof, by order entered of record in the court journal. This appointment to fill vacancy would be effective until the vacancy is filled in the manner provided by law. There is no other manner provided by law for filling such vacancy except under the provisions of Section 1155 of the code, which provides that an officer filling a vacancy in an office which is filled by election of the people, shall continue to hold until the next regular election at which such vacancy can be filled and until the successor is elected and qualified.

In the case cited by you, *State vs. Brown*, 144 Iowa 739, the power of the court under that statute was to appoint a suitable person to act as clerk until the vacancy could be filled in the manner provided by law.

Under the present statute, Section 1152, the power of the court is to fill a vacancy. The statute specifically provides as follows:

"Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

(6) In the office of the clerk of the district court by the said court or by a judge thereof, by order entered of record in the court journal which order shall be effective until the vacancy shall be filled in the manner provided by law."

Therefore, under the present statute, the power of the court is not to ap-

point a suitable person to act as clerk until the vacancy shall be filled as provided by law, but to fill the vacancy until it shall be filled.

We are therefore of the opinion that the change in the statute is such that the opinion in *State vs. Brown, supra*, is not controlling and that the power of the court is to fill the vacancy until it is filled by election under the provisions of Section 1155 of the Code.

**TAXATION—BOARD OF SUPERVISORS:** The board of supervisors may after it has adopted the annual budget but before levy has been made reconsider its action and proceed as required in the first instance to adopt a new budget. That part of the gasoline tax going into the secondary road fund is specifically appropriated to the secondary road construction fund and can only be used for such purpose. Mandatory secondary road construction and maintenance levies may only be reduced when the provisions of Sec. 16, Chapter 20, Acts of the 43rd G. A., are applicable.

September 5, 1931. *Committee on Reduction of Governmental Expenditures:* We acknowledge receipt of your letter under date of August 31, 1931, requesting an opinion of this department on the following questions:

1—After the board of supervisors has adopted its budget and before levy has been made, has the board the power or authority to re-consider its action and reduce its budget for the ensuing year?

2—Can the budget of the gasoline tax going into the secondary road fund or any part of it be used for maintenance purposes or must it all be used for construction?

3—Can any of the levies for secondary road or maintenance purposes be reduced below the rate specified in Chapter 20, Acts of the 43rd G. A.?

1.

We are of the opinion that the board of supervisors may, after the budget has been adopted for the ensuing year but before the levy has been made, reconsider the budget and revise the same either up or down, but, of course, they must follow the same procedure as they did in the original instance—for example: they must comply with the provisions of Section 375 and the following sections of Chapter 24, Code of Iowa 1927.

2.

You are referred to Section 75, Chapter 20, Acts of the 43rd General Assembly. Under the provisions of this section two-thirds of gasoline license tax as appropriated by Section 5093-a9, Code of 1927, is specifically apportioned to the secondary road construction fund of the country.

We are, therefore, of the opinion that that portion of the gasoline license tax apportioned to the secondary road construction fund or any part of it cannot be used for maintenance purposes except only in the manner provided for by Section 18, Chapter 20, Acts of the 43rd General Assembly. Under Section 18 the board of supervisors may with the approval of the budget director make a permanent or temporary transfer of funds from the secondary road construction fund to the secondary road maintenance fund, or from the latter to the former fund.

3.

The board of supervisors has no power or authority to levy less than two (2) mills for secondary road construction purposes and twelve and one-half (12½) mills for secondary road maintenance purposes and two and one-half (2½) mills for either secondary road construction or maintenance purposes as the



board may direct, unless the combined estimated proceeds of the said mandatory levies shall exceed the total amounts collected by direct property taxation in the county from levies imposed during the year 1927 for collection in 1928 for county and township road, bridge, drainage, and dragging purposes, then the board may reduce the mandatory levies for the secondary road construction or maintenance funds, or both, to such a point where the estimated revenues from the levies shall not produce a greater amount than that raised by the levies for all road, bridge, and drainage purposes in such county by the levies imposed in 1927 for collection in 1928. See Section 16, Chapter 20, Acts of the 43rd General Assembly.

**ROADS AND HIGHWAYS: (Primary Roads—Additions).** The Highway Commission, under the provisions of Sec. 4755-b2, Code of 1927, is given certain powers with respect to the addition of roads to the primary road system.

September 5, 1931. *County Attorney, Sioux City, Iowa:* We acknowledge receipt of your letter under date of August 25, 1931, requesting an opinion of this department on the following question:

The Highway Commission during the years 1930-31 have taken over and added to the primary road system certain county trunk roads and local county roads. The question is, has the Highway Commission the power and authority to take over and add to the primary road system county trunk roads and local county roads, either or both?

Your attention is called to Section 4755-b2, Code of Iowa, 1927. Under this section the primary road system was defined as all of those main market roads which connect county seat towns and cities and main market centers as had already been designated as primary roads under Chapter 241, Code of Iowa, 1924. With the power, however, granted to the Highway Commission to eliminate and to add to said primary road system additional roads for the purpose of affording access to cities, towns, or state parks, or for the purpose of shortening the direct line of travel on important routes or to effect connections with inter-state roads at the state line.

It would, therefore, follow that if the county trunk roads and local county roads which have been added to the primary road system in Woodbury county have been added for any of the purposes named in Section 4755-b2, Code of Iowa 1927, then the Highway Commission has the power to so do.

**INSURANCE—CORPORATIONS:** No foreign insurance company may sell or dispose of its capital stock in this state without first complying with the provisions of Sec. 8613, Code of 1931, and with the provisions of Chap. 10, Acts of the 43rd G. A.

September 5, 1931. *Commissioner of Insurance:* We acknowledge receipt of your letter of August 17, 1931, requesting an opinion of this department on the following question:

What supervision or regulation, if any, does the Insurance Commissioner of this state or any other department of state have over the sale of capital stock of a foreign insurance company?

Can a foreign insurance stock company be admitted and authorized to sell stock only without first having qualified to sell insurance?

You are referred to Section 8613, Code of Iowa 1927. The last paragraph of said section provides that the Insurance Commissioner shall supervise the sale in this state of all stock, certificates, or other evidence of interest either by a domestic or foreign insurance company. This, therefore, gives the Commis-

sioner of Insurance the power to supervise the sales of stock and other transactions of foreign insurance companies in this state.

You are also advised that it would not only be necessary for a foreign stock insurance company to secure the approval of the Commissioner of Insurance before selling stock in this state but also to qualify with the Securities Department of this state in accordance with the law as contained in Chapter 10, Acts of the 43rd General Assembly.

**COUNTY OFFICERS:** Mileage, cost of maintaining prisoners in county jail and traveling expenses of the sheriff and county attorney and fees of the justices of the peace and constables in connection with enforcement of the criminal laws of the state cannot be paid out of the court expense fund; it must be paid out of the county general fund.

September 5, 1931. *County Attorney, Knorrville, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

May the sheriff's mileage and expense, including the expense of maintaining the prisoners in the county jail, and the county attorney's expense, such as travelling, etc., and also fees of the justices of the peace and constables incurred in connection with the enforcement of the criminal laws, be paid out of the court expense fund.

We are of the opinion that such expenses are not court expense and are, therefore, not properly chargeable to, and payable out of, the court expense fund. The court expense fund is for the purpose of paying the expenses for the operation of the district court. The expenses of the sheriff, county attorney, and justices of the peace are payable out of the county general fund.

**POOR RELIEF—BOARD OF SUPERVISORS:** Where board of supervisors employs persons who are receiving poor relief from the county to work on the secondary roads of the county they must pay for said services out of the secondary road funds.

September 5, 1931. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter of August 25, 1931, requesting an opinion of this department on the following question:

May the board of supervisors employ men who are out of work and who are receiving part or all of their support from the poor fund on the county roads and pay a part or all of their wages out of the poor fund?

We are of the opinion that whatever wages are paid them for work on the county roads must be paid out of the secondary road funds of the county.

We do not find any statute which would specify the amount of wages which must be paid for work on county roads. It would appear that this is a matter for the board to determine. The board could, therefore, fix the wage at a scale which was commensurate with the work rendered.

**INSURANCE—SECURITIES (Deposited)—WITHDRAWAL:** Where an Iowa company's business has been reinsured with a foreign company and all of the policyholders of the Iowa company have exchanged their policies for policies with the new company the Insurance Commissioner has authority to release securities deposited by the reinsured company.

September 5, 1931. *Commissioner of Insurance:* We acknowledge receipt of your letter under date of July 23, 1931, requesting an opinion of this department on the following question:

About two years ago a fraternal beneficiary association, organized under the

laws of this state, re-enforced its business with a similar association organized under the laws of Minnesota. The Iowa association had on deposit with this department the sum of \$165,200.00 in securities. Under the law of Minnesota the Minnesota association is not required to make a deposit with the insurance department of that state, but permits the treasurer of the association to hold said securities. The Minnesota company now advises that all of the policy holders of the Iowa association have exchanged their policies for policies in the Minnesota association and request permission to withdraw the Iowa deposit.

The question has arisen as to whether or not the Commissioner of Insurance may authorize such withdrawal.

You are referred to Section 8741, Code of Iowa, 1927. It would appear that this company is a Minnesota association and that no policies are outstanding which were issued by the Iowa corporation. It would, therefore, follow that the Minnesota association would be subject to the same law and the same requirements as any other foreign company would under the same circumstances. The purpose for which the securities in the Iowa association were deposited has ceased and we are of the opinion that, under the provisions of Section 8741, Code of Iowa 1927, the Commissioner of Insurance may permit the Minnesota association to withdraw the deposited securities.

**FISH AND GAME:** The Fish and Game Commission has authority to employ others than those designated in Sec. 54, Chap. 257, Acts of the 44th G. A. (Sec. 1717, Code of 1927; Chap. 86, Code of 1927; Chap. 26, Acts of 44th G. A.)

September 10, 1931. *Fish and Game Commission, Council Bluffs, Iowa:* We acknowledge receipt of your letter under date of September 4, 1931, requesting an opinion of this department on the following questions:

Is the State Fish and Game Commission limited to the number of employees specified in Section 54, Chapter 257, Acts of the 44th G. A., or may it employ such other employees as is necessary to properly carry out the provisions of Chapter 26 and the provisions of the statute pertaining to the purposes of the Fish and Game Department?

Section 1717, Code of Iowa 1927, creates the State Fish and Game Protection Fund which authorizes the expenditure of the same for specific purposes therein named, and for the purpose of paying *the expenses of the propagation of fish and game and distributing fish in the waters of the state and all expenditures necessary for the enforcement of the provisions of Chapter 86, Code of Iowa 1927.*

Chapter 26, Acts of the 44th G. A., creates the State Fish and Game Commission. Section 7 of said Chapter 26, among other things, authorizes the expenditure of the State Fish and Game Protection Fund for the purpose of carrying out said chapter.

Section 54, Chapter 257, Acts of the 44th General Assembly, makes an appropriation for only such employees as are therein specified. It does not prohibit, in our opinion, the Fish and Game Commission from employing such other help as may be from time to time necessary to carry out the purposes of Chapter 26, Acts of the 44th General Assembly and of Chapter 86, Code of Iowa 1927. Necessarily there are other expenditures in connection with the operation of the Fish and Game Department that are not provided for in connection with the appropriation made in Section 54, Chapter 257, Acts of the 44th General Assembly. For example: traveling expenses, expenses in connection with the care and upkeep of hatcheries, expense in connection with the freeing of the

lakes and waters of the state from contamination such as is destructive to fish life and many other expenses which are necessary to carry out the spirit and purpose of the fish and game laws of the State.

We are, therefore, of the opinion that the State Fish and Game Commission has the power to employ other employees than those specified in Section 54, Chapter 257, Acts of the 44th General Assembly, when it is found necessary in order to carry out the purposes and intent of the fish and game laws of this State. The expenditures, however, of the Fish and Game Department are limited to the amount received into the State Fish and Game Protection Fund.

**TAXATION:** Taxes suspended under Section 6950 of the Code, remain in suspension subsequent to a tax sale on a tax levied subsequent to the suspension.

September 18, 1931. *Auditor of State:* We have yours of August 25, 1931, at hand. You ask therein as follows:

"When the tax on real estate has been suspended as provided in section 6950 of the code 1927, for two years after which time said real estate tax is entered on the tax list for succeeding years for both regular and special assessments, and such tax becomes delinquent, and the property is sold at tax sale, will the treasurer's deed be subject to tax which was suspended or do suspended taxes become automatically canceled by treasurer's deed for sale for taxes subsequent to suspension?"

Section 6952 of the Code of 1927, provides as follows, and must be considered in connection with Section 6950 mentioned above.

"Grantee or devisee to pay tax. In the event that the petitioner shall sell any real estate upon which the tax has been suspended in the manner above provided, or in case any property, or any part thereof, upon which said tax has been suspended, shall pass by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of such infirm person, the taxes, without any accrued penalty, that have been thus suspended shall all become due and payable, with six per cent interest per annum from the date of such suspension, and shall be enforceable against the property or part thereof which does not pass to such spouse or minor child."

It will be noted that Section 6952 set forth above provides that when the petitioner sells the real estate taxed or in case such real estate passes by devise, bequest or inheritance to any person other than the surviving spouse or minor child, the suspended tax becomes due and payable. No provision is made for such tax becoming due and payable in case of tax sale and it is therefore, the opinion of this office that such suspended tax remains in suspension after a subsequent tax sale by the treasurer of the county.

**TAXATION—CITIES AND TOWNS:** On or before April 1st each year the city council, in any city or town where a consolidated levy has been made, must appropriate to the various funds included within the consolidated levy. They cannot appropriate all of said levy to only a part of the fund included within the same. (Secs. 6217, 6218 and Par. 16, Sec. 5663, Code of 1927.)

September 23, 1931. *Auditor of State:* We acknowledge receipt of your letter of September 4, 1931, requesting an opinion of this department on the following question:

Sections 6217, 6218, Code of Iowa 1927, provide for and authorize a consolidated tax levy in lieu of all the annual levies for the general fund, grading fund, improvement fund, city or town sewer fund, water fund, gas or electric

light or power fund and provides for an appropriation by action of the city council of a city or town prior to the first day of April each year. The following questions have arisen in connection with such consolidated levy:

1—Does the money derived from the consolidated levy have to be appropriated to the funds included in the levy?

2—Is the appropriation of this levy by the city council a separate appropriation from the appropriation provided in Paragraph 16, Section 5663, Code of 1927?

3—Can the consolidated levy be made to include the five funds specified in Section 6217, Code of 1927, and the money so derived from said consolidated levy apportioned to only two or three funds for the purposes named in Section 6217?

1.

Under Sections 6217, 6218, Code of Iowa 1927, it is the mandatory duty of the city or town council, as the case may be, to appropriate the estimated revenue to be received from a consolidated levy in such ratio as it may determine for any purposes for which such funds might have been used, but no part thereof shall be used for any other purpose, and this appropriation must be made prior to April first. When the appropriation is made by the council the amount appropriated for each purpose becomes a separate fund which may be used for only the purpose for which it is appropriated.

2.

When a city or town adopts the method of making a consolidated tax levy, as provided for in Section 6217, Code of Iowa 1927, then the appropriation of the consolidated levy, as well as all other levies, must be made in accordance with Section 6218, Code of Iowa 1927. Where a city or town does not make a consolidated levy then the appropriation must be made as provided for in Paragraph 16, Section 5663, Code of Iowa 1927.

3.

Where a city or town adopts the plan of a consolidated tax levy they may levy one tax for each of the funds specified in Section 6217, Code of Iowa 1927, which tax shall not in the aggregate exceed the total amount of taxes which such municipality might have levied therefor.

The city or town council then has a discretion as to the amount which shall be appropriated for each of the purposes, but it does not have the power to eliminate any one of the purposes. In other words, they must make an appropriation for each of the purposes which constitute the consolidated tax levy. They cannot make an appropriation of all of the consolidated tax levy for only a part of the purposes.

CITIES AND TOWNS: See opinion (re City of Shenandoah). Sec. 6320, Chap. 322, Code of 1927.

September 23, 1931. *Auditor of State:* We acknowledge receipt of your letter under date of September 8, 1931, requesting an opinion of this department on the following question:

The city of Shenandoah, Iowa, has a fire department. The driver of the fire truck receives a regular monthly salary and the other members of the department are paid a fixed annual salary. The driver from May 13, 1908, to May 14, 1918, received a fixed salary, the rest of the members of the department being paid so much per call. From February 11, 1925, to August 29, 1928, all the members of the fire department, except the driver, have received a salary of

\$100.00 per year; the driver at all times receiving a fixed salary per month. Since that time all members, including the driver, have received a fixed salary. The city of Shenandoah has not made the levy authorized in Section 6310, Chapter 322, Code of Iowa 1927, nor have the members complied with the provisions of Section 6314 of said chapter. The truck driver is desirous of retiring from the fire department. The question has arisen as to whether or not he is entitled to receive a pension in accordance with the provisions of Chapter 322, Code of Iowa 1927.

Inasmuch as no levy has been made by the city of Shenandoah for the purpose of creating a firemen's pension fund nor have any membership fees or other sums been collected from the members of said fire department that the city of Shenandoah does not have a firemen's pension fund from which to pay any pension to any member who might be entitled to the same. It would appear from the facts that the driver of the truck was the only member of said fire department that has been on any kind of a fixed salary for a period of at least twenty-two years, and that all of the other members were call members.

This being true the provisions of Section 6320, Chapter 322, Code of Iowa 1927, would be applicable to said fire department, and it appears that said section has not been complied with.

We are, therefore, of the opinion that the city of Shenandoah cannot pay any member of its fire department a pension as provided for in Chapter 322, Code of Iowa 1927, for the reason that the provision of said chapter with respect to the payment of a pension have not been complied with.

**CITIES AND TOWNS—DAM:** It is necessary for the Executive Council to fix a time for hearing and publish notice thereon as provided in Section 7769 of the 1927 Code, before permission to construct a dam as provided in Section 5821 of said Code, even after a municipality and river front commission has sought authority to construct a dam.

September 24, 1931. *Executive Council:* We have yours of September 22, 1931, wherein you ask:

"An Iowa municipality in which a river front improvement commission has authority over the river and banks within the city limits has applied to the Executive Council for permission to construct a dam as provided in Section 5821, Code of Iowa, 1927. Is it necessary in such case for the Executive Council to fix a time for hearing and publish notice thereof as provided in Section 7769 of the 1927 Code?"

Section 5821, above mentioned, provides as follows:

"Said commission may adopt plans, profiles, and specifications for the improvement of the said river channel and banks, and the reclaiming of lands between the meandered lines of said stream within such city, and the construction of dams; but before the beginning of the execution of the same, such plans, profiles, and specifications shall be approved by the executive council."

Section 7767 of the 1927 Code provides as follows:

"No dam shall be constructed, maintained, or operated in this state in any navigable or meandered stream for any purpose, or in any other stream for manufacturing nor power purposes, nor shall any water be taken from such streams for industrial purposes unless a permit has been granted by the Executive Council to the person, firm, corporation, or municipality constructing, maintaining, or operating the same."

Section 7769 of the 1927 Code provides for publication of notice of an application for permit to construct a dam under the provisions of Section 7767 set forth above.

The provisions of Section 7767 were originally contained in Senate File No. 186, paragraph 1, dated March 26, 1924, hence all of those provisions were enacted or re-enacted subsequent to the provisions of Section 5821 set forth above.

The damming of a stream may affect riparian rights on that stream far above the site of the dam. The effect of such dam may, and in the majority cases does, extend to the riparian owner above the dam site and outside the limits of the corporation.

The provisions of Sections 7767 and 7769, Code of 1927, were made for the protection of all riparian owners in order that they might file objection or protest in case their rights were seriously affected.

After due consideration of the statutes in question we are forced to the conclusion that a city commission must follow the provisions of Chapter 363, Code of 1927, in constructing a dam within the corporate limits which would necessarily require the procedure specified in said chapter.

**SCHOOLS AND SCHOOL DISTRICTS:** Institute fund not a dead fund by reason of Chapters 84-85 Laws of the Forty-fourth General Assembly.

September 28, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following proposition:

"Does the institute fund on hand on July 4, 1931, collected and accrued under the provisions of Section 4108-4118 of the Code, become a dead fund in view of the enactment of Chapters 84 and 85 Laws of the Forty-fourth General Assembly?"

We are of the opinion that such fund does not become a dead fund. The enactment by the General Assembly is merely a substitution of procedure and method of conducting the institute and the institute fund on hand when the substitute act became effective would remain a portion of the institute fund. The total effect of Chapters 84 and 85, Laws of the Forty-fourth General Assembly, is merely a substitution of the one plan for another and would not result in a reversion of the fund.

**BOARD OF SUPERVISORS:** Mileage and per diem of the board of supervisors for any service performed by any of the members thereof are payable only out of the county general fund and cannot be paid out of the secondary road construction or maintenance fund.

September 29, 1931. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your letter under date of September 19, 1931, requesting an opinion of this department, on the following question:

Can the board of supervisors be paid for committee work out of the secondary road maintenance fund?

The mileage and per diem of the board of supervisors for committee work and all other work performed by the members thereof are payable only out of the county general fund and cannot be paid out of the secondary road maintenance fund.

**BANKS AND BANKING:** Upon renewal of charter of state or savings banks, stockholders voting in favor are not required to purchase the stock of those voting against. Sec. 8371 et sequi Code, exclusive.

September 30, 1931. *Department of Banking:* We have your oral request for an opinion on the following proposition:

"Where a bank renews its charter in accordance with the provisions of Sections 8371-2-3-4-5 of the Code, are the stockholders who vote in favor of such renewal required to purchase the stock of those who vote against such renewal under the provisions of Section 8365 of the Code?"

We have reviewed the history of the sections relating to the renewal of the corporate existence of banks. We find that Sections 8371 et sequi relating thereto were enacted by the Thirty-first General Assembly and are found as Senate File 215 of that session, and in Chapter 65 Laws of the Thirty-first General Assembly. The law as it appears in the said Chapter has been amended by Chapter 13, Laws of the Forty-third General Assembly merely to change the method of filing the certificate with the Superintendent of Banking instead of the Secretary of State and the Auditor of State.

We find also that Chapter 65, Laws of the Thirty-first General Assembly provided for the repeal of all acts or parts of acts in conflict with the provisions of said act. In the volume of laws of the Thirty-first General Assembly, there appears in the title a bracketed sentence which states that this is additional to the law as it appears in Section 1618 supplement of the Code of 1913. No such clause appears in the title of the enrolled bill.

We reach the conclusion therefore, that the provisions for the renewal of the charter of state and savings banks are governed entirely by Sections 8371 to 8375 inclusive and that the method therein prescribed is exclusive and complete and that it is not necessary for the stockholders who vote in favor of renewal to purchase the stock of those who vote against such renewal as provided in Section 8365 of the Code.

No other conclusion can be reached in view of the fact that the act providing this method for the renewal of banks specifically repealed all acts or parts of acts conflicting therewith.

We are of the opinion that the Legislature by the enactment of Chapter 65, Laws of the Thirty-first General Assembly, set up the exclusive process for the renewal of the charter of state and savings banks and that such renewal is not subject to the provisions of Section 8365 of the Code.

**INSURANCE:** (Contingent bond) Re: Assoc. Bankers Corp. See opinion.

October 6, 1931. *County Attorney, Des Moines, Iowa:* We acknowledge receipt of your letter under date of October 1, 1931, requesting an opinion of this department on the following question:

Is the contingent bond enclosed herewith an insurance contract, and, therefore, one that could only be issued by an insurance company duly authorized to transact business under the laws of this state?

The company, under the bond, agrees to pay to a named beneficiary, other than the donee, if the donee dies within one year from the date thereof, an amount equal to the amount of the average daily balance for ninety days immediately preceding the death of said donee of money deposited by said donee as a savings, time, or checking account in a bank designated in the bond. Said amount in any event not to exceed the amount of said savings, time, or checking account of an agreed minimum balance, etc.

Under this contract the donee clearly has an insurable interest in his own time, savings, and/or checking account. The payment of any amount to the named or designated beneficiary is contingent upon the death of the donee within one year from the date of the bond. We have, therefore, an insurable



interest in the donee and death of the donee as a condition precedent to the beneficiary's right to take or receive under the bond.

It is the generally recognized rule, in connection with insurance, that the assured must have an insurable interest. It is the generally accepted rule that it is not necessary for the beneficiary named in a contract of insurance to have an insurable interest.

We are of the opinion that the contingent bond which you enclosed is a contract of insurance and is such a contract as can only be issued by a company authorized to transact an insurance business under the laws of this state.

**STATE BOARD OF EDUCATION—DEPOSITORIES:** In the absence of a designation by the State Board of Education of depositories for treasurer of the various state institutions it is the duty of the treasurer to select a depository for such funds. (Sec. 3935, Code, 1931.)

October 6, 1931. *State Board of Education:* We acknowledge receipt of your letter under date of October 6, 1931, requesting an opinion of this department on the following question:

In the absence of a designation by the State Board of Education of depositories for the treasurers of the various state institutions do said treasurers have authority to select the depositories for the funds coming into their hands?

Section 3935, Code of Iowa 1931, defines the duties of the treasurers of the various state institutions under the control of the State Board of Education. Among these duties are the duties to receive all appropriations made by the General Assembly for said institutions and all other funds from all other sources belonging to said institutions; to pay out said funds only on order of the Board of Education or of the finance committee and to make an accounting therefor, etc.

It being the duty of the treasurer to receive said appropriation and funds and to keep an accurate account of all of such receipts and of the expenditures thereof, we are of the opinion that in the absence of any designation by the State Board of Education of a depository for said funds that it is the duty of the treasurer to select his own depository for said fund.

**BUILDING AND LOAN ASSOCIATIONS** or Savings and Loan Associations have authority to borrow money from banks. The creditors of such associations are entitled to a preference in case of the liquidation of the assets of the association prior to the claims of the holders of stock in such associations; the officers of such associations do not have authority to pledge assets of the association as collateral to borrowings at banks; provided in each instance proper provisions therefor are contained in the Articles of Incorporation. Section 9329, Code, 1931.

October 8, 1931. *Auditor of State:* Yours of recent date is at hand. You ask therein:

Do building and loan or savings and loan associations have authority to borrow money from banks? Are creditors of such association entitled to a preference in the case of a liquidation of the association prior to the claim of the holders of stock in such associations? Do the officers of such associations have authority to pledge assets of the association as collateral to borrowings at banks?

We must assume at the outset that the associations referred to above are incorporated under the laws of this state, and that their articles of incorporation

permit the association to borrow money and pledge or mortgage the assets of the corporation as security therefor.

There is no statute in this state denying to building and loan or savings and loan associations the power to borrow money and in the absence of such restrictions the power is implied from the general nature of the business such association is organized to carry on.

*Bohn vs. Boone Building & Loan Association*, 135 Iowa 140, 112 N. W. 199.

It is therefore our opinion that a building and loan or savings and loan association organized under the laws of this state under proper power contained in its articles of incorporation, may borrow money incident to its business.

The rule in common law has always been that in the case of a liquidation of a corporation, a creditor thereof is entitled to a preference upon the obligation owed him prior to the claim of a stockholder therein. The reason for this rule is obvious. A creditor has no choice in the management of the corporation, may not choose the officers thereof, and has no interest therein except as a creditor of such corporation.

It is therefore our opinion that in the case of a liquidation of such association, a creditor thereof is entitled to priority over the holders of common stock therein.

*Bohn vs. Boone Building & Loan Association*, supra.

Section 9329, Code of Iowa, 1931, reads in part as follows:

"All building and loan or savings and loan associations \* \* \* shall have the power, subject to the terms and conditions contained in their articles of incorporation and by-laws: \* \* \* (4) To acquire, hold, encumber and convey such real estate and personal property as may be necessary for the transaction of their business."

No provision is found in the statutes for a pledge of the assets of such association other than the right to mortgage real estate above given.

The pledging of the assets of a corporation may, and oftentimes does, directly affect the rights of a creditor in case of the liquidation of such association. The code section above quoted fails to provide that the assets of such corporation may be pledged but does make the provision that real estate owned thereby may be mortgaged.

We are therefore of the opinion that no such corporation may pledge the assets of the association as collateral to borrowings at banks although the real estate owned by such association may be mortgaged as collateral thereto.

The president and secretary of such association are its executive officers. A corporation acts only through agents for the reason that it has no personality other than that provided by law.

It may delegate to its agents such powers as are consistent with the statutes and the purposes for which it was organized and that is the only way in which it can operate.

Such delegation of powers may be contained in the minutes of the meetings of the board of directors or by repeated acts of similar nature and subsequent approval thereof by such board. Such officers may be given the power by implication to borrow money and mortgage real estate therefor.

It is therefore our opinion that the secretary and president of such corporation may borrow money therefor and encumber the real estate thereof as security

for such mortgage provided such authority has been delegated to such officers by the corporation itself.

*Bohn vs. Boone Building & Loan Association, supra.*

**BUILDING AND LOAN ASSOCIATIONS:** In determining the value of the shares of stock of a mutual building and loan and savings and loan association, the indebtedness of the borrowing members therein should be deducted from the total value of such shares. Sections 7017-d1, 7017-d4, Code of Iowa, 1931.

October 8, 1931. *Auditor of State:* We have at hand yours of recent date wherein you ask, in substance as follows:

In determining the value of the shares of stock of a mutual building and loan and savings and loan association, may the indebtedness of the borrowing members therein be deducted from the total value of such shares?

Section 7017 d-1 of the 1931 Code of Iowa, provides that the value of shares of such association engaged exclusively in such business shall be assessed against said association.

Section 7017 d-2 provides that certain information be furnished the assessor who is required to arrive at the actual value of such stock, basing his findings on the information shown in the last named section by Code Section 7017 d-4, Code of 1931, which section also provides as follows:

"In arriving at the value of shares of each mutual building and loan or savings and loan association, the assessor shall allow as a deduction the total amount of indebtedness of all borrowing members to the association."

It is therefore our opinion that in arriving at the true value of shares of each mutual building and loan or savings and loan association, there should be deducted from the value prior to such deduction the total amount of indebtedness of all borrowing members to the association.

**CITIES AND TOWNS—HIGHWAYS:** The state is liable for its proportionate share of the cost of constructing improvement inside a city or town when the state owns lands which abut upon such improved highways, under Section 4634 of the 1931 Code.

October 8, 1931. *Executive Council:* We have yours of October 6, 1931, wherein you ask:

Is the state liable for its proportionate share of the cost of a street improvement inside a city or town when the state owns lands which abut upon such improved highways?

Section 4634 of the 1931 Code, reads as follows:

"When a city, town, special charter city, or county shall drain, oil, pave or hard surface a road which extends through or abuts upon lands owned by the state, the state, through the executive council, shall pay such portion of the cost of making said improvement through or along such lands as would be legally assessable against said lands were said lands privately owned, which amount shall be determined by said council, or board."

The liability provided for in the section above set forth is definite and positive, and it is the opinion of this office that the Executive Council in case such improvement is made, has no alternative excepting to make payment after due investigation, as provided in said section.

**CITIES AND TOWNS—CEMETERIES:** A city may provide for a fund to be used for investments, the interest and principal to be subject to the use of the city for the care, improvement and maintenance of cemeteries, provided

however, the expenditures thereunder are for the permanent maintenance of such cemeteries. Section 6579, Code, 1931.

October 10, 1931. *Auditor of State*: Yours of October 8, 1931, is at hand. You ask therein the following:

"May a city provide for a fund to be used for investments, the interest and principal to be subject to the use of the city for the care, improvement or maintenance of cemeteries?"

The powers and rights of a city are delegated rights and a city may do only those things that the legislature has given it the right to do.

The only provision contained in the Code relating to the creation of funds by the city for the benefit of cemeteries is Section 6579, Code of Iowa, 1931, which provides as follows:

"Every such city shall have power to create a fund from tax levies heretofore or hereafter authorized for cemeteries or from the sale of lots in cemeteries, or from other sources, including bequests or donations for the permanent maintenance of cemeteries, and the fund thus created shall not be used for any other purpose; and the city council shall have authority to cause such accumulations to be invested in bonds of the United States, or in municipal bonds or certificates, or other evidence of indebtedness issued by authority of and according to law of this or any other state, when such bonds are at or above par."

It will be noted from the above that such fund shall be used only for the *permanent maintenance of cemeteries*.

It is, therefore, the opinion of this department that no cemetery fund may be created by a city for any other purpose than the permanent maintenance of cemeteries, and that neither such fund nor the interest could be expended for improvements of a temporary nature.

**SCHOOLS AND SCHOOL DISTRICTS:** "Resident pupil" in a school township corporation means the resident of the township district and not the sub-district; limitation of pupils for maintenance of schools does not therefore apply to sub-district.

October 14, 1931. *County Attorney, Iowa City, Iowa*: This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following questions:

"1. What is the construction of the words 'resident pupil' in reference to sub-districts of school townships?"

"2. Is the present situation where there are only 4 pupils resident of the sub-district, although these pupils are attending together with 2 pupils from another sub-district of the same township, such as to render it necessary to close the school and make it illegal for the township to pay out funds for its continuance?"

"3. Is the teacher's contract valid and can she recover damages for its breach?"

"A resident pupil" in a school township is a resident of the township school corporation. The purpose of sub-district lines is for election and ordinary school attendance but the township board may direct that a pupil attend any one of the schools in the township.

Under the conditions set out in your letter it is not mandatory upon the township board to close this school and it would not be illegal for the township to pay out funds for its continuation. This would apply only if there were one school in the township and the attendance in that school had dropped below the attendance required by law.

The teacher's contract is therefore valid and she could recover for damages for breach thereof.

The Superintendent of Public Instruction has written to the county superintendent very recently explaining the construction placed on these statutes by that Department.

**SCHOOLS AND SCHOOL DISTRICTS:** Board cannot use transportation busses to go outside the district to transport non-resident pupils; nor transport non-resident pupils free of charge; nor offer any other inducement to non-resident pupils to attend which are not offered to all pupils generally.

October 15, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following propositions:

"(1) Has the board of the high school in which such student enrolls, especially in consolidated districts, legal authority to send a transportation bus outside the boundaries of its district to gather up such student, whether reimbursed or not?

"(2) May a school board legally admit a non-resident high school student to transportation busses inside the corporation without being reimbursed to the extent of the pro rata cost thereof?

"(3) May the average cost of high school tuition legally chargeable to the home district of such student, as provided in Section 4277, include costs in connection with transporting him to high school?

"(4) May a board expend a portion of the high school tuition legally collectible from the home district of such student or a portion of other public funds already on hand for the purpose of providing:

(a) Free transportation or free room rent for such non-resident students  
(b) Reimbursement to those non-resident high school students who transport themselves

(c) Any other gratuities that are not a part of the average tuition costs legally chargeable under the provisions of Section 4277 as a special inducement to certain high school non-resident students to enroll?"

We shall answer your questions in the order submitted.

(1) The board of education in a consolidated district has no legal authority to send a transportation bus outside the boundaries of its district for the purpose of gathering up nonresident students whether reimbursed for this service or not.

In the cause of Schmidt vs. Blair, 203 Iowa 1016, our court had under consideration the question of the authority of the school board to use the transportation busses in the transportation of pupils of the school to athletic games and other activities outside the school district. In this case, the court held that the clear effect of the provisions of the statute was *to limit the duty and power of the board to the transportation of children living within said corporation and more than one mile from the school house, to and from school*. The court also held that there was no power conferred on the board to provide transportation for school children residing within one mile of the school house and that there is no discretion conferred on the board to expand this delegation of power.

Therefore, there would be no power in the board to use its transportation system for the purpose of going outside the district and transporting non-resident pupils.

(2). Under the authority of the same case, we hold that the board cannot admit a non-resident high school student to the transportation busses even

within the corporation limits without being reimbursed for the cost of transportation. To permit this would be to permit the use of the public transportation facilities for a purpose not designated in the statutes and not within the power of the board.

(3) The average cost of high school tuition legally chargeable to the home district as provided in Section 4277, cannot include transporting such non-resident pupils to high school. Under Sections 4275-7 a student who has completed the approved course of study in his own district is entitled to attend school in any high school which will receive him and have the tuition up to the amount of \$12 paid by the district of his residence. Transportation is not within the contemplation of the statute and is not an element of tuition.

In the case of *Tow vs. School District, 200 Iowa, 1254-1257*, our court in construing this statute said:

"This (statute) provides that a child of high school age residing within a sub-district which does not provide a high school course, may attend high school elsewhere and it becomes the duty of his school district to pay the tuition therefor. There is no provision therein that his transportation is to be provided for. The provision is a very liberal one, as it is, and we see little reason why it should be enlarged, either by statute or by judicial construction."

(4) From the expressions of our supreme court in the above cases, it will be noted that in all of these matters the court places a strict construction on the rights, powers and duties of boards of education and on the privileges of students who were attending school in a corporation other than their own.

Reasoning from these cases, we are of the opinion that the board cannot expend a portion of the high school tuition collected from nonresident pupils for the purpose of providing any gratuity, transportation, room rent, reimbursement for cost of transportation, or any other such inducement to nonresident pupils to attend school. The cost of tuition must be computed on the basis of the actual cost of instruction and not upon any outside advantages which may be offered to the nonresident pupils.

It is a well established principle of law that school districts are municipal corporations existing at the sufferance of the state and deriving their powers by delegation from the state. Their purpose is the administration of the public educational system of the state and they have no powers which are not conferred on them by acts of the General Assembly. There are but two methods delegated to school districts under which text books may be furnished to pupils free of charge. These methods are prescribed in Sections 4238 for indigent pupils and in Sections 4464-7 where a free text book plan is adopted. Therefore, the board would not have the power to loan text books free to nonresident pupils only. This might be done as a part of the school system, but it would be necessary that it be uniform in operation and apply to all pupils alike.

These questions have been before the courts in other states. In the case of *Irwin et al. vs. Gregory et al.*, 86 Georgia Reports, 605, 13 S. E. Reports, 120, the court, speaking on the question of nonresident tuition said:

"In other words, non-residents are at least to pay for their own tuition, and the people of the town are not to be burdened as taxpayers with any part of the same. The board can put terms upon non-residents which will make their tuition a source of revenue to the school, but cannot allow terms which will make it an expense upon the inhabitants of the town."

Trusler in his work entitled "Essentials of School Law" says:

"The rate of tuition charged non-residents must at least equal the per capita cost of their education. Should the directors charge such pupils a less tuition, the deficit would have to be made good by a use of money raised by taxation in the district for the education of the children of the district, which would amount to a diversion of this money from its proper purposes."

A splendid collection of cases on the question of transportation may be found in 63 A. L. R. pages 413 to 428.

The decided cases amply bear out the conclusion reached in the foregoing opinion.

**CORPORATIONS:** The Secretary of State should not issue a permit for the transaction of business inside the state of Iowa to a foreign corporation having a name identical or nearly identical to the name of a corporation already doing business within the state. Sections 8344, 8427, Code, 1931.

October 15, 1931. *Secretary of State:* We have yours of October 10, 1931, wherein you ask in substance as follows:

Should the Secretary of State issue a permit for the transaction of business inside the state of Iowa to a foreign corporation having a name identical or nearly identical to the name of a corporation already doing business within the state?

A corporation cannot lawfully adopt the same name or a nearly identical name as that of an existing corporation created by or under the laws of the state, or of an unincorporated association or partnership doing business therein, and a domestic corporation may be enjoined from using a name similar to the name of a corporation already in existence, even though that corporation be a foreign corporation.

*Atlas Assurance Company Limited v. Atlas Insurance Company*, 138 Iowa, 228.

In the state of Iowa no corporation can be created unless it meets all the requirements of the law. Section 8344, Code of Iowa, 1931.

The Secretary of State has certain supervisory powers and duties with regard to corporations operating therein, and is the representative of the public in connection with matters of a public nature transacted in such state. From the sole standpoint of keeping the records of his own office in order it is necessary that corporations not be permitted to use identical names.

The Code section 8427, Code, 1931, provides as follows:

"Issuance of permit—effect. The secretary of state *shall* thereupon issue to such corporation, a permit in such form as he may prescribe, for the transaction of the business of such corporation, and upon the receipt of such permit said corporation shall be permitted and authorized to conduct and carry on its business in this state."

It is the opinion of this office that the code section above set forth would require the Secretary of State to issue such permit only in case the foreign corporation were meeting all of the requirements of the law, and we are of the opinion that the secretary of state should not issue a permit to a foreign corporation bearing the same name or a name very similar to the name of a corporation already transacting business within the state.

**TOWNSHIP TRUSTEES:** Miniature golf courses fall within the meaning of amusement parks, and a filling station which provides for tables or a counter for patrons and sells cooked food falls within the provisions of a roadhouse. (Sections 5582, 5584, Code of 1927.)

October 16, 1931. *County Attorney, Marshalltown, Iowa*: This will acknowledge receipt of your request of August 21st, which is as follows:

"Will you kindly give me an opinion on whether miniature golf courses located outside of the limits of a city or town are required to secure a license from the township trustees under Section 5582 of the 1927 Code of Iowa? Also as to whether or not a filling station which sells candies, pop and sandwiches must obtain a license from the township trustees. Also as to whether a regular golf course owned by private individuals and operated for a profit and open to the public is required to have a license.

"I would also appreciate your construction of Section 5584 of the Code as to the amount of license fee which should be charged by township trustees. Could they charge a license fee of \$10.00 for each place?"

We are of the opinion that a miniature golf course outside the limits of a city or town does fall within the provisions of Section 5582.

As to a filling station, which sells candies, pop and sandwiches, we believe that the question as to whether or not it falls within the definition of a roadhouse is largely a question of fact, and it is rather our belief that it was the intention of the Legislature that the definition of a roadhouse meant where food was cooked and served in the place, either at tables or at a counter, and a place where people could congregate. We are of the opinion that the question as to whether or not certain filling stations, which offer additional service to the public, fall within the provisions of a roadhouse is largely a question of fact to be determined by the method of business under which they are operated.

It is also our opinion that private individuals operating golf courses for a profit are required to secure a license from the township trustees.

As to the amount of license fees the trustees can charge, we see no reason why they cannot place a license fee of \$10.00 on each place.

COUNTY OFFICERS: Marshal acting as sheriff of superior court entitled to 10 cents a mile on civil process, but 7 cents on criminal process. (Chap. 12, 44th G. A.; Sec. 10750, Code, 1931.)

October 16, 1931. *County Attorney, Eldora, Iowa*: This will acknowledge receipt of your request of September 22nd, which is as follows:

"Based upon previous opinions of your office generally and my construction of Chapter 12 of the 44th G. A., as applied to Sec. 10719 of the 1927 Code of Iowa, I have ruled that no public officer except the county sheriff and his deputies are entitled to more than seven cents a mile.

"It is the contention of those insisting on ten cents for the marshal of Iowa Falls, that he is sheriff. My construction of the statute dealing with a marshal as sheriff of the superior court does not come within the purview of the reduction of mileage act, and that he is not a sheriff but his duties only correspond to that of sheriff."

We desire to refer you to Section 10750, which provides that the marshal of the superior court shall receive the same fees and compensation for serving the process of the superior court as a sheriff receives for like services in the district court. In view of the fact that the 44th G. A., excepted the sheriff and his deputies from the provision for seven cents a mile, we are inclined to believe that the marshal of the superior court would be entitled to ten cents a mile for the service of a civil process, but that in the service of a criminal process, he would be confined to the same fees as are paid to a constable in justice court.



**BOARD OF SUPERVISORS—COUNTY OFFICERS:** Where county officer has been over paid a compromise cannot be effected until after judgment has been rendered. Secs. 5121 and 5136, Code of 1931.)

October 16, 1931. *County Attorney, Davenport, Iowa:* This will acknowledge receipt of your request of September 16th, which is as follows:

"The coroner of Scott county is a physician and surgeon. Under the law previous to the 44th General Assembly he performed post mortem examinations himself and filed claims with the county, which claims were allowed and paid. The examiners from the State Auditor's office in checking over the records of Scott county have called the attention of the board of supervisors to the fact that such claims were not according to law as stated by a ruling from your office in the Report of the Attorney General of Iowa in 1928, Page 197. There is a considerable amount involved. The board of supervisors now wish to know, can they compromise this claim with the coroner? The different members of the board of supervisors have said they would like to compromise it if they can do so legally.

"\* \* \*

"Will you please give me your opinion as to whether the claim that the county has against its coroner for these fees wrongfully paid can be compromised in amount or not?"

In reply we would say that we are inclined to believe that Section 5121 of the Code does not authorize the Board of Supervisors to compromise with any county official until after judgment has been obtained, and then they may proceed as authorized under the provisions of Section 5136, Code of Iowa, but I am inclined to believe that Section 5121 wherein it is said "no settlement with county officers made except by a majority of the board" applies to the authorization of Section 5136.

**BOARD OF SUPERVISORS—COUNTIES:** Board of supervisors authorized to build cottage on county farm without advertising for bids where the cost is less than \$2,000.00. (Sections 5130 and 5131, Code of 1931.)

October 16, 1931. *County Attorney, Osage, Iowa:* This will acknowledge receipt of your request of September 19th in which you submit the following question:

"May the board of supervisors of its own volition build a cottage at County Farm large enough to house two families, at cost of not over \$1,200, and if so, may children be kept in the family in such cottage at the County Home?"

In reply we would say that under the provisions of paragraph 15 of Section 5130, the board of supervisors has authority to build a cottage on a county farm, and under the provisions of 5131, might do so without advertising and taking written bids where the cost would not exceed \$2,000.00.

As to the purpose for which the cottage is to be used, we do not attempt to say, as you do not set the same out in your letter.

**COUNTY OFFICERS:** Coroner entitled to \$5.00 for viewing the body and \$10.00 where an inquest is held. (Chap. 47, Acts 44th G. A.)

October 16, 1931. *County Attorney, Newton, Iowa:* This will acknowledge receipt of your request of August 20th, which is as follows:

"A member of a carnival group, which is in town for a few days, dies on the carnival grounds. The death is apparently from natural causes and there are no suspicious circumstances of any kind attending the same. The deceased being a floater the coroner makes an investigation in an effort to locate friends or relatives and being unable to find any such, he makes arrangements to have the body delivered to the state hospital for scientific purposes.

"Is it the intention of Chapter 47, Acts 44th G. A., that the coroner should be allowed a fee of \$10.00 for his services or is he entitled to charge only a fee of \$5.00?"

In reply we would say that under the facts related by you and where no inquest was held, we are inclined to believe that the coroner would be entitled to charge only a fee of \$5.00.

**SOLDIERS AND SAILORS—TAX EXEMPTION:** The widowed mother of an ex-service man is entitled to an exemption on her property where she was dependent upon her son, for his life; exemption to carry through even after the death of her son. (Section 6946, Code of 1927.)

October 16, 1931. *County Attorney, Fort Madison, Iowa:* This will acknowledge receipt of your letter of September 28th in which you make the following request for an opinion:

"I write to inquire whether or not a widowed mother, dependent during his lifetime upon a soldier in the war with Germany, is entitled to an exemption after the soldier's death, under paragraph 4 of Section 6946 of the Code of 1927."

In reply we would say that we are of the opinion that it was the intention of the Legislature that a widowed mother of an ex-service man, who was dependent during the lifetime of the ex-service man, should also be granted the exemption after the death of her son, and that it was not the intention of the Legislature that upon the death of the son, the widowed mother should be deprived of the exemption upon her property where her financial condition had not changed. It is the holding of this department that a widowed mother, dependent during the lifetime of an ex-service man upon him for support is entitled to an exemption upon her property even after the death of her son.

**ELECTIONS—TAXATION:** Where an election was held under the provisions of Section 6134-d1, the acquisition of a light plant does not become a general obligation of the city. (Chap. 158, Laws 44th G. A.)

October 16, 1931. *County Attorney, Fairfield, Iowa:* This will acknowledge receipt of your letter of September 26th in which you submit the following question:

"The city of Fairfield has called a special election for October 13, 1931, to vote upon the question of the acquisition by the Fairfield municipality of a municipal light plant.

"\* \* \*

"Can the establishment of a municipal light plant under Section 2-A, 2-B and 2-C of Chapter 158 of the Laws of the 44th General Assembly which amends Section 6134 of the 1927 Code of Iowa, create a general tax obligation on the municipality?

"\* \* \*"

In reply we would say that if an election were held to vote upon the question of the acquisition of a municipal light plant, under the provisions of Section 6134-d1 and following sections of the Code, 1931, there is no question but that it would not be a general obligation upon the city.

**TOWNSHIP OFFICERS:** Where a constable is sick, a special constable may be appointed for the necessary duties. (Section 10627, Code of 1931.)

October 16, 1931. *County Attorney, Centerville, Iowa:* This will acknowledge receipt of your request of August 22nd in which you submit the following question:

"We have a constable here who has been sick for six or eight weeks and unable to attend to his duties.

"We need a constable very badly. I have not been able to find any law that would make his sickness alone a vacancy in this office.

"Is there any way we can appoint a man to take care of this man's duties while he is incapacitated?"

We are of the opinion that under the provisions of Section 10627 a special constable might be appointed to perform the duties of the present constable who is now sick, provided, of course, that the provisions of this section are followed.

**TAXATION—CITIES AND TOWNS:** City councils, under Sec. 5838, Code 1931, have power to levy not to exceed two (2) mills for support of a band. They, therefore, have a discretion within said limit.

October 20, 1931. *County Attorney, Eldora, Iowa:* We acknowledge receipt of your letter under date of August 11, 1931, requesting an opinion of this department on the following question:

Has the city council any discretion with respect to the number of mills levied under and in accordance with the provisions of Chapter 296, Code of Iowa 1931?

Section 5838, Code of Iowa 1931, makes it the duty of the city or town council, after a band tax is authorized by a vote of the people, to levy a tax sufficient to support or employ such band not to exceed two mills. It would, therefore, follow that the city or town council has a discretion with respect to the number of mills necessary to support the band.

**ROADS AND HIGHWAYS:** If a bridge constructed on a secondary road is not accessible and useful to the public without approaches then the approaches are a part of the bridge and it is the duty of the county to build said approaches and pay for the same out of the secondary road funds. (Sec. 4644-c3, Code, 1931.)

October 20, 1931. *County Attorney, Carroll, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

The county board is contemplating the construction of a bridge within a city or town on an extension of the secondary road; the city or town does not control its own bridge levies.

The question has arisen as to whether or not the cost of constructing the approaches to the contemplated bridge should be borne by the county or by the city or town?

Our Supreme Court in the case of *Morland vs. Mitchell County*, 40 Iowa, 394, at 398, said:

"The main structure as it is called being that part which spans the river would be incomplete as a bridge without the so-called approaches. It would be utterly useless as a bridge because totally inaccessible without the approaches which are in fact a prolongation of the bridge to enable persons traveling on the highway to cross the river on the bridge."

The question, therefore, is whether or not the bridge is accessible and useful to the public without the approaches.

It would appear from the court's decision that the approaches are a part of the bridge and should be constructed by the board whose duty it is to build the bridge.

Your attention is called to Section 4644-c3, Code of 1931. It will be noted that the secondary bridge system under this connection does not include bridges in cities and towns which control their own bridge levies.

We assume, from the facts stated, that the city or town where the contemplated bridge is to be built does not control its own bridge levies, and that, therefore, it is the duty of the county board to construct said bridge. You should examine the case cited, for it appears to be strictly a question of fact; each case depending upon the particular facts in that case.

Your attention is also called to the case of *Shope vs. City of Des Moines*, 188 Iowa, 1141.

**COUNTY OFFICERS:** Under Section 12554, Code 1931, fines and costs should be paid county treasurer and fees paid prosecutor on claims allowed by board of supervisors in the regular way.

October 22, 1931. *County Attorney, Council Bluffs, Iowa:* This will acknowledge receipt of your request for an opinion on the following questions:

"Under the provisions of Section 12554 of the Code as amended by Chapter 232 of the Forty-fourth General Assembly, the same being now Section 12554 of the Code of 1931, the following questions have been raised:

1. By whom is the deduction of the fees allowed the county attorney on fines to be made;
2. What constitutes court costs allowable as deductions;
3. May the deductions be made from the total fines collected for all court costs; or are the deductions to be made from a given fine for the court costs in that particular case only?"

This section as amended provides as follows:

"12554. Fines and forfeitures. All fines and forfeitures, after deducting therefrom court costs and fees of collection, if any, and not otherwise disposed of, shall go into the treasury of the county where the same are collected for the benefit of the school fund."

1.

We have given this question extensive consideration both from the standpoint of legal interpretation and also the viewpoint of administration. These fines are collected by the clerk of the district court, the clerk of the municipal court, the clerk of the superior court, the justice of the peace, and the mayor's court.

Since none of the statutes relating to the collection and accounting for fines collected were changed, we are of the opinion that they should all be paid to the county treasurer under the now existing statutes. The county treasurer may then hold the fines collected in a suspended account in his office. The County Attorney may then file his claim for commissions with the county auditor, have the same allowed by the board of supervisors and warrant drawn for same on this suspended account in the county treasurer's office. The county auditor may then, at the time of the semi-annual apportionment, apportion the balance in this suspended account to the school districts of the county and draw warrants accordingly. The county treasurer may transfer this balance to the school fund and pay the apportionment therefrom.

We believe that this method is a fair interpretation of the statutes as they are left by the amendment of the Forty-fourth General Assembly and that this procedure will lead to a better administration of the statute than any other.

## 2.

We are of the opinion that court costs allowable as deductions in these cases are those court costs which would otherwise be paid by the county. We do not believe that such expenses as extradition expenses, travelling expenses for attendance, or other miscellaneous expenses, could be charged as court costs in such cases. The clerk collecting the fine may deduct the court costs, if they are to come out of fines and are not assessed in addition thereto, and remit the balance to the county treasurer. We believe that in most instances, the court costs will be in addition to the fine and that therefore the court costs will not, as a general rule, come out of the fine.

## 3.

We are of the opinion that the individual rule should be applied to the administration of this statute and that only the court costs and the county attorney's commission for collection, or fee, should come out of the individual fine when collected. In other words, we are of the opinion that all fines and forfeitures cannot be thrown into one account, and then the fees for collection, and the court costs of all criminal cases, taken from that account. In cases where no fine is assessed or collected the court costs should be paid as they were under the statute prior to the amendment.

**TAXATION:** State Board of Assessment and Review may require data sheets and order board of supervisors to pay the costs thereof; such work extra or special service under Section 5669.

October 22, 1931. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your letter in regard to compensation for the assessor in Iowa City and the data sheet work.

This of course, is ordered under the direction of the State Board of Assessment and Review. That board has the power under Section 17 (2) Chapter 205 Laws of the Forty-third General Assembly to prescribe such forms as it may deem necessary or expedient for the proper listing and assessment of property. In sub-section 5, of said section, it has the power to require all taxing officials to report such information as may be needful or desirable and upon such blanks as the board may prescribe.

The State Board of Assessment and Review adopted and prescribed the data sheet as one of its forms and under general order has ordered the boards of supervisors to have the work done.

We are therefore of the opinion that this would constitute extra or special services to be performed by the assessor and that the limitation of \$1,800 as prescribed in Section 5669 would not apply in such case; and that therefore, this work may be paid for by the board of supervisors.

**SCHOOLS AND SCHOOL DISTRICTS:** Minor change of boundary line does not affect organization of a new district.

October 24, 1931. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"Where two adjacent consolidated districts make minor changes in the boundary line between them, under the provisions of Sections 4140 and 4191, do the two boards in office at the time the changes were made remain in office or is it necessary for each district to elect a new board?"

We are of the opinion that such minor changes would not affect the formation of the new district and that, therefore, it would not be necessary for each district to elect a new board.

**FISH AND GAME:** Hunting license not required of non-resident to hunt on land owned by him in this state. (Secs. 1719-a1, 1720, Code of 1931.)

October 28, 1931. *Fish and Game Commission:* We acknowledge receipt of your letter of October 13, 1931, requesting an opinion of this department on the following question:

A resident of another state owns farm land in this state. Has he the right, during the open season for pheasants, to hunt on his land without a hunting license?

Your attention is called to Section 1720, Code of 1931. Clearly, under this section, the owner of farm land in this state is not required to secure a hunting license to hunt game on his own land irrespective of his residence.

Section 1719-a1, Code of 1931, is not applicable to a non-resident who owns farm land in this state; that is, so far as hunting on his own land.

**FISH AND GAME—JUSTICES OF PEACE:** Justices of peace have no authority to suspend a fine after sentence and fine have been fixed. Deputy game warden may take a person whom he arrests for violation of the law before any justice of the county.

October 28, 1931. *Fish and Game Commission:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Is it lawful for a deputy warden to take a violator before any justice of the peace in the county where the violation occurred?

Is it within the power of the justice to remit or suspend the fine after it has been fixed?

Where a deputy warden arrests a person for violation of the game laws he may take said person before any justice in the county where the violation occurred.

After the person has been tried by a justice and sentence imposed the justice then loses jurisdiction to suspend or remit the fine. The justice, however, has power at the time of trial to impose a fine and suspend the sentence as a part of the same order, but after he has entered an order imposing a fine he cannot thereafter suspend the same.

**FISH AND GAME—FUR DEALER'S LICENSE:** Under Sec. 2, Chap. 34, Acts of 44th G. A., all fur dealers' licenses expire as of March 31 each year, and said chapter applies to licenses issued prior to March 31, 1931.

October 28, 1931. *Fish and Game Commission:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

A fur dealer's license was issued to L. E. Goode of Bloomfield, Iowa, August 31, 1929. This license was for the year ending March 31, 1930. For the year ending March 31, 1931, he renewed his bond but paid no fee for a new license, claiming that there was no expiration date fixed in the statute for such a license. He has, under date of October 19th, forwarded to us a new bond for \$500.00, stating as follows: "Enclosed please find bond for \$500.00 for L. E. Goode, as Principal, and Aetna Casualty & Surety Company, as Surety, good until March 31, 1932. As Section 1766-C3 was not signed by the Governor until April 2, 1931, our license is good until March 31, 1932."

What is the effect of Section 2, Chapter 34, Acts of the 44th General Assembly?

Section 2, Chapter 34, Acts of the 44th G. A., reads as follows:

"The provisions of this act shall apply to all licenses heretofore issued, and they shall expire March 31, 1931."

We are, therefore, of the opinion that any fur dealer's license which was issued to Mr. Goode prior to the enactment of Chapter 34, Acts of the 44th G. A., expired as of March 31, 1931, and that it is now necessary for him to secure a new license in accordance with the statute.

**CIGARETTE VENDING MACHINES:** The owner and proprietor of a cigarette vending machine is liable for any illegal sales by the machine the same as though it were done by himself personally.

October 29, 1931. *Treasurer of State:* You have requested the opinion of this Department upon the question as to whether or not a person holding a permit to sell cigarettes may furnish and dispense the same through a cigarette vending machine operated mechanically upon the insertion of the purchase price in money into the machine, and whether or not if a minor should happen to operate said machine and secure cigarettes therefrom, the permit holder would be liable under the provisions of Sections 1553 and 1554 of the Code, for selling to a minor.

Your attention is called to the provisions of Section 1553 which state that no person shall "furnish to any minor under twenty-one years of age by gift, sale, or otherwise" any cigarette, etc.

It is also provided in said section that no person "shall directly or indirectly by himself or agent sell, barter, or give to any minor under sixteen years of age any tobacco in any other form," except upon the written order or consent of his parent or guardian.

The plain mandate of the statute is that no cigarettes shall be furnished or sold to minors. If any person furnishes any cigarettes to any minor by any means whatsoever, he is guilty of a violation of this law.

We are of the opinion that any person placing in operation a vending machine which furnishes cigarettes or tobacco to a minor, is liable just the same as though he had personally sold the cigarettes or tobacco to the minor.

**CITIES AND TOWNS:** City of Davenport does not have to advertise and receive bids for the purchase of motorized equipment unless there is an ordinance adopted by the city council to that effect.

October 29, 1931. *Auditor of State:* We are in receipt of your communication of recent date requesting an opinion upon the following question:

"Is the City of Davenport required by law to advertise for and receive bids for the purchase of equipment, motorized or otherwise, such equipment being used for the general maintenance and upkeep of the city?"

The City of Davenport is a special charter city, having received its charter from the State of Iowa when the State was quite young. The charter gives the City very broad powers, and in fact, in some instances more and greater power than the State itself now enjoys upon the same subject matter.

We have examined the general statutes and find no provision of law which requires a special charter city to advertise for and receive bids in connection with the purchasing of fire equipment. We have examined the special charter

of the City of Davenport, and we find no provision therein making this requirement.

Therefore, we are of the opinion that the matter is one subject to the ordinances of the City of Davenport, and that unless there is an ordinance requiring the advertising for and receiving of bids for such purposes, then there is no such requirement.

**MOTOR VEHICLES:** Drivers' license fees forwarded the treasurer of state under the provisions of Sec. 4960-d25, should be credited to the state general fund.

November 12, 1931. *Treasurer of State:* We have yours of November 2, 1931, wherein you ask in substance what disposal is to be made of drivers' license fees that may be forwarded you under Section 4960-d25.

Although the above mentioned section requires that these fees be forwarded you, neither that section nor any of the legislative enactments providing for such fees make any requirement with regard to their disposal.

We are, therefore, of the opinion that such fees should be credited to the general state revenue fund.

**DRAINAGE DISTRICTS:** Where a drainage warrant has been presented for payment and stamped "not paid for want of funds" the holder of the warrant, when the warrant is called for payment by the treasurer, is entitled to compound interest. (Sec. 7496, Code of 1931.)

November 16, 1931. *County Attorney, Glenwood, Iowa:* We acknowledge receipt of a letter from your County Recorder requesting an opinion of this department on the following question:

Woods Brothers of Lincoln, Nebraska, holds a number of registered warrants of this county on Missouri River Improvement No. 1. Recently they presented a warrant for payment and asked for compound interest on same. This warrant was dated in 1923 and registered in that year but has never been presented for payment of interest at any time since said date. Are they entitled to receive compound interest on this warrant?

You are referred to Section 7496, Code of Iowa 1927. Under this section, after the warrant has been presented for payment to the Treasurer and endorsed by him "not paid for want of funds" there is no duty incumbent upon the holder of the warrant to again present the warrant until called by the treasurer, and the holder of the warrant is, under said section, entitled to interest on overdue annual interest. In other words, he is entitled to compound interest.

It is the duty of the Treasurer, under said section, when he has funds on hand available for the payment of outstanding warrants due, to issue calls for outstanding warrants. (See Section 5161, Code of Iowa 1931.)

**COUNTY OFFICERS:** Each chattel mortgage requires a separate release, that is, a separate instrument. Sec. 10028, Code of 1931.

November 16, 1931. *County Attorney, Sac City, Iowa:* We acknowledge receipt of a letter from the county recorder of your county, Dorothy Karlson, under recent date, requesting an opinion of this department on the following question:

May more than one chattel mortgage be released by one executed release?

You are referred to Section 10028, Code of 1931. We are of the opinion that,



under this section, and we find no other section to the contrary, each chattel mortgage requires a separate release; that is, a separate instrument.

**BOARD OF SUPERVISORS—DRAINAGE DISTRICT:** Where a drainage district has been established pursuant to law and no claim for damages has been made for more than ten years after the establishment no damages can now be claimed. (Sec. 4607, Code of 1931.)

November 16, 1931. *County Attorney, Storm Lake, Iowa:* We acknowledge receipt of your letter of recent date in which you request an opinion on the following question:

The boards of supervisors of Cherokee, Buena Vista, Ida and Sac counties, in order to shorten the route and eliminate bridges, proceeded to change the course of a creek which ran along the borders of the four counties. This was done in the year 1914. The four boards, by proper action, ordered the change. The Buena Vista board of supervisors advertised the project in four newspapers in Buena Vista county. This was all done in the year 1914. No objections were filed by any of the landowners involved. A tile drain, which permitted some of the water out of the creek to run into the old channel, stopped up sometime in the year 1924, and the landowners involved appeared and claimed damages. The joint boards allowed one of them \$250.00, the others refused to accept. One of the parties now who refused to accept the damages awarded claims damages by reason of the fact that a well on his place is now dry; his claim being that the same is by reason of the diversion of the water.

The question has arisen as to whether or not any of the landowners can now claim any damages by reason of the change and alteration of the stream.

Of course, the matter is pretty much a question of fact. Under the provisions of Section 4607 and the following sections of the Code of 1931, boards of supervisors are authorized to change the course of any part of any secondary road, stream, water course or dry run in order to avoid the construction and maintenance of bridges, etc.

If the boards of supervisors, and I take it from the facts they did, proceed in accordance with said sections then we are of the opinion that the landowners involved would have no claim against any of the counties for damages by reason of the change of the course of the creek.

We are also of the opinion that if the boards of supervisors of the various counties did not proceed in accordance with the statute, but did in fact make the change as stated and that the landowners did not until 1924 claim any damages by reason of said change, that they would now be estopped and barred by the statute of limitations from making any claim for damages.

You are, however, advised that if through any negligence on the part of the counties in permitting any drain to become stopped up which would cause new damages, that then, of course, the statute of limitations would not start to run against any claim for said damages until the damage actually occurred.

We do not believe from the facts stated that there is any liability on the part of the counties for damages claimed by reason of a well drying up.

**DRAINAGE:** Where drainage bonds have been issued and are due and funds are not available for their payment the board of supervisors, acting as a drainage board, does not have power to extend any particular landowner's indebtedness, but only to extend the whole indebtedness of the district. (Sec. 7509-a1, 7663, Code of 1931.)

November 16, 1931. *County Attorney, Spencer, Iowa:* We acknowledge re-

ceipt of your letter of recent date requesting an opinion of this department on the following question:

Drainage bonds were issued in drainage district No. 55, Clay county, Iowa, and are about to become due and funds are not available for the payment thereof. The amount due is less than \$5,000.00; less than 15% of the landowners in the district are asking for an extension. The board of supervisors is contemplating issuing certificate against the property of the particular landowners who are unable to pay their assessments.

The question arises as to whether the issuance of these certificates will be valid.

You are referred to Section 7509-a1, Code of 1931, and to Section 7663 of said code. Under these sections the board of supervisors acting as a drainage board is authorized to settle, adjust, renew or extend the time of payment of the legal indebtedness they may have or any part thereof in the sum of \$1,000.00 or upwards, whether the same is evidenced by certificates, warrants, bonds or judgments, and may fund or refund the same and issue bonds therefor.

These sections, however, authorize the adjusting, renewing, or extending, etc., of the indebtedness of the entire district and not of any particular landowner or landowners in said district.

We are, therefore, of the opinion that the board of supervisors would not have authority, under the statutes of this state, to issue a certificate or any other form of indebtedness against the property of a particular landowner.

You will also note that under Section 7663, Code of 1931, the petition to the board requires only 10% of the landowners.

**BOARD OF SUPERVISORS:** Under Sec. 2938, Code of 1931, the county board of supervisors only has authority by itself or through its designated agent to inspect the books and records of the farm bureau of the county and does not have authority to require an association to furnish to it a list of its membership.

November 16, 1931. *County Attorney, Mt. Pleasant, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Section 2938, Code of 1931, provides in part, as follows:

"\* \* \* The books, papers, and records of the association shall at all times be open to the inspection of the department and to the board of supervisors or anyone appointed by the board to make such inspection."

The question has arisen as to whether or not, under that part of said section quoted above, the board of supervisors or its duly appointed agent, has the right to require the Farm Bureau to furnish a list of its membership, or whether such list may be taken from the books and records by said agent.

We are of the opinion that under said provision all that the board of supervisors or its duly appointed agent has authority to do is to inspect the books and records of said association, but that it or its agent does not have power, under said provision, to require the association to furnish a list of its membership or to make a list thereof from said books and records. This for the reason that under the provisions of said section the president and treasurer of said association on the first Monday of January, each year, are required to file with the county auditor a detailed report under oath of all the receipts and expenditures of such association, showing from whom received and to whom paid and for what purpose.

The inspection provided for, in our opinion, is for the purpose of checking the report with the books and records and that only.

**TAXATION:** Where property has been sold at scavenger sale and the certificate is issued to the original owner the original owner cannot redeem without paying the full amount of the taxes due against said property. (See opinion Geo. H. Clark, Jr., County Attorney, Ida Grove, Iowa, January 13, 1928.)

November 16, 1931. *County Attorney, Waterloo, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The owner of a certain tract of real estate permitted said property to be sold at scavenger tax sale. The treasurer issued a certificate to the purchaser who again transferred it, and after other transfers it finally was assigned to the original owner. The taxes, including interest and costs, assessed against said real estate at the time it was sold were \$14.28. It sold at scavenger tax sale for \$2.50. The original owner who now holds the certificate by assignment is asking for a deed to said property.

The question has arisen as to whether or not the county treasurer may issue a tax deed pursuant to said certificate of sale to the original owner.

In an opinion rendered by this department under date of January 13, 1928, to George H. Clark, Jr., County Attorney, Ida Grove, Iowa, we held that the owner of property can never be a purchaser at any tax sale, either at a general or scavenger sale, and that one who is under a duty to pay the taxes, such as a mortgagee or the owner, could not be a purchaser at tax sale and acquire any rights by virtue of a tax deed.

This being true, we are, therefore, of the opinion that the county treasurer cannot be compelled to issue a tax deed to the present certificate holder who was the original owner, for the reason that the owner acquired no rights by virtue of the certificate of sale.

We think it would also follow that the original owner, now the holder of the certificate of sale, in order to clear up the title to his property, would have to pay the taxes, interest, and costs for which the sale was originally made.

**ROADS AND HIGHWAYS:** Where a road has been established and nothing is said as to the width in the resolution of establishment it is the statutory width of 66 feet.

November 16, 1931. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter of recent date, requesting an opinion of this department on the following question:

One of the secondary roads of this county was a subject of litigation in the case of *Clarken vs. Lennon, et al.*, 203 Iowa 359. This road as used by the public is only 40 feet wide.

The question has arisen as to whether or not the county board of supervisors has authority to require the adjoining landowners to move their fences back so as to make the road 66 feet wide.

Your attention is called to the *Clarken vs. Lennon* case, 203 Iowa 359 at page 363. The Court there referring to the case of *Brause vs. Fayette County*, 164 Iowa, 603, said:

"We conclude that, under the facts, it must be determined that the highway as originally laid out, fenced, and continuously used, was the practical location of the road, and as such would control, as against subsequent surveys

which, when applied to the recorded plat in its recitation of the midsection line, would fix a line different from that actually laid out \* \* \*."

The Court also said on the same page, as follows:

"It is, therefore, our holding that, when the proper officials constructed the road in 1868, and continued to improve and use the same continuously ever since, that is the legal public highway regardless of whether it complies with the field notes and plat and order of the board of supervisors originally made. By constructing the original highway as they did, not using any of the lands of appellants therefor, they abandoned their right to use the same, and are estopped from now claiming such right."

The Court also said at page 364 of said Iowa report:

"The Revision of 1860 provided that, unless otherwise provided, highways should be 66 feet in width; \* \* \*."

It would appear that the Court has in effect held that the highway as originally laid out and constructed was the location of the road irrespective of the plats, surveys, etc., and that as to the width of the highway the law provided that at the time the highway was originally constructed it should be 66 feet in width, and that the fences could, therefore, be moved back so as to conform with this width.

This case, however, holds also, as it would seem, that where the highway as originally laid out was all on one owner's land, and one side or the other of the highway ran along another owner's land that the only way the county could acquire any right of way of the land along which such highway bordered would be either by purchase or condemnation. However, where the highway was originally laid out and part of it was on each of the adjoining owners then the statutory width of 66 feet could now be acquired by compelling both landowners to move their fences back the required number of feet.

**STATE BOARD OF EDUCATION:** The State Board of Education being an agency or arm of the state is not liable for personal injuries sustained by reason of the negligence of its employees and, therefore, has no authority to expend money for liability insurance.

November 16, 1931. *State Board of Education:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Whether, since the state would not be liable for injuries done by state owned cars, the State Board of Education can expend funds to procure a public liability policy, that is, can a policy be so worded as to bind the insurance company even though there was no liability upon the state.

The Supreme Court of this state has repeatedly held in numerous decisions that the State cannot be sued without its consent. We do not find any statute where the Legislature has consented that the State might be sued for damages for personal injuries arising by reason of the negligence of its agents and employees.

The Supreme Court has also held that the various agencies of the State, such as the State Board of Education, are an arm of the State, and that the State is the real party defendant and that a suit against the agency or arm of the State is a suit in fact against the State.

There being no liability on the part of the State for damages by reason of injuries sustained by the negligence of the agents or employees of the State, we are of the opinion that the State Board of Education does not have any

authority whatsoever to expend state funds for the purpose of securing the policy of liability insurance, especially in view of the fact that before there is any liability upon the part of the insurance company there must be some liability upon the part of the assured. In this case the assured would be the State Board of Education.

We know of no way in which a policy could be so worded as to provide for waiver on the part of the insurance company of the disability of the assured to be sued.

**FISH AND GAME—PEDDLER'S LICENSE:** Under Sec. 19, Chap. 57, Acts 43rd G. A., it is necessary for one who peddles fish to secure a license from the State Fish and Game Department. The exemption provided for in Sec. 7177, Code of 1931, is only as to county licenses:

November 16, 1931. *County Attorney, Mt. Pleasant, Iowa:* We acknowledge receipt of your letter under date of July 11, 1931, requesting an opinion of this department on the following question:

Is it necessary for a fish peddler to secure a license to peddle fish in the country outside of a city or town?

Under Section 19, Chapter 57, Acts of the 43rd General Assembly, anyone who desires to peddle fish must secure a license from the Fish and Game Department. The license provided for in Section 7177, Code of Iowa 1927, is only a county license and one who peddles is excepted from the provisions of this section. However, the exception contained in Section 7177 does not relieve fish peddlers from securing a license as provided in Section 19, Chapter 57, Acts of the 43rd General Assembly.

**BOARD OF SUPERVISORS—(Secondary):** (See opinion.)

November 16, 1931. *County Attorney, Burlington, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

At the time the board of supervisors took over the secondary roads there was a township in this county which had an outstanding indebtedness of \$1,000.00. The machinery and equipment was taken in at \$600.00 leaving a balance owing of \$400.00. It appears now that the township clerk of this particular township had expended on the roads \$104.00 belonging to the cemetery fund. The question now arises as to whether or not the county may refund this amount to the township and correct the credits given the township accordingly.

It is suggested that in view of the fact that the township roads received the benefit of the expenditure made from the cemetery fund the board of supervisors of your county would be entirely justified in paying out of the proper road fund to the township the sum expended from the cemetery fund, and making an adjustment of the credits and debits due from this township.

**WIDOW'S PENSION:** (See opinion.) Sec. 3641, Code of 1931.

November 16, 1931. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

"Applicant claiming legal settlement in Mitchell county formerly lived in this county. Has made her home for more than one year in an adjoining county, which county served pauper notice on the family within a year. Must her domicile be in this county now to give her a right to widow's pension?"

You are referred to Section 3641, Code of 1931. The right of a widow to receive a widow's pension is not based upon the county in which she has a legal settlement, but is based upon the question of her residence. In other words, under Section 3641, Code of 1931, a widow to be entitled to receive a widow's pension must have been a resident of your county for one year preceding the filing of the application.

According to the facts stated in your letter she has not been a resident of your county for one year preceding the filing of her application and is, therefore, not entitled to receive a widow's pension under Section 3641, Code of 1931.

**COUNTY RECORDER:** County recorder, when requested, must index a real estate mortgage which contains a chattel mortgage clause in the chattel mortgage index book.

November 16, 1931. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

A real estate mortgage was filed and recorded in this county in the year 1922. Said mortgage contained a clause pledging the rents, issues and profits of said real estate. It was not indexed in the chattel mortgage index book at the time it was recorded. The mortgagee now requests that said mortgage be indexed in the chattel mortgage index book.

Is the recorder required to index this mortgage in the chattel mortgage index book at this time?

We are enclosing herewith copy of opinion rendered by this department to Floyd Billings, County Attorney, Red Oak, Iowa, under date of November 16, 1931.

We are of the opinion that the county recorder, when requested to index such a mortgage has no discretion in the matter; the only requirement being that the real estate mortgage must be of record before such a mortgage can be indexed as a chattel mortgage.

The date of indexing should be the date that it is made in the chattel mortgage index book and the file in number should be the same as though a new chattel mortgage were presented for filing.

**COUNTY RECORDER:** It is the mandatory duty of the county recorder to index in the chattel mortgage index book all real estate mortgages which contain a chattel mortgage clause without any additional fee.

November 16, 1931. *County Attorney, Red Oak, Iowa:* We acknowledge receipt of your letters of recent date requesting an opinion of this department on the following questions:

The Chicago Joint Stock Land Bank from time to time has had recorded in this county a number of real estate mortgages, all of which contain a chattel mortgage clause. They have never requested that said mortgages be indexed in the chattel mortgage index book and this has not been done. Recently they wrote the county recorder sending a list of the mortgages which were of record in this county and requesting that she have each of the mortgages indexed in the chattel mortgage index book.

The question has arisen as to whether or not the county recorder is entitled to collect a fee for indexing these mortgages. In any event should the county recorder have the original real estate mortgages in his possession so that the proper filing notation could be placed on the mortgage by the recorder?

You are referred to Section 10032, Code of 1931. Under this section it is the

mandatory duty of the county recorder to index, in the chattel index (mortgage) book all real estate mortgages which contain a chattel mortgage clause, and we find no section of the code which would require the payment of any fee for this indexing.

We are also of the opinion that the instrument should be in the possession of the county recorder at the time the indexing is made so that the proper filing stamp may be made upon the instrument.

**WIDOW'S PENSION:** (See opinion,) Sec. 3641, Code of 1931.

November 16, 1931. *County Attorney, Britt, Iowa:* We acknowledge receipt of your letter of November 3, 1931, requesting an opinion of this department on the following question:

On March 1, 1930, Mr. Armstrong and family, residents of Hancock county, moved to Franklin county and made their home there until about March 4, 1931, when they moved back and took up their residence in Hancock county. Later Mr. Armstrong died. His widow is applying in Hancock county for a widow's pension. The question has arisen as to whether or not Mrs. Armstrong is entitled to a widow's pension from either of the counties, and if so which one?

You are referred to Section 3641, Code of 1931. You will note from reading this section that the mother must have been and is a resident of the county where application is made for one year preceding the filing of the application.

It would, therefore, follow from the facts stated above that the Armstrongs had a residence in Franklin County, but when they moved back to Hancock County they lost their residence in Franklin County and took up a new residence in Hancock County. They have not resided in Hancock County for one year preceding the filing of the widow's application for a widow's pension.

"Residence" as used in Section 3641, Code of 1931, is not used in the same sense as is "legal settlement." A "residence" may be lost by a change of place of abode. It would appear in this case that the Armstrongs having removed their household goods and children from Franklin to Hancock County that they abandoned their residence in Franklin County.

If it were a question of legal settlement and she was applying under the poor law for relief, if the fact could be established that they had lived in Franklin county for one year—that is from March 1, 1930, to March 4, 1931, then they would have gained a legal settlement in Franklin county, and Franklin county would be liable for their support for under the poor law a legal settlement once acquired is not lost until a new one is acquired; and the only way a new legal settlement can be acquired under the law is to reside in the new county without having received notice to depart for a period of one year.

**POOR—DEPORTATION:** Sec. 5313, Code of 1931, where it is desired to deport a non-resident poor person the application should be filed in the district court and an order secured fixing the date for hearing and the notice to be given the pauper.

November 16, 1931. *County Attorney, Leon, Iowa:* We acknowledge receipt of your letter under date of October 21, 1931, requesting an opinion of this department on the following question:

A resident of South Dakota has taken up his home in this county and is now being taken care of by Decatur county at the county home. The question

has arisen as to just what procedure should be taken under Section 5313, Code of Iowa 1927.

We are of the opinion that, under Section 5313, Code of 1927, the procedure should be as follows:

An application should be filed in the district court for an order for deportation and asking that the Court fix the notice to be given the pauper for hearing upon said application. There must be some notice of hearing, in our opinion.

**PUBLIC FUNDS:** In order to be entitled to the benefits of the state sinking fund for public deposits it is necessary that the governing body of a political sub-division designate a depository and fix the maximum amount of the deposit. After this designation it remains as such depository until a new depository is designated. Change in membership of the governing board would not require a new designation.

November 16, 1931. *County Attorney, Winterset, Iowa:* We are in receipt of a letter from your County Treasurer, F. W. Creger, under date of October 22, 1931, requesting an opinion of this department on the following question:

Is it necessary for the supervisors, trustees, school directors, or city council, to pass a resolution naming a depository bank for the ensuing year even though the depository bank and the amount of deposit remain unchanged?

When membership in any of the above governing bodies change, is it necessary that a new resolution be adopted naming the depository bank and the maximum deposit?

You are advised that all that the statute requires is that the depository and the amount of the deposit be designated and fixed by the governing board. After this has once been done by proper resolution said depository and the fixed amount remain until a new designation is made by the governing board.

Change in the membership of the governing board would not require a new resolution.

**TAXATION (Tax sales):** Secs. 7242, 7244, Code of 1931. There is no authority in the statutes for the extension of time of payment of taxes. It is the mandatory duty of the treasurer to advertise all real estate upon which taxes are delinquent and offer the same for sale at the regular December sale.

November 16, 1931. *County Attorney, Algona, Iowa:* We acknowledge receipt of a letter from your County Treasurer, H. N. Kruse, under recent date, requesting an opinion of this department on the following questions:

Is there any authority for the extension of time for the payment of taxes without penalty?

Is it mandatory upon the treasurer to advertise all real estate upon which taxes are delinquent, and offer same for sale in the regular December sale?

We find no statute which would authorize any extension of time for the payment of taxes without penalty.

Section 7244, Code of 1931, makes it the mandatory duty of the treasurer to offer at public sale all lands, town lots, or other real property on which taxes of any description for the preceding year or years are delinquent.

Section 7242, Code of 1931, authorizes an adjustment of the tax sale from time to time not exceeding a total extension of five days in all.

**DOMESTIC ANIMALS:** Verifications of claims for animals killed by dogs may be made after the expiration of the ten days if the claim signed and verified by the owner is filed within such period.



November 18, 1931. *County Attorney, Northwood, Iowa*: This will acknowledge receipt of your letter of recent date in which you request the opinion of this department upon the following proposition:

Where a claim, duly verified, has been filed, under the provisions of Chapter 277 of the Code, within the period therein prescribed, but not supported by the affidavits of two disinterested persons, as therein required, may the supporting affidavits thereafter be supplied and the claim allowed by the board of supervisors?

We are of the opinion that the supporting affidavits may be filed after the expiration of the ten day period. There is no limitation in Chapter 277 that the affidavits must be filed at the time of filing claim, or that the claim shall be accompanied by such affidavits, as there appears in Section 5459, subsection 5, and in other statutes relating to accompanying affidavits. Therefore, the general rule would apply that a matter required to be verified may be verified after filing.

**TAXATION—CITIES AND TOWNS:** Public libraries established under the provisions of Chapter 299, 1931 Code of Iowa, are liable for paving assessment properly levied and municipal water tax in the cities in which they are located.

November 19, 1931. *Executive Secretary, Historical Building, Des Moines, Iowa*: We have yours of November 16th, 1931, wherein you ask:

1. Are public libraries, established under the provisions of Chapter 299, Code of Iowa, 1931, liable for paving assessment properly levied in such city or town?

2. Are such libraries liable for the payment of water tax when the water system is owned and maintained by the city?

Libraries established under Chapter 299 of the Code of Iowa, 1931, are separate and distinct from the city government, although established and maintained in part by such city. Various branches of the government, including the city itself, are required to pay paving tax properly levied under the statute, in cities and towns.

1.

It is therefore our opinion that a public library, established under Chapter 299, is liable for special assessment paving tax properly levied under the statute.

2.

It is, therefore, our opinion that public libraries, established under said chapter, are liable for water tax when the water plant and distribution system thereof are owned and maintained by the city.

**FISH AND GAME:** Deputy game warden has the same powers as any other peace officer and can only make search of a dwelling house, or other buildings, pursuant to a search warrant. Sec. 1772, Code of 1931, does not apply to carrying a loaded gun in an automobile by a farmer on his own land.

November 19, 1931. *County Attorney, Britt, Iowa*: We acknowledge receipt of your letter under recent date requesting an opinion of this department on the following questions:

May a deputy game warden make search of farm dwellings and other buildings without a search warrant?

May they make search of automobiles on a public highway without search warrants?

Is it a violation of law for a farmer on his own farm to place a loaded gun in or on an automobile owned by him?

Deputy game wardens have the same power and authority as do peace officers. They do not have power to search any dwelling, or building of another without a search warrant.

We are of the opinion that it is not a violation of Section 1772, Code of 1931, for a farmer on his own farm to carry a gun or firearm in or on a motor vehicle. Section 1772 is a game law and applies primarily to the highways and to those hunting on lands other than their own.

**SUPERIOR COURT—FEES:** Fees to be paid by county for handling state cases.

November 23, 1931. *Judge of the Superior Court, Iowa Falls, Iowa:* We are in receipt of your request for an opinion upon some questions involving the administration of a Superior Court.

Your first question is whether or not the Superior Court collects from the county the docketing fees in all State criminal cases including those in which the costs and fees cannot be made from the defendant.

Your attention is called to the provisions of Section 10723 of the Code which state that the fees in criminal actions in Superior Courts shall be the same as in Justice Courts and shall be paid and accounted for as is provided in Section 10721 and as otherwise provided by law for Justices of the Peace and their courts. Therefore, in all such cases, the Superior Court should be paid by the county the same fees as are paid to Justices of the Peace.

Your attention is also called to the provisions of Section 10638 of the Code which provides that the fees contemplated in Justice Court in criminal cases shall be audited and paid out of the county treasury in any cases where the prosecution fails, or where such fees cannot be made from the person liable to pay the same, the facts being certified by the Justice and verified by affidavit. You should make your claim for your court in the same manner.

You have also inquired whether or not the marshal of your court, when acting as a sheriff, is entitled to seven cents per mile or ten cents per mile.

In this connection your attention is called to the provisions of Section 10750 of the Code which provide that the marshal shall receive the same fees in compensation for serving the processes of said court, and for other services required of the sheriff in the district court, as the sheriff receives for like services, but in all criminal cases in said court the law provides that the marshal shall receive the same fees as are paid constables.

Thus, this provision of law specifically provides that when he is doing the same services which a sheriff performs, he shall receive the same rate, which is ten cents per mile, as mileage. Also, when he is performing services in criminal cases, he shall receive the same fees as a constable, which, under the provisions of Section 10637, subparagraph 4, is seven cents per mile for mileage. There can be no question as to the rates for mileage which your marshal may charge in view of this section of the law.

Your next question is whether the county should pay docketing fees, service fees and other expenses incident to matters which by law have been transferred from the district court to the superior court to handle when such fees are normally paid by the county when such matters are handled by the district court.

It is the opinion of this Department that the county should pay such fees to the Clerk of your Court where they cannot be made from the parties concerned.

You are also advised that the county should furnish all dockets, record books and blanks as are needed to take care of the State business. The city should furnish such record books and blanks for city business.

**STATE BOARD OF EDUCATION:** Under Sec. 9222-c3, Code of 1931, banks and trust companies are authorized to pledge assets for security of public deposits. Where the State Board of Education has not designated the depository for one of its treasurers it is the duty of the treasurer to select the same.

November 24, 1931. *State Board of Education:* We acknowledge receipt of a letter from Esquil C. Carlson, under date of October 21, 1931, requesting an opinion of this department on the following questions:

Mr. Knapp, Treasurer of Iowa State College, has been requested to furnish a fidelity bond and also depository bond. In connection with the bonds the following questions have arisen:

1. "In the event of the failure of any one of the banks in which the treasurer has deposited money belonging to the state educational institutions, would the bonds and other securities which have been given to protect the treasurer and the Iowa State Board of Education actually belong to the said treasurer and the said Iowa State Board of Education, or could they be replevined by the receiver of the insolvent bank and by him taken and counted as assets of the said insolvent bank?"

2. "If any one of the depositories selected by the treasurer should fail, would the said treasurer be personally liable because of the failure of such bank, or would the surety company which signed his fidelity bond be liable, provided the said treasurer has not been guilty of neglect or misfeasance in office?"

For answer to your first question you are referred to Section 9222-c3, Code of Iowa 1931.

For answer to your second question, you are advised that so far as the fidelity bond of the Treasurer of the Iowa State College is concerned, in the event of failure of any bank in which he has deposited funds appropriated for use of the Iowa State College there would be no liability on his part for any loss occasioned by the closing of the bank, unless it could be shown that he was guilty of negligence, that is, by continuing to make deposits in said bank or leaving the deposit in the bank after he had information charging him with notice of the fact that the bank was not in a safe and sound condition.

**BOARD OF EDUCATION—BOARD OF CONTROL—STATE OF IOWA:** Various state agencies, such as Board of Control, etc., may employ rate experts under a contract on commission basis to check freight bills for refunds.

November 27, 1931. *Auditor of State:* Pursuant to your request we are herewith submitting to you an opinion upon the following question:

The Board of Control, the State Board of Education, and other governmental agencies pay a lot of freight on merchandise, materials and supplies purchased, and in past years it has been the policy to have these freight bills audited by a rate expert and this rate expert has in many instances secured

a refund from the railroads because of overcharges made by reason of charging of the wrong tariff or rate. The rate experts work on a commission basis. The question has arisen as to whether or not these state agencies may employ a rate expert to check these bills under a contract which provides for the payment of a commission on refunds collected.

We are of the opinion that the various State agencies may employ a rate expert under a contract which provides for the payment of a commission on refunds collected. The payment of this commission, in our opinion, would not be violative of any statute and would not be an illegal expenditure of State funds because of the fact that whatever is collected from the railroads by way of a refund is due to the services of the rate expert, and the commission paid is merely compensation for services actually rendered to the State.

**PUBLIC FUND:** Sec. 9239-a2, Code of 1931, specifically authorizes counties to execute waiver agreements without impairing the right to benefits of the state sinking fund for public deposits.

November 27, 1931. *County Attorney, Davenport, Iowa:* We herewith hand you an opinion on the following questions:

The American Savings Bank and Trust Company has submitted to the county board of supervisors of this county the plan for the re-organization of said bank. This plan provides for a waiver of 40% of the county deposit; 60% being immediately available upon the re-organization of the bank and the balance of 40% to be represented by certificates against the liquidated corporation. They have asked the county board of supervisors to authorize the county treasurer to make and execute this waiver. The question has arisen as to whether or not the county board has authority to authorize the treasurer to make such waiver.

Among the funds which the county had in this bank was some \$30,000.00 of money which would eventually be paid to the state of Iowa, and some \$30,000.00 belonging to the school board of the City of Davenport. The question has arisen as to whether or not the board of supervisors has any authority in connection with the execution of waivers as to these amounts.

You are referred to Section 9239-a2, Code of Iowa 1931. Under this section the county is authorized to make and execute such an agreement as is proposed by the re-organization committee of the American Savings Bank and Trust Company. The execution of such a agreement would not in any way affect the county's right to receive the benefits of the Brookhart-Lovrien Law.

You are also advised that all funds in the hands of the county treasurer collected from the receipts of taxes are county funds until they have been paid to the State Treasurer or the school board, and the county is liable to such agencies for the same.

You are advised that I have taken this matter up with the State Treasurer and that there is no question as to the county's right to execute these waivers.

**COUNTY OFFICERS:** Recorder should charge fee of 25 cents for contract and 25 cents for assignment thereof if assignment is executed.

November 30, 1931. *County Attorney, Des Moines, Iowa:* In response to your telephone request, Mr. Stephens has asked me to write you in regard to the recording fee to be charged on a conditional sales contract or other similar instruments where the instrument affected contains either on the back thereof or in the body thereof, a fully executed assignment.

We are of the opinion that the contract, if the assignment is executed,

should be indexed as from vendor to vendee and from assignor to assignee and that the same would constitute two instruments whether the assignment is made on the back of the instrument or in the body thereof. The county recorder is therefore entitled to charge a fee of twenty-five cents for each transaction. In view of our holding that the county recorder has no discretion as to whether the instrument shall be recorded, the same rule would apply if the assignment is executed but not sworn to.

**COUNTIES—ATTORNEY'S FEES:** The county is liable for attorney fees for attorneys appointed by the court to conduct an action for removal from office of a county official, when such attorneys were appointed by the court, under the provisions of Section 1100, Code of Iowa, 1931.

November 30, 1931. *Board of Supervisors, Des Moines, Iowa:* We have yours of November 25th wherein you ask in substance as follows:

Is the county liable for attorney fees of attorneys appointed by the court to conduct an action for removal from office, which attorneys were appointed by the court, under the provisions of Section 1100 of the 1931 Code of Iowa?

The case of *Hyatt v. Hamilton County*, 121 Iowa, 292, is authority for the proposition that when the Code makes provision for the appointment of an attorney to prosecute disbarment proceedings without providing for his compensation, the county is liable for the value of the services of such attorney.

This case is cited with approval in the case of *Heller v. Montgomery County*, 188 Iowa, 981.

We can see no material difference between the appointment of a special prosecutor in an action for the disbarment of an attorney, or such appointment in an action for removal from office—no provision being made by our present code for compensation in either case.

It is therefore our opinion that the county is required to compensate attorneys appointed under Section 1100 of the 1927 Code of Iowa, to prosecute an action for the removal from office of a county attorney.

We make no comment herein with regard to the procedure necessary to enforce the collection of such compensation.

**BANKS AND BANKING—PUBLIC FUNDS:** The office of a bank established under the provisions of Chapter 203, Laws of the 44th General Assembly, cannot be designated as a depository for public funds; parent bank may be designated and deposits made through the office if the parent bank comes within the conditions of Section 7420-d4, Code 1931.

December 1, 1931. *Auditor of State:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"If a bank establishes an office in a town other than the one in which said bank is located as provided in Chapter 203, Acts 44 G. A., is the county treasurer protected in the deposits under the State Sinking Fund, made in these offices, and should the office be named as depository?"

Deposits can be made properly only by designation of the bank itself. The office cannot be designated as a depository.

The designations made must comply with the statutes as set out in Section 7420-d4, Code of 1931. That section provides that deposits by the Treasurer of State shall be in banks located in this state; by a county officer in banks

located in his county or in an adjoining county and within this state; by a city or town treasurer in banks located in the city or town, but in the event there is no bank in such city or town, then in any other bank within the county; by a school treasurer or a school secretary, in banks located within the county or counties in which the corporation is located or within five miles of the border of said county or counties.

A designation of the office is not a sufficient designation. In order to bring the deposits within the protection of the state sinking fund for public deposits, the bank itself must be designated as a depository without regard to any offices established by it and the bank must meet the requirements as to location as set out in the above section.

**PUBLIC FUNDS—STATE SINKING FUND—CITIES AND TOWNS:** Police-men and firemen pension funds not public funds within meaning of Brookhart-Lovrien law.

December 1, 1931. *City Solicitor, Des Moines, Iowa:* Pursuant to your request, and your conference with Attorney General Fletcher, of a few days ago in regard to the claim of the City of Des Moines for police pension fund deposited in the Iowa Trust and Savings Bank, now closed, we submit the following conclusions:

The bank closed on December 6, 1930, and the receiver was appointed by the district court on December 17, 1930. Your claim for deposit in the policemen's pension fund was in the amount of \$13,068.98. You are aware, of course, of the opinion of this Department rendered to the Auditor of State on September 20, 1927, and found in the Report of the Attorney General for the years 1927-1928 at page 227.

The writer spent considerable time considering the matter with Attorney General Fletcher, and we are forced to reaffirm the conclusion reached in the cited opinion. The public sinking fund act commonly known as the Brookhart-Lovrien law, in so far as it applies to cities, provides that the interest collected by city treasurers as provided in Section 5651 of the Code 1927, shall be diverted to the state sinking fund for public deposits. See Section 1090-a6, Code of Iowa 1927. The interest described in Section 5651 is that interest on *city and town funds* and the interest thereon, in the absence of the order for diversion by the Treasurer of State, accrues to the benefit of the general fund.

The fund is available only to pay the amount of the several deposits of public funds deposited in the closed bank *by authority and in conformity with the direction of the legal governing council or board* which is charged by law with the duty of selecting depository banks for such funds. See Section 1090-a9, Code of Iowa 1927. The supreme court of this state in interpretation of this statute has held that the state sinking fund for public deposits is in every proper sense a trust fund and is set apart for the express purpose of protecting public funds lawfully deposited "by authority of and in conformity with the direction of the local governing council or board." The court said further:

"All of the different public corporations enumerated by the statute that place their public funds in approved depositories are interested in the administration of this state sinking fund. No public corporation can participate in such

sinking fund unless it has complied with the provisions of the statute permitting it to so participate."

"\* \* \*

See *Andrew vs. Iowa Savings Bank*, 203 Iowa 1089 at 1094.

This theory was reaffirmed in *Andrew vs. Stuart Savings Bank*, 204 Iowa 570 at 571-2.

Therefore, unless the funds in question were deposited in the bank "by authority of and in conformity with the direction of the governing council or board" the claim cannot be allowed against the sinking fund.

This brings us to an analysis of the statutes creating the policemen's pension fund and the control thereof. Said statutes are contained in Chapter 322, Code of Iowa 1927. The fund is created under Section 6310 of the Code and is composed of the following as quoted from said section:

"\* \* \*

All moneys derived from each tax so levied, and all moneys received as membership fees and dues, and all moneys received from grants, donations, and devises for the benefit of each fund shall constitute separate funds, to be known and designated as a policemen's pension fund and a firemen's pension fund."

The said funds are not under the control of the legal governing council or board charged with the duty of directing the disposition of the funds of the city, but are under the management and control of a separate board of trustees. The statute relating to the board which has the control and management of this fund, is Section 6311 and provides as follows:

"The chief officer of each department, with the city treasurer and the city solicitor or the attorney of such cities or towns, shall be ex-officio members of and shall constitute separate boards of trustees for the management of each fund. The chief officer of the department shall be president and the city treasurer treasurer of such boards, and the faithful performance of the duties of the treasurer shall be secured by his official bond as city treasurer. Such trustees shall not receive any compensation for their services as members of said boards."

In addition to this, there is specific provision for the investment of these funds. This investment is made by the board of trustees and not by the city council. The funds are not in the hands of the city treasurer but are in the hands of the treasurer of the board of trustees although it happens that the city treasurer is ex officio treasurer of said board.

The fund is not a public fund of the city, but is a trust fund created for the specific benefit of divers persons who are entitled to the fund when they meet certain statutory requirements set out in Section 6315 et sequi of the Code.

The funds are disbursed by warrants signed by the board of trustees which warrants are paid by the treasurer of the board. The treasurer is required to make an annual report showing the expenditures of the fund for the preceding fiscal year, the money on hand, and how the same is invested. Even though a portion of this money is raised by taxation it is disbursed in so far as the city treasurer is concerned, when it is transferred by the treasurer to the policemen's pension fund account just the same as the funds of the institutions under the State Board of Education or the State Board of Control are disbursed when they are transmitted by the Treasurer of State to the finance officer or treasurer of each institution.

We have held, and have been supported in that holding by numerous district courts, that the funds in the hands of the treasurers or finance officers of the institutions under the Board of Control and the institutions under the State Board of Education are not covered by the provisions of the statute creating the state sinking fund for public deposits. These funds involve millions of dollars annually, but since the legislature has not seen fit to place them under the protection of the state sinking fund for public deposits, these treasurers and finance officers are required to protect themselves by bond or pledge of securities if they desire protection on the deposit.

We are forced to the conclusion that the funds in question are not public funds within the meaning of the Brookhart-Lovrien law.

**STATE BOARD OF EDUCATION:** Director or staff member of psychopathic hospital may travel outside the state on official business at institution expense.

December 2, 1931. *State Board of Education:* This will acknowledge receipt of your letter requesting the opinion of this Department on the following proposition:

"After July 4, 1931, the date on which the amendments become a part of Chapter 197, will the Iowa State Board of Education have the legal right to authorize the director of the state psychopathic hospital, or a member of the staff, to travel outside of the state on official business, with the understanding that his expenses will be paid out of institutional funds?"

Since the State Psychopathic Hospital has been integrated with and made a part of the College of Medicine and general hospital of the State University of Iowa, its officers, employees and staff would come under the general statute applying to the institutions under the State Board of Education.

It would then come under the provisions of Section 3933 of the Code relating to such expense. We call your attention to that section which provides as follows:

"The members of the finance committee and other employees shall maintain their official residences at the places designated by the board and shall be entitled to their necessary travelling expenses therefrom by the nearest travelled and practicable route incurred *in visiting the different institutions and other places* and returning therefrom when on official business, and such other expenses as are actually and necessarily incurred in the performance of their official duties."

We are of the opinion that this section authorizes travel by the director of the psychopathic hospital or a member of the staff to travel within or without the state on official business and that his expenses may be paid from institutional funds. Since the State Board of Education designates the place of their official residence, we are of the opinion that travel outside the state should be only upon application and approval by the State Board of Education and that a record should be made in the minutes of the board.

**BOARD OF CONTROL:** Funds from one appropriation to an institution may be transferred to another institution provided there is a surplus and it is in the interest of economy and better government and the consent of the Budget Director and Governor is first secured.

December 3, 1931. *Board of Control:* This will acknowledge receipt of your request of November 12th in which you submit the following question:



The 44th General Assembly appropriated \$45,000.00 for an addition to the water supply at Anamosa. A contract has been let for about one-half of this amount, leaving an excess of approximately \$22,000.00. The 44th General Assembly also appropriated \$6,000.00 for an addition to the water supply at the training school for girls at Mitchellville. This sum has been expended and no water has been procured; a dry hole of 800 feet having been drilled.

May the Board of Control transfer sufficient funds from the excess left from the appropriation to the State Reformatory at Anamosa to complete the work for the training school for girls at Mitchellville?

In reply we desire to quote to you Section 61, of Chapter 257, Acts of the 44th General Assembly.

"The governing board of any state department, institution, or agency, or, if there be no governing board, the head of any department, institution or agency, in the interest of economy and efficiency, may, with the written consent and approval of the governor and director of the budget, first obtained, at any time during the biennium, partially or wholly use its unexpended appropriations for purposes properly within the scope of such department, institution or agency."

We are of the opinion that a transfer of this kind would be in the interest of economy and efficiency and, therefore, might be transferred, provided you first secured the written consent and approval of the Governor and the Director of the Budget.

**CITIES AND TOWNS:** The offices of town mayor and town assessor are incompatible and cannot be held by the same person.

December 3, 1931. *County Attorney, Marshalltown, Iowa:* This will acknowledge receipt of your letter of November 18th in which you submit the following question:

"Can the office of town mayor and town assessor be held by the same person?"

In reply we would say that it has been the ruling of the Supreme Court of this state that the test of incompatibility is whether there is an inconsistency of the functions of the two offices, as where one is subordinate to the other and subject in some degree to its revisory power, or where the duties of the two are inherently inconsistent and repugnant, or where public policy renders it improper for an incumbent to retain both offices. Under this rule, we are inclined to believe that these two offices are incompatible inasmuch as the work of the town assessor may and usually is revised by the mayor in his capacity as a member of the Board of Review. We must, of necessity, hold that the two offices cannot be held by the same person.

**BOARD OF EDUCATION:** The board of education does not have authority to grant leaves of absence and continue to pay regular salaries unless it is on account of sickness.

December 3, 1931. *Director of the Budget:* This will acknowledge receipt of your request of November 13th, which is as follows:

"1. At a meeting of the State Board of Education December 9, 1930, a leave of absence was granted to Dr. Papoff for a limited time with compensation in full. Later on a further motion extended this leave with compensation. Was this legal?"

"2. When employees die during the month it has been the policy of the board to issue warrant in full for that month's service. Is that legal?"

In reply to the first question submitted, we are of the opinion that the State Board of Education does not have the authority to grant leaves of absence to professors and instructors and continue to pay them their regular salaries. Employees of the State of Iowa are expected to devote their entire time to their assigned duties.

Section 66 of Chapter 257, Acts of the 44th General Assembly provides as follows:

“\* \* \*

“The employees provided for in this act are granted one week's vacation after one year's steady employment and two weeks' vacation after two or more years' employment, with pay. Leave of absence of thirty days is granted to employees on account of sickness or injury, accumulative for three consecutive years, with pay at the discretion of the heads of departments.”

In view of this provision of the budget bill we can see no reason for making any exception in favor of any employees of one department which would not be accorded employees of other departments.

We believe that the paragraph just above quoted would answer question No. 2, and would authorize the board to issue a warrant in full for the month's service when an employee dies during that month, as that would be optional with the head of the department, or, in this particular case, the State Board of Education.

Replying to your 3rd question, we desire to copy the opinion written by this department on August 8, 1931, to the Iowa State Board of Education, which fully answers the third question submitted by you.

“We are of the opinion that inasmuch as judges are elected by the people, and under the law are required to devote their entire time to the business of the courts and are paid compensation for the same by the state, that they cannot receive or draw any compensation from any other subdivision of the state for any services rendered.”

COUNTIES: A county is liable for stenographic help furnished the county attorney.

December 5, 1931. *Auditor of State:* We have yours of December 3rd wherein you ask in substance as follows:

Is the county liable for stenographic help furnished the county attorney?

At the present time stenographic help is an actual and necessary expense of any practicing attorney.

The county attorney is entitled to the actual and necessary expense of his office and should not be required to furnish his county with free stenographic help. It is, therefore, the opinion of this office that the county attorney is entitled to reimbursement for cash outlay for stenographic help actual and necessary in connection with his duties as such official, upon his filing a properly verified itemized claim therefor.

The question of the necessity for stenographic help is a matter to be determined by the boards of supervisors of the various counties of the state, and would depend upon the amount and kind of business transacted by the county attorney in his county.

COUNTIES: A proper itemization of a claim against a county must show the date of the furnishing of services rendered, property sold or expense

incurred. The item must show the nature of the property sold, services rendered or expense incurred.

December 11, 1931. *Auditor of State:* We have yours of December 3, 1931, wherein you ask in substance as follows:

What constitutes a proper itemization of an unliquidated claim against a county?

Code Section 5124 of the 1931 Code, provides as follows:

"All unliquidated claims against counties and all claims for fees or compensation, except salaries fixed by statute, shall before being audited or paid, be so itemized as to clearly show the basis of any such claim and whether for property sold or furnished the county, or for services rendered it, or upon some other account, and shall be duly verified by the affidavit of the claimant, filed with the county auditor for presentation to the board of supervisors; and no action shall be brought against any county upon any such claim until the same has been so filed and payment thereof refused or neglected."

It will be noted that said section provides that the claim must be itemized "to clearly show the basis of any such claim and whether for property sold or furnished the county, or for services rendered it, or upon some other account." It is, therefore, our opinion that any claim showing the date of the furnishing of services rendered, property sold, or expense incurred, together with statement showing the nature of the property sold, services rendered or expense incurred by items, would be properly itemized.

**TAXATION:** Appeal from action of board to district court should follow same procedure as appeals from local board of review. Sub-division 9-a Code Section 6943-c27.

December 12, 1931. *Board of Assessment and Review:* This will acknowledge receipt of your letter of recent date inquiring what procedure is necessary where an appeal has been taken from the action of your board to the district court under sub-division 9-a Code Section 6943-c27.

We find no provision in the statute for you making any filing with the clerk of the district court. The statute provides that the appeal shall be taken to the district court by serving notice of appeal on the chairman of the State Board in the same manner as provided for the service of original notice. The original notice would, therefore, after having been served as aforesaid, be filed in the office of the clerk of the district court in order to give that court jurisdiction.

We are of the opinion that Sections 7134 et sequi, would then apply and the matter would be triable de novo in the district court on the question of the assessable value of the property. It has been the practice in appeals from the local board of review to the district court for the appeal to set out in the written notice the grounds of objection to the assessment. We believe that the same process of appeals from your board would avoid much confusion as courts and lawyers are well acquainted with the procedure in appeals from the local board of review to the district court.

**FISH AND GAME:** Notaries public who are authorized to issue hunting and fishing licenses may charge legal fees for acknowledging the same.

December 14, 1931. *Fish and Game Commission:* We acknowledge receipt

of your letter under date of August 17, 1931, requesting an opinion of this department on the following question:

In a number of instances we find that some of those who have been authorized to issue hunting and fishing licenses are charging notary fee to the applicant.

The question is, is it necessary for a person who takes the application and issues the license to be authorized to take acknowledgments, that is, must he be a notary or authorized by statute to take acknowledgments; and if it is necessary that one either be a notary or authorized by statute to take acknowledgments then may he charge a fee for such service in addition to the regular license fee?

We are of the opinion that where the application for hunting or fishing license is acknowledged by a notary public that the notary public, even though he is authorized by the county recorder to issue hunting and fishing licenses, may charge a fee for such acknowledgment.

The applicant is not required to make an application to anyone other than the game warden or the county recorder and if he for convenience makes the application to a notary public he must not only pay the license fee but legal notary fee as requested.

**BOARD OF CONSERVATION—MEANDERED LAKES AND STREAMS—The**

Board of Conservation has the power to prevent the emptying of sewage into the meandered lakes and streams of Iowa. It may not however prevent the usual encroachment of water below the high water mark on meandered lakes and streams. Secs. 1812, 1799-b1, Code 1927-1931.

December 17, 1931. *Executive Council:* We have yours of December 15, 1931, wherein you ask:

Does the Board of Conservation have the power to prevent the emptying of sewage into the meandered lakes of this state?

May it prevent the encroachment of cattle below the high water mark of meandered lakes?

Your attention is called to the provisions of Section 1812, Code of Iowa, 1927-1931, which provide as follows:

“Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the board. The board, with the approval of the executive council, may establish parts of such property into state parks, and when so established all of the provisions of this chapter relative to public parks shall apply thereto.”

Your attention is also called to Section 1799-b1 of said Code, which provides as follows:

“It shall be the duty of the board to adopt and enforce such rules and regulations as it may deem necessary, regulating or restricting the use by the public of any of the state parks or state-owned property or waters under their jurisdiction. It shall also be the duty of said board to adopt and enforce rules and regulations prohibiting, restricting or controlling the speed of boats, ships, or water craft of any kind upon the lakes and waters under their jurisdiction; and traffic upon the roads and drives upon state lands and parks under their supervision.

“Said rules shall be printed and kept posted in conspicuous places wherever they apply, and any person violating any such rule or regulation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not to

exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days."

The case of *Peck vs. Olsen*, very recently decided by our Supreme Court but not yet reported, has an important bearing upon this matter. That case is authority for the proposition that the State may deprive a riparian owner of his right of access to the lake or stream upon which his property is situated, provided such deprivation is in the interest of the public welfare.

We are of the opinion that the Board of Conservation has the right to prevent the emptying of sewage into meandered lakes, but the board would not have power to deprive the people of the state of the ordinary and age-old uses of the river, and such board would not have the power to prevent the ordinary use of the lake bed below high water mark of the public or riparian owner for the purposes of watering cattle or using the streams in the ordinary manner for purposes associated with domestic animals.

**BOARD OF CONSERVATION—STREAMS:** The state does not have the power to regulate the flow of water in streams that are non-navigable and unmeandered, unless interference with the flow by an individual has an effect upon lower waters of such stream that are navigable or meandered.

December 17, 1931. *Executive Council:* Yours of December 15, 1931, is at hand. You ask therein:

Does the state have the power to regulate the flow of water in streams that are non-navigable and unmeandered?

In Iowa the State owns the fee title to meandered and non-navigable streams below high water mark. It is also the owner of the beds of navigable streams below high water mark.

The federal government, however, has conveyed the beds of the non-navigable and unmeandered streams to the riparian owners. It would be our opinion, therefore, that the State does not have the right to regulate the flow of water in such streams, provided the interference has no effect upon lower waters of such stream that are navigable or meandered.

**COUNTY OFFICERS:** County attorney is not entitled to an attorney fee for third time conviction under Section 1964 of the Code, even though it be for maintaining a liquor nuisance.

December 28, 1931. *County Attorney, Fort Dodge:* You have requested an opinion from this Department upon the following proposition:

"Under Section 1930 of the Code of 1931, the penalty provided states that a reasonable attorney's fee shall be taxed by the court. Where the defendant is charged with maintaining a liquor nuisance and the indictment also alleges two prior convictions and subsequently found guilty of maintaining a liquor nuisance, and the jury finds that he has been subsequently convicted as alleged in the indictment, the court sentences the defendant under the last paragraph of Section 1964, and the question is whether or not it is incumbent upon the court to also tax an attorney's fee for the county attorney when sentencing the defendant under the last paragraph of Section 1964."

It is the opinion of this Department that if the principal offense charged, and for which the defendant is tried, is that of maintaining an intoxicating liquor nuisance in violation of Section 1929 of the Code, and it happens to be a third time offense and is so charged in accordance with the provisions of Section

1964 of the Code, that then the provisions of Section 1930 do not apply and the punishment is that provided in Section 1964 for a third-time conviction. Therefore, no attorney fee should be taxed by the court.

**INSURANCE:** "Facility of payment" clause contained in the usual industrial policy is not a violation of Sec. 8776, Code of 1931.

January 8, 1932. *Commissioner of Insurance:* We acknowledge receipt of your letter of January 4, 1932, requesting an opinion of this department on the following question:

The various companies which issue what they call "industrial policies" have in said policy what is known as a "facility of payment" provision. Under this provision the assured contracts with the company that in the event of death the company may pay the proceeds to any relative by blood or connection by marriage of the insured or to *any person appearing to said company to be equitably entitled to the same by reason of having incurred expense on behalf of the insured for his or her burial.*

The question has arisen as to whether or not this "facility of payment" provision is in contravention of Section 8776, Code of 1931, particularly the first paragraph of said section.

We have examined the various briefs submitted on the question, and after due consideration thereof and after our own independent investigation we are of the opinion that the facility of payment clause, as used by the Metropolitan Life Insurance Company, the John Hancock Mutual Life Insurance Company and the Prudential Insurance Company of America, are not in contravention of the provisions of Section 8776, Code of Iowa 1931.

The facility of payment provision is an agreement to the contrary within the meaning of the exemption provision of Section 8776, Code of 1931.

**SCHOOLS AND SCHOOL DISTRICTS:** Where a sub-district school is closed, the district must furnish transportation to all children residing an unreasonable distance from school who desire to attend school in the township even though they were not in attendance at the time the school was closed for lack of attendance.

January 18, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this Department on the following proposition:

"Where a school in a particular subdistrict has been closed for lack of attendance, would children who were not in attendance at said school at the time of its closing be entitled to transportation to another school in the said school township if they desired so to attend and they lived three and a half miles from the nearest school in the school township of their residence?"

You state that this transportation has been refused upon the basis of the case of *Kruse vs. Independent School District, 209 Iowa 64*, and you inquire whether this case would apply to transportation within the school township. It should be noted that the *Kruse* case applied to an independent district. It should also be noted that there are no fixed boundary lines or limitations between subdistricts in a township in so far as school attendance is concerned and that it is the duty of the school township to furnish educational facilities for all children residing therein.

The *Kruse* case would, of course, prevent any allowance for tuition to a school outside the school township.

We are of the opinion however, that this case is neither a limitation on nor a

prevention of the allowance of transportation to attend school in the school township where the distance to the school is unreasonable, taking into consideration the mileage, the condition of the road, and the age and condition of the children.

We have checked this matter with the county attorney of this county, and have a copy of his opinion rendered on the question. We find that he does not question the matter of transportation to a school in the township, but that his opinion was limited to the question of tuition and transportation to a school outside the township district.

In this of course, we think he is correct, based on the authorities of the Kruse case above cited.

**COUNTIES: BOARD OF SUPERVISORS:** Board of Supervisors may not disallow coroners fees; work being required of him by statute. (Section 5237, Code of 1931.)

January 18, 1932. *County Attorney, Glenwood, Iowa:* This will acknowledge receipt of your request of December 5, 1931, which is as follows:

"The Coroner of Mills county has recently filed with the County Auditor a number of claims in the statutory amounts for services rendered in examining dead bodies, and holding Coroner's inquests. The Board of Supervisors feels that in a number of these instances the examinations and inquests were entirely unnecessary and unjustified. In your opinion, have they the right, to disallow such claims for these inquests?"

In reply we would say that under the provisions of Chapter 260 it is mandatory upon the coroner to view the body of anyone dying from accidental or violent means, as he is required by statute to make a report to the Bureau of Investigation, and therefore, it being mandatory upon him, he is entitled to receive the fees for the same.

The board would not be justified in disallowing claims for either viewing the body or for holding an inquest. You, of course, appreciate that where the coroner only views the body he is entitled to a fee of \$5.00, and where an inquest is held he receives a fee of \$10.00 as provided by Section 5237.

**COUNTY OFFICERS—BOARD OF SUPERVISORS:** Board of Supervisors may fix salary of extra help where there is no statutory provision fixing the compensation. (Section 5238, Chapter 261, Code of 1931.)

January 18, 1932. *County Attorney, Fort Dodge, Iowa:* This will acknowledge receipt of your request of January 12, 1932, which is as follows:

"Chapter 261 of the Code provides for the compensation of county officers and deputies. Section 5238 of Chapter 262 of the Code provides for the appointment of assistants and clerks in county offices. Although there does not seem to be any statute directly so stating, it is, of course, assumed that the board of supervisors have power to fix the salaries of such clerks.

"We have in at least two of our county offices men who have been employed as clerks and whose salary has been fixed by the board of supervisors at a higher amount than that allowed by law to deputies. An insistent demand for the reduction of salaries in county offices has raised the question as to whether or not the board of supervisors can lawfully hire clerks in county offices and fix their salaries in excess of the amount received by deputies. This is the proposition upon which we would like your opinion."

In reply we beg to state that the board of supervisors may, at the request of the various county officers, permit additional help, and it is within the province

of the board of supervisors to fix the salaries of any additional help other than that which is provided for and fixed by Chapter 261, Code of 1931.

**BOARD OF HEALTH:** Sale of toilet articles and permanent wave machines does not require license.

January 18, 1932. *Commissioner of Health:* This will acknowledge receipt of your requests of November 12, 1931, which are as follows:

"May one who is unlicensed in cosmetology in Iowa give free facials to the general public, in the home, for the purpose of selling toilet articles?"

"May one who is unlicensed in cosmetology in Iowa give free facials to the general public, in a cosmetology establishment, for the purpose of selling toilet articles?"

"May one who is unlicensed in cosmetology in Iowa give a free permanent wave to the general public, as a demonstration, for the purpose of selling a permanent wave machine?"

In reply we would say that the cosmetology act provides that where work of this character is done for compensation it constitutes the practice of cosmetology, and, of necessity, a license must first be secured before the same can be done.

In your questions you state that free facials and free permanent waves are given to the general public for the purpose of selling toilet articles and permanent wave machines. In view of the fact that the party giving the free facials would not be securing compensation as a cosmetologist but only on the sale of this merchandise, it would seem that he was not performing these acts for compensation and would not have to secure a license.

**SOLDIERS—TAXATION:** Ex-service men not entitled to have exemption refunded from taxes paid by bank.

January 18, 1932. *County Attorney, Sidney, Iowa:* This will acknowledge receipt of your request of December 7, 1931, which is as follows:

"An ex-service man here owns twenty shares of stock in the National Bank, The National Bank paid its taxes for the year 1930; and this ex-service man is now asking for a refund on \$500.00 actual value of this bank stock, and has filed a claim therefor.

"A claim was filed with the assessor by the claimant as required by law, but of course the stock was assessed to the bank and the bank paid the taxes thereon.

"Is he entitled to have this exemption refunded to him from the taxes paid to the County Treasurer by the bank?"

In reply we would say that the ex-service man of whom you speak is not entitled to have the exemption refunded to him from the taxes paid to the county treasurer by the bank.

**SOLDIERS AND SAILORS—SOLDIERS RELIEF FUND:** Relief fund applicable only to honorably discharged soldiers, sailors, marines and nurses of any war. (Chap. 273, Section 5385).

January 18, 1932. *Bonus Board:* This will acknowledge receipt of your request of October 24, 1931, which is as follows:

"1. Are men who served in the Army, Navy or Marine Corps during peace time eligible to relief from the Soldiers' Relief Funds of the various counties?"

"2. What is the meaning of the word 'indigent' as used in Section 5385, Chapter 273, Code of Iowa?"

In reply to your first question submitted, we would say that Section 5385



specifically confines relief to honorably discharged soldiers, sailors, marines and nurses, who served in the military or naval forces of the United States in any war.

Therefore, those engaged in the Army, Navy, or Marines during *peace times* and whose service was composed solely of service during time of peace would not be entitled to relief.

As to the meaning of the word "indigent", we are inclined to believe that the term "indigent" is used to refer to one's financial ability and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want.

**BOARD OF HEALTH:** Physician, surgeon or osteopath may specialize in podiatry. (Section 2510-d1, Code of 1931.)

January 18, 1932. *County Attorney, Newton, Iowa:* This will acknowledge receipt of your request of November 4, 1931, which is as follows:

"Is a regularly licensed physician or osteopath engaged as a specialist in the practice of podiatry required to have a license as a podiatrist?"

In reply we would say that under the present laws of this state there is no prohibition against a regularly licensed physician or osteopath specializing in the practice of podiatry; bearing in mind, however, that each licensee must particularly designate the branch of the healing art to which he belongs, as provided in Section 2510-d1, Code of 1931.

**CIGARETTE LICENSE—CITIES AND TOWNS:** Where a licensee has been convicted of violation of cigarette law, city council should revoke license. (Secs. 1559, 1572, Code of 1931).

January 18, 1932. *Treasurer of State:* This will acknowledge receipt of your request of January 11th, which is as follows:

"A violator of the Iowa Cigarette Law plead guilty in the District Court at Iowa City and was fined \$100.00 and costs, \$50.00 of which was suspended. Information for said arrest was filed under Section 1572. The question that this office desires an opinion on is as follows:

"This party applied for cancellation of his permit before the transcript of the case was taken to the City Council for the revocation of said permit, which is under Section 1559. Does a City Council have to accept the cancellation that he applied for or can they ignore that and revoke his permit under Section 1559?"

In reply, we beg to advise that under the provisions of Section 1559 the statute makes it mandatory upon the city council to revoke the permit of any person who has been convicted of a violation of Chapter 78, and, provided that the cancellation of a permit had not been carried out prior to the conviction of the party, it would be the duty of the city council to revoke the permit.

**COUNTIES:** Where county attorney sends material to expert for examination county must pay for the work.

January 18, 1932. *County Attorney, Storm Lake, Iowa:* This will acknowledge receipt of your request of January 9th, which is as follows:

"During the recent investigation of a murder case in this county we had Mr. W. J. Teters, Dean of the College of Pharmacy, of Iowa City examine the vital organs of the deceased for poison.

"Professor Teters submitted his bill for examination in the amount of \$50.00 to our Board of Supervisors, but they are withholding payment under the assumption that Professor Teters should do this work for them for nothing.

"I advised them that I thought they were mistaken in the matter, but they have asked me to write you for an opinion as to whether this charge was one that they should pay."

In reply we would say that your advice to the Board of Supervisors was absolutely correct in that there is no provision whereby the county may have an examination made for poison by the Dean of a College of Pharmacy without making payment the same as they would to any other expert along this line, as this is not a part of the work of the Dean but is done on spare time and entirely outside of his college work.

**CRIMINAL LAW—TRADE SCHEMES:** Trade stimulants that include the elements of a game of chance are prohibited.

January 18, 1932. *County Attorney, Boone, Iowa:* This will acknowledge receipt of your request of December 19, 1931, which is as follows:

"I have had numerous inquiries through my office as to the legality or the illegality of the various trade stimulants that are now being used throughout the country that take various forms. One in particular is a well known 5c candy bar made by the Northwestern Candy Company of Des Moines in which a 5c candy bar is sold for a nickel and then the customer is allowed to pull a wrapper off a card then disclose whether or not they will get an additional bar or bars free. Also there are other trade stimulants being used that the customer at various business houses receive coupons for the amount of their purchase which are saved by them with the view to cashing the same on prizes that are given at a later date. In all cases the customer receives the entire amount of their purchase with a possibility of receiving something in addition. It is unlike the slot machine proposition where tokens are given and the tokens either converted into cash or can be used to play back into the machine.

"Personally I cannot see how it is anything other than a trade stimulant and not in any way a gambling device. However, there has been some talk in various parts of the county and in the state concerning these matters and I would like to know just what your department has ruled on this proposition. I was in the Paramount Theatre in your city during the County, Attorneys' Convention and there received tickets which were to be deposited in a box kept there for that purpose and on a set date, if present in the theatre, would have a chance on a drawing to be made there. This candy proposition that I speak of is not as much of a gamble or game of chance that that would be for the reason that it does not call for any further outlay of money. In other words, in order to have a chance at the show you must buy an additional ticket and attend another show in order to qualify for the prize but in the case of the candy you either get an additional bar or you don't."

In reply we beg to advise that there is no question but that technically this is a violation of the present statutes. While it is true that this is carried on more or less throughout the state, nevertheless, it is inclined to partake of all the elements of a game of chance, and the unfortunate part of it is that it is inclined to lead children into the spirit of gambling.

**POOR:** Legal settlement defined. See opinion. (Sec. 5311, Chap. 267, Code of 1931.) (Sec. 3395, Code of 1931.)

January 20, 1932. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter under date of December 24, 1931, requesting an opinion of this department on the following question:

A man and his wife moved from Missouri to Iowa in September, 1930. The man came for the purpose of entering the University to take post-graduate work and claims that he intended to establish his residence in Iowa City. During the summer months of 1931 he and his wife were not residing in Johnson County, Iowa, as he was engaged in teaching in another county. Part of

their personal effects were left in the apartment which they were occupying in Iowa City while they were absent during the summer months. He again entered the University in September and is still taking a post-graduate work. His wife is suffering with tuberculosis and is now in the State Sanatorium at Oakdale, and they are unable to pay the expense thereof and are asking relief from this county. No notice to depart has ever been served upon them. Does he have a legal settlement in this county such as would entitle him to relief?

Under Section 5311, Chapter 267, Code of Iowa 1931, a legal settlement is acquired in this state by an adult person in the county of his residence by residing in this state one year without being warned to depart. All that is necessary to acquire a residence in a county is for an adult person to move to said county with a present good faith intention of making that his home and after residing there for the period of one year he acquires a legal settlement. A temporary sojourn away from the county of his residence would not affect his residence and his acquisition of a legal settlement.

Under the same section above referred to a married woman acquires the settlement of her husband. The question of residence, therefore, is one of fact, and if the man in your case has no other home and retained his apartment leaving part of his personal effects there during the summer months and you do not have any other facts to show that he considered Iowa City only his temporary abode, we are of the opinion that he has acquired a legal settlement in Johnson County and would be entitled to benefits of Chapter 267, Code of Iowa 1931, provided, of course, he is entitled to poor relief. If Johnson County, therefore, is the legal settlement of the man in question and he is entitled to poor relief, then under Section 3395, Code of Iowa 1931, his wife would be an indigent patient and under Section 3399 the county would be liable for her support at the State Sanatorium at Oakdale.

**PUBLIC OFFICERS:** Chapters 208 and 209 of the 44th G. A. went into effect July 4, 1931, and all contracts made prior to that date and all claims filed thereunder are subject to the provisions of said chapters. The law, being remedial affects existing contracts, as well as contracts made subsequent to the taking effect of the law.

January 25, 1932. *State Highway Commission, Ames, Iowa:* We have your favor of the 21st at hand in which you request our opinion on the following proposition:

Section 10299, Code of 1927, was amended by Chapters 208 and 209, Laws of the Forty-fourth General Assembly, with reference to the filing of claims for labor and material used on construction projects. Chapters 208 and 209, as we understand, became effective July 4, 1931. Prior to this date there were a large number of our 1931 construction projects under way. The question has now arisen as to whether or not the amendments referred to are applicable to contracts let prior to July 4, 1931, particularly in reference to the time within which claimants may bring suit after the completion and acceptance of the contract. And in the event that a suit is started, may the contractor, by filing a bond in double the amount of the claim, secure his retained percentage prior to the adjudication of the claim?

Must the Commission recognize claims against a project contracted for prior to July 4, 1931, if such claims are filed with the county auditor, auditor of state, or any other state or county body?

Chapter 208, Laws of the Forty-fourth General Assembly, amended not only Section 10299, but also Sections 10313, 10306, and 10312, Code, 1927. Insofar as the request above quoted is concerned, it is only necessary to consider the

amendment made by said chapter to Section 10313. The provisions of this statute as amended, read as follows:

"The public corporation, the principal contractor, any claimant for labor or material who has filed his claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than *sixty days*, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

*"Provided that upon written demand of the contractor served on the person or persons filing said claims requiring him to commence action in court to enforce his claim in the manner as prescribed for original notices, such action shall be commenced within thirty days thereafter, otherwise such retained and unpaid funds due the contractor shall be released; and it is further provided that after such action is commenced, upon the general contractor filing with the public corporation or person withholding such funds a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for such claims so filed, said public corporation or person shall pay to the contractor the amount of such funds so withheld."* (Sec. 10313.)

The italicized portions of the above statute were the amendments contained in Chapter 208, and became effective on July 4, 1931.

Section 10305, in reference to the filing of claims relating to public improvements, as amended by Chapter 209, Laws of the Forty-fourth General Assembly, reads as follows:

"Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, *board or commission authorized by law to let contracts for such improvement*, an itemized, sworn, written statement of the claim for such labor or material, service or transportation." (Sec. 10305.)

The italicized portion of the above statute was inserted by the amendment referred to in lieu of the language contained in the former statute, "authorized by law to issue warrants in payment of such improvement". The amendment to Section 10305 also went into effect July 4, 1931.

The question resolves itself into the one proposition: that is, whether or not the statutes enacted by the Forty-fourth General Assembly, above referred to, affected the procedure under contracts entered into prior to July 4, 1931.

The amendments in question apply to the procedure and to the limitations on filing claims and bringing actions for claims relating to public improvements. If the amendments affect the remedy and not a contractual right, they apply on the date the statutes became effective to claims relating to public contracts entered into prior to that date. Statutes pertaining to procedure and the statute of limitations are remedial statutes. *Sutherland, Statutory Construction, 2d Edition, Sections 336, 665.* The legislature has control and may enlarge or limit modes of procedure providing it does not deny a remedy. *Sutherland, Statutory Construction, 2d Edition, Section 665.*

In the case of *Jack v. Cold*, 114 Iowa, 349, the Supreme Court of this state considered the question of whether a statute limiting the time for redemption in a foreclosure sale was effective as of the date of an amendment thereto, which occurred after the sale. The Court said:

"The sale to Burmeister occurred before the adoption of the Code, October 1, 1897, but it was afterwards that the certificate of sale was assigned to Jack. Did the provision of the Code of 1873 in force at the time of the sale control in the matter of making redemption? The repeal by the Code did not affect any

act done, any right accruing or which has accrued or been established, nor any suit or proceeding had or commenced in any civil case before the time when such appeal takes effect; but the proceedings in such cases shall be conformed to the provisions of the Code so far as consistent.' Section 51, Code. As often said, rights, not remedies, are saved by this section; and, unless the change in remedy in some way affected existing or accruing rights, this statute has no application, except to a pending suit or proceeding, and even then the provisions of the Code are to be followed as far as may be. *Jones v. Insurance Co.*, 110 Iowa 75; *Wormley v. Hamburg*, 40 Iowa 22; *Tilton v. Swift*, 40 Iowa 78; *Woods v. Haviland*, 59 Iowa 476; *Kossuth County v. Wallace*, 60 Iowa 503. 'The right of a creditor to any particular remedy is not a vested right in a continuance of any special mode of proceeding, or the perpetuation of any remedy or remedial process which can be modified or abolished without impairing or taking away the right itself. A particular remedy existing at the time of the making of the contract may be abrogated altogether without impairing the obligation of the contract, if another and equally adequate remedy for the enforcement of that obligation remains, or is substituted for the one taken away.' Beach, *Modern Law Contract*; *New Orleans & L. R. Co. v. Louisiana*, 157 U. S. 214 (15 Sup. Ct. Rep. 581, 39 L. ed. 679). Was the right which the judgment conferred, or the obligation which the defendant assumed, affected—enlarged or abridged in any way—by the change in the law? The plaintiff had the perfect right to assignment of the certificate without redeeming, before the change. *Streeter v. Bank*, 53 Iowa 178. That right continued unimpaired. Then taking the assignment, without more, would have been treated as a redemption; afterwards, as a purchase only. The choice of purchasing or redeeming was open after the change, as before. The method alone had been changed. What was done would have constituted a redemption before October 1, 1897. It did not after that. \* \* \*. But the right to redeem was in no way affected, as this might have been accomplished as readily through payment to the clerk as to the party. Undoubtedly alterations in redemption law may affect the rights of parties to contracts." (Citing cases).

In *Cassady v. Grimmelman*, 108 Iowa, 695, the question of the limitation within which suit might be brought on a judgment was determined, a change having been made in the limitation after the time of the judgment and before action to enforce its collection. The Court said:

"Now, while it is true that a statute of limitations relates only to the remedy, and may be changed from time to time without impairing the obligation of contracts, yet the legislature has no power to cut off the remedy or bar a suit upon an existing cause of action instanter. A reasonable time must be given within which to prosecute existing causes of action under the new statute." (Citing cases).

In *Norris v. Tripp*, 111 Iowa, 113, at 118 our Court said:

"It is undoubtedly within the statutory power of the legislature to require, as to existing causes of action, that suits for their enforcement should be barred unless brought within a period less than that prescribed at the time the contract was made or the liability incurred from which the cause of action arose. The exercise of this power is, of course, subject to the fundamental condition that a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of an action before the bar takes effect." (Citing cases).

A new or different remedy may be added to or substituted for those which existed at the time the contract was entered into. *Robinson v. Ferguson*, 119 Iowa 325; *Sutherland, Statutory Construction*, 2d Ed., Section 674.

In *Sutherland on Statutory Construction*, 2d Edition, Section 666, the authority quotes from the case of *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143, as follows:

"Taney, C. J., says: 'Undoubtedly a state may regulate at pleasure the modes

of proceeding in its courts in relation to past contracts as well as future. It may, for example, shorten the period of time within which claims shall be barred by the statute of limitations. \* \* \*. Regulations of this description have always been considered, in every civilized community, as properly belonging to the remedy, to be exercised or not by every sovereignty according to its own views of policy and humanity. \* \* \*. And although a new remedy may be deemed less convenient than an old one, and may in some degree render the recovery of debts more tardy and difficult, yet it will not follow that the law is unconstitutional. Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract."

An amendment to the charter of the City of Oshkosh, Wisconsin, provided that no suit should be maintained on any claim against the city unless same was presented to the city council and disallowed, and failure to take action for sixty days was made equivalent to disallowance; and disallowance by the council was made a bar, unless an appeal was taken to the circuit court by serving a Notice of Appeal on the Clerk within twenty days, and giving a bond to the city in the sum of \$150.00, with two sureties to be approved by the city attorney and city comptroller. This was held not to impair a contract previously made between the City and a water company in regard to hydrant rentals, but to be a mere change in the remedy, within the power and discretion of the legislature. *Oshkosh Water Works Co. v. Oshkosh*, 85 N. W. (Wisc.) 376; *Oshkosh Water Works Co. v. Oshkosh*, 187 U. S. 437. And in the decision of the cited case in the Supreme Court of the United States, it was said:

"It is well settled that while in a general sense the laws in force at the time a contract is made enter into its obligation, parties have no vested right in the particular remedies or modes of procedure then existing."

There is no doubt but that the amendments referred to by the Forty-fourth General Assembly fall within the class of remedial statutes and are governed by the above decision. We are, therefore, of the opinion that the provisions of Sections 10313 and 10305 as amended by Chapters 208 and 209, Laws of the Forty-fourth General Assembly, apply to claims relating to contracts for public improvement made prior to July 4, 1931, the date said amendment became effective. This being true, a suit must be commenced not later than sixty days following the completion and final acceptance of the improvement, and in the event that a suit is started the general contractor may, upon filing a bond, as provided in Section 10313 as amended, secure the retained percentage prior to the adjudication of the claim or claims in controversy.

Section 10305 as now amended, requires that claims for labor or material pertaining to the construction of a public improvement, shall be filed "with the officer, board or commission authorized by law to let contracts for such improvement." Contracts let by the Highway Commission fall within the provisions of this statute, and claims must be filed with the Commission and not with the county auditor, auditor of state or other county or state body. The Highway Commission is, therefore, not required to investigate or take notice of claims for labor or material arising from public contracts, unless the same are filed with the Highway Commission, and this is true even though the contract was entered into prior to July 4, 1931.

COUNTIES: A warrant drawn against the poor fund stamped "not paid," the proceeds of which are used to pay for real estate for county home, may be

included in a bond issued to take up outstanding warrants against the poor fund. (Sec. 5261, Code of 1931.)

January 25, 1932. *County Attorney, Logan, Iowa:* We acknowledge receipt of your letter of January 22, 1932, requesting an opinion of this department on the following question:

During the year 1931 the board of supervisors purchased real estate for a county home to the extent of \$5,000.00 proceeding under Section 5261 of the Code of 1931. At the time this purchase was made the poor fund of the county was overdrawn and the warrant for \$5,000.00 was stamped "not paid for want of funds." The board is now selling bonds to take up outstanding warrants in the poor fund. Can this warrant be included in the bond issue?

In your question you state that the county board proceeded in accordance with the provisions of Section 5261, Code of 1931. We assume that the question was not submitted to the vote of the people as the amount is not such an amount as requires a submission to the vote of the people. The warrant was drawn against the poor fund and is an obligation of that fund and would be in the same category as any other warrant drawn against the poor fund which was stamped "not paid for want of funds."

We are, therefore, of the opinion that if the bonds which are being sold to take up the outstanding warrants against the poor fund are for the purpose of taking up outstanding warrants issued during the year 1931, that the \$5,000.00 warrant drawn for the purpose of purchasing real estate for a county home may properly be included in said bond issue.

**TAXATION:** Personal tax assessed against merchandise when such merchandise is sold in bulk, is superior and prior to the lien of a chattel mortgage on the same, whether the chattel mortgage is prior in time or not as against personal property not specified in Sec. 7205, Code of 1931. A chattel mortgage prior in time to the personal tax is superior and prior to the same.

January 25, 1932. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Is the tax lien provided for in Section 7205, Code of 1931, superior to a lien of a chattel mortgage, which chattel mortgage is prior in time to the levy of the personal tax?

You are referred to Section 7205, Code of 1931. Under this section taxes upon stocks of goods, merchandise, fixtures and furniture in hotels, restaurants, rooming houses, billiard halls, moving picture shows and theatres, are made a lien thereon, which lien continues as such when they are sold in bulk and they may be collected from the owner, purchaser, or vendee, and such owner, purchaser, or vendee is made personally liable for the same.

We are of the opinion that under this section the tax lien therein provided is superior and paramount to that of a chattel mortgage whether the chattel mortgage is prior in time to the assessment and levy of the tax or not.

Our attention has been called to the case of *Larson vs. Hamilton County, et al.*, 123 Iowa, 485, and to the case of *Iowa Mercantile Company vs. Blair*, 123 Iowa, 290. We have examined these cases and find that the statute, Section 7205, Code of 1931, was amended by the Legislature since these decisions were handed down and these decisions do not now control.

We call your attention to the fact that this opinion applies to the classes of personal property mentioned in Section 7205, Code of 1931, and does not apply to

personal property generally. Except as in said section provided, personal property taxes are not a lien on personal property and a prior chattel mortgage would be superior to the claim for personal taxes.

**COUNTY OFFICERS:** Where the salary is fixed by statute the same cannot be reduced except by the voluntary action of the individual officer. Where the statute does not fix the salary of an appointive county officer the same may be reduced by action of the county board of supervisors.

January 26, 1932. *Committee on Reduction of Governmental Expenditures:* We acknowledge receipt of your letter of January 13, 1932, requesting an opinion of this department on the following questions:

(1) Several of the county officers whose salaries are fixed by the statute have voluntarily informed the board of supervisors of the various counties that they will accept a 10% reduction in their warrants for salaries. Will you kindly tell me how the county auditor should make their warrants out; whether they should be made out for the full amount or whether they should be for 90% of it?

(2) Supposing an officer has voluntarily taken a cut in his salary and comes up for re-election and he has an opponent and this opponent is asked if he would be willing to take the same reduction as the incumbent has. If the candidate says he will then is he disqualified from taking the office if elected?

(3) Where the statute does not fix the salary of an appointive officer of the county or of any other municipality has the governing board the right to reduce the salary of such an officer?

(1)

Where the salary of a county officer is fixed by statute and he voluntarily agrees to take a reduction, it would be necessary that said county officer file with the county auditor a request that his warrant be drawn for the amount that he voluntarily agrees to accept and an agreement that he will accept said amount in full compensation for all services rendered by him as such county officer, and that he waives any and all claims against the county for the difference between his salary as fixed by statute and the amount he agrees to accept. In the absence of this authority the county auditor would have no right to make the warrant out for less than the amount fixed by statute.

(2)

A candidate for a public office cannot offer or agree publicly or otherwise, that if elected he will accept a salary less than that fixed by statute, nor can he, if the compensation for the services rendered in such office are payable by way of fees, agree to accept a maximum amount and to turn back the excess over and above said amount. This has been construed by our Supreme Court to be an offer of a bribe for the purpose of procuring election and disqualifies the candidate making such an offer.

You are referred to the case of Carrothers vs. Russell, 53 Iowa, 346. There are other cases to the same effect.

(3)

Where the salary or compensation of an appointive officer of a municipality, including county, is not fixed by statute the governing board has the right to fix the salary and may reduce the same in their discretion.

**CORPORATIONS:** Issuance of stock for property. Only duty Executive Council has is to determine the value of the property in question.



January 26, 1932. *Executive Council*: You have requested the opinion of this Department upon the following proposition:

"Where permission is asked to issue stock in exchange for property is it necessary that proof of ownership and clear title to said property be shown by the applicant."

The provisions of law applicable to the question raised are Section 8143, et seq. of the Code. It will be observed that there is no requirement in any of these provisions that a showing or proof shall be made to the executive Council of ownership or clear title to any property which it is desired to exchange for stock. The only function or duty the Executive Council has in the matter is to determine the value of the property in question it is desired to exchange for stock, and to then make its order permitting the corporation to issue the proper amount of stock for that property. It is not necessary that the corporation, at the time of the application and order of the council, have title to said property. It is sufficient if the corporation acquires full and complete title at the time stock is issued therefor. It would be well for the order of the Executive Council to recite this requirement.

**SCHOOLS AND SCHOOL DISTRICTS:** Pupil entitled to total of four years tuition in high school even though he changes residence from one district to another under Section 4277 Code 1931.

January 29, 1932. *Superintendent of Public Instruction*: A question has arisen in regard to the construction placed on Section 4277 of the Code under an opinion of this Department relative to your Department on June 30, 1927. In that opinion, we held that where a child moved from one district to another that the limitation of a total period of four years would apply in either of the districts and that a pupil who had not attended for a period of four years in the district of his parent's residence, would be entitled to tuition for that period of time in that district even though it took said pupil more than four years to finish the high school course. Your specific question submitted at that time was as follows:

"A certain student entered high school in his own district but on account of his inability to make his grades, repeated the first year. On account of his having to devote two years' time to the first year of high school work this student, at the end of four years of high school attendance, was still one year short of graduation. At the end of his fourth year of high school attendance his family moved to a rural district that does not maintain an approved four year high school course, so the boy returned to the high school where he had already spent four years and enrolled in the senior class as a nonresident student. This rural district, however, refuses to pay his tuition on the grounds that this boy had already attended high school four years.

"Section 4277 provides that:

' A school corporation in which such student resides shall pay from the general fund to the secretary of the corporation in which he shall be permitted to enter a tuition fee of not to exceed \$12.00 a month during the time he so attends NOT EXCEEDING A TOTAL PERIOD OF FOUR YEARS.'

"We would like to know if, under the circumstances, this rural district is obligated to pay tuition for this fifth year of high school attendance."

We have reconsidered the matter and reached the conclusion that the district of the child's residence would not be liable for the tuition for the fifth year or for any period of time beyond a total attendance in high school of four years.

The statute provides that the child shall be permitted to attend any high school that will receive him and that the corporation of the student's residence shall pay his tuition, not to exceed \$12.00 a month, during the time he so attends not exceeding a total period of four years. We reach the conclusion that the limitation of the four years applies to his attendance in the high school, and not to his attendance from a particular district.

In discussing this section, our supreme court in the case of *Tow vs. Dunbar Consolidated School District*, 200 Iowa 1254 at 1257, said:

"This (section) provides that a child of high school age residing within a district which does not provide a high school course may attend high school elsewhere, and it becomes the duty of his school district to pay the tuition therefor. \* \* \* The provision is a very liberal one, as it is, and we see little reason why it should be enlarged, either by statute or by judicial construction."

We therefore, reach the conclusion that the four-year period applies to the child's attendance in high school and not for attendance from any one district. Therefore, when a child has attended high school for a four-year period whether from one or more districts, and whether he has completed the course or not, he is not entitled to further tuition.

All former opinions of this Department in conflict with the above are hereby overruled.

**SCHOOLS AND SCHOOL DISTRICTS—COUNTY OFFICERS:** Five year re-adoption not mandatory; the limitation being "not less than five years;" continued use not a renewal unless specific provisions in contract.

February 1, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in regard to the expiration of existing contracts for a uniform system of text books in some of the counties of the state in which you inquire whether it is mandatory on the county board to adopt or readopt on the expiration of the existing contract and whether a failure to readopt formally a continued use of the books would amount to a ratification of a new five year contract for the same books.

We have examined the statute and find only the provisions of Section 4453 relating to this question. This statute places a minimum limitation of five years on the power of the board to change the contract. This section provides that there shall not be a change before the expiration of five years. It is not therefore, in our opinion, mandatory on the board to make a change at the time of the expiration of the present contract.

The effect of continued use without formal action on the contract would depend on the contract in each case. We are of the opinion that such continued use would not constitute a renewal of the contract for a five year period unless there is a specific provision in the contract to that effect.

**CORPORATIONS (Foreign):** A foreign pipe line corporation which only distributes natural gas to distributors within the state is not doing business within the meaning of Chap. 386, Code of 1931. (Continental Construction Corporation.)

February 4, 1932. *Secretary of State:* We acknowledge receipt of your letter of October 8, 1931, requesting an opinion of this department on the following question:

The Continental Construction Corporation have a pipe line constructed across the State of Iowa for the purpose of transporting natural gas from their own gas

wells. At the present time said company is furnishing natural gas to distributing companies in two cities of this state. The question has arisen as to whether or not said Continental Construction Corporation is doing business within the meaning of Chapter 386 of the Code of Iowa 1931.

We have made an exhaustive study of the various decisions of the various states of the United States by the Supreme Court wherein the above question has been considered, and we are of the opinion that the furnishing of natural gas by the Continental Construction Corporation to distributing companies within this state (not to consumers) is not doing business within this state within the meaning of Chapter 386 of the Code of Iowa 1931. The business it is conducting is inter-state and not intra-state.

Our decision would be quite different were said company furnishing natural gas to the consumers of this state.

Your attention is called to the case of the State Tax Commission of Mississippi, et al., etc., Appellants, vs. Inter-state Natural Gas Company, Incorporated, decided by the Supreme Court of the United States in the October term, 1931. The facts in that case are identical with the facts in the question under consideration. The Court in that case, speaking through Mr. Justice Holmes, said:

"The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incidental to the inter-state commerce between Louisiana and Mississippi. The plaintiff simply transports the gas and delivers it wholesale not otherwise worked over than to make it ready for delivery to the independent parties that dispose of it by retail."

**FISH AND GAME:** Board of Conservation may secure a game breeder's license under Section 1706, Code of 1931.

February 6, 1932. *State Board of Conservation:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Section 1706, Code of 1931, provides for the issuance of game breeder's license under certain conditions. Can the Board of Conservation, as such, qualify under said section and secure a game breeder's license?

We can see no reason why the Board of Conservation, upon compliance with the provisions of Section 1706, Code of 1931, cannot be issued a game breeder's license.

**FAIR BOARD—TREASURER'S BOND.** Sureties on the bond of the treasurer of the Iowa State Fair Board are not insurers or guarantors. (Sec. 1059, 1060, 2883, Code of 1931.)

February 8, 1932. *State Fair Board:* We acknowledge receipt of your request for an opinion on the following question:

What is the liability of the treasurer of the Iowa State Fair Board with respect to public funds in his possession?

Section 2883, Code of Iowa 1931, provides for the appointment by the board of a treasurer and defines his duties. Under said section he is required to file with the board, subject to the approval of said board, a bond for the faithful performance of his duties.

The Iowa State Fair Board is an agency or arm of the state and the funds in the hands of the treasurer are public funds and the treasurer is a public officer. The conditions of the treasurer's bond would be the same as other public officers

as provided under Section 1059, Code of Iowa 1931; the liability of the surety on the treasurer's bond as defined in Section 1060, Code of Iowa 1931.

The courts have held in construing these sections and the liability of public officers who have custody and control of public funds that said officers are only required to exercise ordinary reasonable diligence and care in the handling of the public funds, and that where the treasurer is not guilty of negligence there is no liability on his part for loss of said funds because of the failure of a bank, theft, or otherwise.

The surety on the bond of the treasurer of the Iowa State Fair Board is not an insurer or guarantor of the funds that come into the hands of said treasurer. The sureties are merely liable for breach of the terms and conditions of the bond on the part of the treasurer and not otherwise. In examining the form of bond provided for in Section 1059, Code of 1931, we find the following language:

"That he will exercise all reasonable diligence and care in the preservation and lawful disposal of all monies \* \* \* appertaining to his said office, and deliver them to his successor, or to any other person authorized to receive the same; \* \* \*."

Our Supreme Court has construed Section 1060, Code of 1931, and the liability of the public officer on his bond, as well as the sureties, in the case of *Town of Danbury vs. Riedmiller, et al.*, 208 Iowa 879; 226 N. W. 159 at 160.

We are, therefore, of the opinion that the sureties on the bond of the treasurer of the Iowa State Fair Board are not insurers or guarantors, and that the treasurer's duty is to exercise ordinary reasonable care and diligence in connection with the handling of the funds coming into his hands as said treasurer, and that he would not be liable on his bond unless he was guilty of negligence in the handling of the same.

**COUNTY OFFICERS—TAXATION:** Where a treasurer receives counterfeit bills in payment of the taxes he is liable and must account for the money.

February 8, 1932. *County Attorney, Sioux City, Iowa:* We acknowledge receipt of your letter under date of January 5, 1932, requesting an opinion of this department on the following question:

The county treasurer, during the November rush received one \$20.00 and one \$10.00 counterfeit bill in payment of taxes. He does not know from whom the bills were accepted. The question has arisen as to whether or not he is personally responsible to the county for the money represented by these counterfeit bills.

The county treasurer has only authority to accept money in payment of taxes. A check payable to the county treasurer is never payment of the taxes until the money is received by the treasurer. Therefore, if the county treasurer or his deputies accepted counterfeit bills in payment of taxes it would be negligence on his part, and it would be his duty to account for the same; that is, if he could not determine who presented the counterfeit bills the treasurer would have to make up the shortage.

**COUNTY OFFICERS:** Where a deputy clerk or a county officer is appointed with the approval of the county board of supervisors the statute of nepotism is not applicable. The term of office of a deputy clerk or helper appointed by a county officer subject to the approval of the county board is at the will and

pleasure of the appointing officer unless the appointment is made for a specific period. (Sec. 1166, Code of 1931; Chapter 61, Code of 1931.)

February 8, 1932. *County Attorney, Boone, Iowa*: Pursuant to your request we herewith submit you an opinion on the following question:

Where an elective county officer appoints by and with the approval of the county board of supervisors a person as a deputy, clerk, or helper in his office, and said appointed person is related by consanguinity or affinity, within the third degree, to the county officer making the appointment, is said appointment contrary to the provisions of Chapter 61, Code of 1931?

Section 1166, Code of Iowa 1931, specifically provides in substance that where an appointment is made and first approved by the officer, board, council or commission whose duty it is to approve the bond of the principal, that such appointment would not be a violation of said Chapter 61, that is, the law as to nepotism.

You are further advised that where the statute does not fix the term of office of a deputy, clerk, or helper appointed by a county officer subject to the approval of the county board, and the appointment is not made or approved for a definite term, that the term of office of said appointee is at the will of the appointing officer.

**COUNTY OFFICERS:** Where more than one chattel mortgage is assigned by one instrument the county recorder should collect a fee for each chattel mortgage assigned by said instrument. (Sec. 10031, Par. 1, Code of 1931.)

February 8, 1932. *County Attorney, Albia, Iowa*: We acknowledge receipt of letters from your County Recorder under dates of December 3rd and 14th, respectively, requesting an opinion of this department on the following question:

On November 10, 1931, the First Bank and Trust Company of Eddyville, Iowa, presented an assignment which assigned thirty-one (31) chattel mortgages from the First Bank and Trust Company to the Manning and Epperson State Bank of Eddyville. The question has arisen as to what fee should be charged in connection with the assignment of these thirty-one (31) chattel mortgages.

Your attention is called to Section 10031, Code of Iowa 1931, paragraph 1, which reads as follows:

"1. For filing any instrument affecting the title to or incumbrance of personal property, twenty-five cents each."

An assignment of a chattel mortgage is an instrument which affects the title to or incumbrance of personal property and the fact that thirty-one (31) chattel mortgages were assigned in one instrument would not mean there was only one assignment—there were thirty-one (31)—and under the section referred to above you should charge twenty-five (25) cents for each chattel mortgage assigned by said assignment or collect a total of \$7.75. It would be necessary for the recorder to index separately the assignment of each of the thirty-one (31) mortgages.

**COUNTY OFFICERS:** Where more than one chattel mortgage is released by one instrument the county recorder should collect 25 cents for each chattel mortgage released by said instrument. (Sec. 5177, paragraph 3, Code of 1931.)

February 8, 1932. *County Attorney, Fort Madison, Iowa*: We acknowledge receipt of a letter from your County Recorder requesting an opinion of this department on the following question:

A blanket release of 27 chattel mortgages has been submitted to the county recorder of this county. The question has arisen as to how much should be charged as recorder's fees in connection with the release of these chattel mortgages.

Your attention is called to Section 5177, paragraph 3, Code of Iowa 1931. Clearly, under this section and paragraph, a fee of twenty-five cents (25c) must be collected for every marginal assignment or release, and the fact that 27 are released in one instrument would not make any difference. You should collect a fee of twenty-five cents (25c) for each chattel mortgage released by said instrument.

**TAXATION—BANKS AND BANKING:** Sheriff's certificate of sale under a mortgage foreclosure, tax sale certificates and deposits in banks are all subject to taxation as monies and credits.

February 8, 1932. *County Attorney, Toledo, Iowa:* We acknowledge receipt of your letter under date of February 2, 1932, requesting an opinion of this department on the following questions:

(1) Is a sheriff's certificate of sale under a mortgage foreclosure of real estate taxable as monies and credits?

(2) Are tax sale certificates taxable as monies and credits?

(3) Are funds on deposit in a bank which closed prior to January 1st taxable for the ensuing year as monies and credits, and if so how would the actual value be determined?

(1)

A sheriff's certificate of sale under a mortgage foreclosure is a chose in action and is property in the hands of the holder thereof and may be sold and assigned by him. The owner of the land has a year's equity of redemption and if within said year he pays the amount due on the certificate of sale he is entitled to the surrender of the certificate.

We are, therefore, of the opinion that a sheriff's certificate of sale under a mortgage foreclosure is monies and credits in the hands of the holder thereof and subject to taxation as such.

(2)

A tax sale certificate is a chose in action and is subject to sale and assignable by the holder thereof. The owner of the property has at least three years within which to pay the amount due on the tax sale and satisfy the same.

We are, therefore, of the opinion that a tax sale certificate is monies and credits in the hands of the holder thereof and subject to taxation as such.

(3)

We are of the opinion that the claim of a depositor against a closed bank is monies and credits in the hands of the depositor and subject to taxation as such.

The question of value would be one for the assessor to determine as is the case with other property. He, no doubt, would have to take constructive estimate as to the amount of dividends which would probably be paid to the claimant.

**SOLDIERS:** The limit of relief for each poor person, exclusive of medical attendance, is \$2.00. It is only necessary that one who makes application for relief from the Soldiers Relief Commission have a domicile in the county and it is not necessary that they have a year's residence. (See 5233, Code of 1931.)

February 8, 1932. *County Attorney, Clinton, Iowa*: We acknowledge receipt of your letter under date of November 13, 1931, requesting an opinion of this department on the following questions:

1. Under Chapter 267, Code of Iowa, 1931, is the limit for relief for each person, exclusive of medical attendance, \$2.00 per person?

2. Is it necessary that for one who applies for relief under Chapter 273, particularly Section 5385, Code of Iowa 1931, to have a residence of one year in the county before being entitled to the relief therein provided?

1.

You are referred to Section 5322, Code of Iowa 1931. This section specifically limits the relief that may be granted to \$2.00 per week for each person exclusive of medical attendance. We find no exception to the statute.

2.

For answer to your second question we enclose herewith copy of an opinion rendered by this department to John E. Mulroney, County Attorney, Ft. Dodge, Iowa, under date of January 17, 1929; also to Robert D. Blue, County Attorney, Eagle Grove, Iowa, under date of March 19, 1929; and to Robert E. Long, County Attorney, Sac City, Iowa, under date of November 25, 1929.

**BOARD OF SUPERVISORS—COUNTY OFFICERS:** Board of supervisors has power and authority to reduce the salary of the county superintendent to the minimum provided for by statute. County superintendent may voluntarily accept less than the minimum. (See 5232, Code of 1931.)

February 8, 1932. *County Attorney, West Union, Iowa*: We acknowledge receipt of your letter of January 6, 1932, requesting an opinion of this department on the following question:

Has the board of supervisors power and authority on its own motion to reduce the salary of the county superintendent? The county superintendent was elected for a term of three years from and after September 1, 1930. When he took office his salary was fixed at \$2,400.00 per year.

Section 5232, Code of Iowa 1931, provides in substance that the superintendent of schools of each county shall receive an annual salary of not less than \$1,800 and such additional compensation as the board of supervisors in each particular county may allow; however, in no case to exceed \$3,000.

We are of the opinion that under this section the board of supervisors has the authority at any time to fix the salary of the county superintendent of schools provided it cannot fix the same at an amount less than the minimum of \$1,800. The fact that the superintendent was elected for a period of three years would have no bearing upon the right of the board to raise or lower the salary. The board does not contract with the county superintendent, he is elected. The county superintendent, of course, could always voluntarily accept a reduction in salary irrespective of the minimum salary fixed by Section 5232, Code of Iowa 1931.

**TAXATION—SCAVENGER SALE:** Where property is sold at scavenger tax sale and later the owner comes in to redeem from said sale, said owner must pay the full amount of the taxes against said property, irrespective of the amount paid by the purchaser at the tax sale together with the same interest as penalty as is provided for in connection with ordinary taxes.

February 8, 1932. *County Auditor, Guthrie Center, Iowa*: We acknowledge receipt of your letter of July 7, 1931, and beg to advise that for some reason this

letter was misplaced and we have just located the same. We are sorry that this occurred and we herewith submit you an opinion on the following question:

When property is sold at a scavenger sale to the highest bidder and the owner, before deed is taken, comes in to redeem, what interest and penalty should be figured on the taxes which were not paid by the purchaser at the tax sale?

You are advised that under the statutes you would figure the same interest as penalty as you would in connection with ordinary taxes, that is, the same as you would figure in connection with property sold at ordinary tax sale. In other words, the owner who redeems from a scavenger sale would pay just the same as though there had not been any tax sale except that he would have to pay the cost, etc., of sale in addition to the full amount of the taxes plus the interest and penalty.

**ROADS AND HIGHWAYS—TOWNSHIP TRUSTEES:** Board of supervisors, under secondary road law, has authority to employ such help as is necessary to maintain the local county road and may, if it chooses, employ township trustees for such purpose. (Section 4644-c34, Code of 1931.)

February 8, 1932. *County Attorney, Knoxville, Iowa:* We acknowledge receipt of your letter of January 18, 1932, requesting an opinion of this department on the following question:

There is considerable demand to have the township trustees again assume the maintenance of the secondary roads under the provisions of Section 4644-c34, Code of 1931. Does this section authorize the board of supervisors to transfer the maintenance of the secondary roads back to the townships and township trustees after said board has taken these duties away from said trustees and adopted a different plan?

We are of the opinion that Section 4644-c34, Code of 1931, only contemplated that the board of supervisors at the time the local township roads were taken over could, if it desired, leave the maintenance of said roads with the township trustees subject to the supervision of the county highway engineer, and that it did not contemplate nor does it authorize after the board has adopted another plan, that is, has taken the maintenance work out of the hands of the trustees, the turning of said maintenance work back to said township trustees as such. However, Chapter 240, Code of 1931, makes it the duty of the county supervisors to construct, repair, and maintain the secondary road and bridge system of the county. This being true, the board has the right to employ whomsoever it chooses to take care of the maintenance work on any part of the secondary road system of the county.

The board, therefore, if it chose, could employ the township trustees for the purpose of taking care of the local county road maintenance and could pay them reasonable compensation for such work.

**ELECTIONS—"OFFICE" DEFINED:** An "office" is limited by the term for which the candidate is elected and a candidate may have his name placed on the ballot for an un-expired term and also for the new term commencing at the end of the un-expired term. (Sec. 756, Code of 1931.)

February 8, 1932. *County Attorney, Allison, Iowa.* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

May a person be a candidate for an unexpired term and also for a term commencing at a date subsequent to the election and have his name placed on the ballot as a candidate for the unexpired term and for the new term?



You are referred to Section 756, Code of 1931. This section in substance provides that the name of the candidate shall not appear upon the ballot in more than one place for the same office. The question, therefore, is:

What is an "office"?

The term "public office" has been defined as the right, authority and duty created and conferred by law by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is vested with some portion of the sovereign function of the government to be exercised by him, for the benefit of the public. In other words, the term "office", as used in Section 756, Code of 1931, is co-incident with the term for which the person is a candidate.

Take for example the office of county supervisor. Where there is a vacancy created by the resignation of a member of the board of supervisors, there is a vacancy in the office and a candidate for the unexpired term would be a candidate for that office and could have his name placed on the ballot as a candidate for the unexpired term and he could also be a candidate for the term commencing after the election, that is, at the expiration of the unexpired term.

**POOR RELIEF—SOLDIER'S DAUGHTER:** Daughter of Civil War veteran who is not a member of said veteran's family cannot demand that she be given relief outside of the county home. (Sec. 5325, Code of 1931.)

February 8, 1932. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter of December 29, 1931, requesting an opinion of this department on the following question:

A daughter of a Civil War veteran has applied for poor relief. Her father died several years ago; she married and had a home of her own. The township trustees are of the opinion that she would receive much better care at the county home than by outside relief but she refuses to go to the home; that under Section 5325, Code of 1931, she is entitled to special relief. Does she come within the provisions of Section 5325, Code of 1931?

We are of the opinion that a daughter of a Civil War veteran who has attained her majority and who is not a member of the household of the deceased veteran, that is, living under the same roof with his widow or the rest of the family, is not entitled to the benefits of Section 5325 as such unless the county board finds and is of the opinion that she can best be taken care of outside of the county home as in said section provided.

**FISH AND GAME—FUR DEALERS:** A fur dealer who has possession of skins or hides during the closed season must prove that he has possession legally. (Secs. 1766-c2-c3-c4-d1; Sec. 1794, Code of 1931.)

February 8, 1932. *County Attorney, Bloomfield, Iowa:* We acknowledge receipt of your letter of November 12, 1931, and beg to advise that we regret we have been unable to give you an opinion on the question therein requested before this date. Your question is:

Whether or not it is a violation of the law for a fur dealer to buy furs during the closed season.

Section 1766-c3, Code of 1931, requires that every dealer in or buyer of skins or hides of fur-bearing animals shall first obtain a license and file with the department a corporate surety bond or cash bond in the penal sum of \$500.00 conditioned upon the faithful obedience to and observance of the law.

Section 1766-c4, Code of 1931, authorizes a dealer to have in his possession at all times skins or hides of such animals which have been legally taken.

Section 1766-d1, Code of 1931, provides that any person violating the provisions of the seven preceding sections shall be guilty of a misdemeanor and shall be fined not less than \$10.00 nor more than \$100.00, or imprisoned in the county jail not more than thirty days, or both.

Under Section 1766-c2, Code of 1931, it is made the duty of the dealer or buyer of skins or hides to report to the State Fish and Game Department the name of any person who sells or attempts to sell any skins or hides which appear to have been illegally taken or possessed by said person.

We are of the opinion that a fur dealer, licensed under Section 1766-c3, Code of 1931, may, under the law, purchase skins and hides of animals which have been legally taken within the state and that a dealer cannot purchase the skins and hides of animals which are caught within the state during closed season on the same.

A dealer cannot have in his possession skins and hides of animals taken from the wild within this state during the closed season.

Under Section 1794, Code of 1931, possession of skins or hides during the closed season is presumptive evidence that they were taken unlawfully. In other words, the dealer must prove that possession of the skins and hides during closed season are skins and hides which were legally taken.

**COUNTY AUDITOR**—County auditor has no discretion with respect to receiving or rejecting instruments for transfer. (Sec. 10126, Code of 1931.)

February 8, 1932. *County Attorney, Osage, Iowa*: We acknowledge receipt of your letter of January 20, 1932, requesting an opinion of this department on the following question:

A deed is presented to the county auditor for the purpose of completing the transfer record. It appears that there is an error in the description in the said deed. The county auditor has proceeded under the provisions of Section 10126 and called the attention of the parties to said deed to the same. The attorneys for the parties insist that the auditor make the transfer in accordance with the description contained in the deed.

The question is, has the county auditor any authority to make a correction of the description in the deed? Also, if the description is not corrected must the county auditor enter the same on the transfer records?

We are of the opinion that the county auditor only has authority to call the parties' attention to the error and that then if they insist upon his entering the same on the transfer records as per the description contained in the deed that he has no discretion in the matter and must do so. Certainly he has no authority to change the description contained in said deed unless properly authorized by the grantor and grantee.

**ELECTIONS—NOMINATION PAPERS**: Sections construed—see opinion. (Sec. 546, Sec. 655-a17, Chapter 37-a2, Code of 1931; Chapter 37-a1, Code of 1931.)

February 8, 1932. *County Attorney, Burlington, Iowa*: We acknowledge receipt of your letter of January 27, 1932, requesting an opinion of this department on the following question:

Under Section 546, Code of 1931, it is provided that nomination papers for an office to be filled by the voters of the county must be filed by at least 2% of the party vote in the county as shown by the last general election.

Under Section 655-a17, Chapter 37-a2, Code of 1931, it is provided that nomination papers of a candidate for county, district, or other division not less than a county shall be signed by at least 2% of the qualified voters residing in the county, district or division as shown by the total vote of all candidates for governor at the last preceding general election in such county, district, or division.

There appears to be some inconsistency between the two sections with respect to the total votes upon which the 2% shall be based.

You are advised that Section 546 of the Code of 1931 applies to nomination papers of party candidates only, and that Section 655-a17, Chapter 37-a2, Code of 1931, applies to nomination papers of independent candidates.

There are three methods provided for the nomination of candidates: one is under Section 546, Code of 1931, which applies to the nomination papers of party candidates; second, Chapter 37-a1 provides for nominations by non-political organizations and Chapter 37-a2 provides for nominations of independent candidates.

An examination of the history of these sections, as adopted by the Legislature, will disclose this fact.

**FISH AND GAME—WILD GAME:** Wild game may be sold in this state provided the same were legally killed and shipped in from without the state. (Sec. 1769 and 1788, Code of 1931.)

February 8, 1932. *Fish and Game Commission:* We acknowledge receipt of your letter of January 14, 1932, requesting an opinion of this department on the following question:

Would it be permissible to sell deer, elk, moose or bear meat in this state providing they were legally killed and shipped in from another state?

Your attention is called to Section 1788, Code of Iowa 1931. Under this section it is made lawful for any person, firm, or corporation to have in his or its possession any fish or game lawfully taken outside of the state and lawfully brought into the state.

We are, therefore, of the opinion that deer, elk, moose or bear meat lawfully taken without the state and lawfully shipped into the state may be sold within the state. Section 1788 is an exception within the meaning of Section 1769, Code of 1931.

**COUNTY AUDITOR—COUNTY RECORDER:** County auditor has no discretion with respect to the receiving of instruments for transfer.

February 8, 1932. *County Attorney, Knoxville, Iowa:* We are in receipt of a letter from your County Recorder under date of November 25, 1931, requesting an opinion of this department on the following question, and herewith submit you an opinion on the same:

A deed was delivered to the county recorder of this county undated. The county recorder presented the same to the county auditor together with the transfer fee and the county auditor refuses to enter said deed for the reason that the same does not bear any date. The question has arisen as to whether or not the county auditor has any discretion in the matter.

We are of the opinion that the county auditor has no discretion in the matter. When a deed is presented to him for entry upon the transfer and plat books it is his duty to accept the fee and make the proper entries. The fact that his transfer books have columns for date of the instrument would not give him the

authority to refuse to accept the deed. It would simply be his duty to leave the date blank and make the other necessary entry.

The purpose of recording a deed or other instrument is to give constructive notice to the public generally, and that notice would be, irrespective of the date of the deed, from the time the deed was filed for record.

**TAXATION—BOARD OF SUPERVISORS:** The board of supervisors has no authority to compromise suspended taxes after the property against which the taxes were suspended has been sold or transferred by descent. (Secs. 6950-52, 7193-a1, 7193-b1, Code of 1931.)

February 8, 1932. *County Attorney, Bedford, Iowa:* We acknowledge receipt of your letter of January 7, 1932, requesting an opinion of this department on the following question:

A resident of this county died during the fall of 1931 the owner of a one-third interest in certain real estate. The property was sold by the administrator for the sum of \$700.00. The family has always been a poor family. The county board suspended the taxes against the property for the years 1924, 1927 and 1928. There are also some delinquent personal property taxes against the property and the taxes for the year 1930-31 have not been paid. Claims have been filed against the estate for funeral expenses, doctor bills, etc. It appears that if all the suspended taxes are paid in full by the administrator that there will not be enough left in the estate to pay the costs, claims, and the administration in full. The administrator has offered to pay the taxes for the year 1930-31 in full in order to compromise the balance of the suspended taxes.

The question has arisen as to whether or not the board of supervisors has any discretion in the matter.

You are referred to Sections 6950-52, inclusive, Code of Iowa 1931. Clearly, under Section 6952, the suspended taxes become due and payable against the property of the deceased. The board of supervisors has authority only to compromise taxes which are regularly assessed in accordance with the provisions of Section 7193-a1, Code of 1931. Under that section, after the property has been offered by the county treasurer for sale for two consecutive years and not sold or sold for only a portion of the taxes, then the board may make a compromise. Of course, in this case the property has not been offered at tax sale and the board would have no authority to make a compromise.

Under Section 7193-b1, Code of 1931, the board is only given authority to compromise personal taxes when they are not a lien upon real estate. In this case the personal taxes would be a lien upon the real estate.

We can, therefore, not see where the board has any authority in the matter. See opinion to same, May 12, 1932.

**COUNTY OFFICERS:** A farm lease may only be recorded and cannot be filed. (Sec. 10016, Code of 1931.)

February 8, 1932. *County Attorney, Greenfield, Iowa:* We have a letter from your County Recorder, under date of November 18, 1931, requesting an opinion of this department on the following question:

May a farm lease be filed or must it be recorded?

We assume that reference is made to the ordinary farm lease which only gives the landlord a lien upon all crops and personal property used or kept upon the premises during the term and not exempt from execution. This being true, there is no provision in the statute which would authorize the filing of such a lease, and if it is desired to record it, it would be necessary that the same be

recorded in the usual manner. A lease to be entitled to be filed such as referred to in Section 10016, Code of Iowa 1931, is a lease wherein a transfer of title or ownership of personal property is made to depend upon a condition. There is no such condition in the ordinary farm lease.

**COUNTY OFFICERS—RECORDER—CHATTEL MORTGAGE:** It is not the duty of the county recorder to know that one who executes a release of a mortgage has authority to do so. The lessee in a lease is in the same status as a mortgagor under a chattel mortgage; the landlord is in the same position as the mortgagee.

February 8, 1932. *County Attorney, Spirit Lake, Iowa:* We acknowledge receipt of request from your county recorder for the opinion of this department on the following questions:

(1) Is it necessary for a party who is a member of a company to have power of attorney or some other instrument to show that he has authority to release mortgages?

(2) How should a lease be indexed, that is, when indexing it to secure rents and profits should the lessee take the same place as the mortgagor in chattel mortgages?

(1)

We are of the opinion that so far as the county recorder is concerned it is not necessary that he know whether or not the party who makes the release has or has not authority to do so. The question is one for the chattel mortgagor or the conditional sales vendee to determine.

(2)

The lessee in a lease is in the same status as the mortgagor under a chattel mortgage. The landlord is in the same position as the mortgagee.

For answer to your other inquiry we are enclosing herewith copy of an opinion rendered by this department under date of August 8, 1931, to Arthur W. Smith, County Attorney, Emmetsburg, Iowa.

**TAXATION—REAL ESTATE CONTRACTS—CITIES AND TOWNS:** The unpaid balance on a real estate contract is subject to taxation as monies and credits. A city assessor is not a county officer. (Sec. 5573, Code of 1931.)

February 8, 1932. *State Board of Assessment and Review:* We acknowledge receipt of your letter under date of January 14, 1932, requesting an opinion of this department on the following questions:

(1) Is the unpaid balance on a real estate contract subject to assessment for taxation purposes?

(2) Does Section 5260-c1, Code of 1931, have any application to the office of city assessor?

(1)

There can be no question about the unpaid balance of a real estate contract. Clearly this is monies and credits in the hands of the vendor or his assignee and is subject to taxation as such.

(2)

The city assessor is an officer of the city and, under Section 5573, Code of 1931, his compensation is paid by the county.

We are of the opinion, however, that a city assessor is not a county officer or in charge of a county office.

We are also of the opinion that it is the duty of the county auditor to furnish the necessary assessment blanks to the various assessors.

**TAXATION—TAX SALE—SCAVENGER SALE—DESCRIPTION:** The word "description" as used in Section 7247, Code of 1931, refers to description of the property and not to the description of the taxes. It is the mandatory duty of the county treasurer to hold annually on the date of the regular tax sale a scavenger sale. (Sec. 7247, 7255, Code of 1931.)

February 9, 1932. *Committee on Reduction of Governmental Expenditures:* We acknowledge receipt of your letter of recent date requesting an opinion of this department for the Committee on Reduction of Governmental Expenditures on the following questions:

(1) Section 7247, Code of 1931, provides in substance "The compensation shall not exceed forty cents for each description \* \* \*." Does this mean the description of the property or the description of the various taxes against the property?

(2) Does Section 7255, Code of 1931, mean that it is mandatory that the county treasurer shall hold what is known as a scavenger sale and sell to the highest bidder all property which has been advertised and offered for two or more years and remains unsold for want of bidders?

(1)

We are of the opinion that the word "description" as used in Section 7247, Code of 1931, refers to the description of the property and not to the description of the taxes.

You are referred to Section 7246 of said code, which in part reads as follows:

"Notice of the time and place of such sale shall be given by the treasurer, and shall contain a *description* of each separate tract to be sold as taken from the tax list, the amount of taxes for which it is liable delinquent for each year, and the amount of penalty, interest, and costs thereon, \* \* \*."

We call your attention to this section for it will be noted that the notice which is to be published shall contain a *description* of each separate tract of land, and the compensation provided for in Section 7247 for the publication of this notice is an amount not exceeding forty cents for each description. It must be assumed that "description" as used in both sections refers to the property.

(2)

We are of the opinion that under Section 7255, Code of Iowa 1931, it is the mandatory duty of the county treasurer to hold annually, on the day of the regular tax sale, a scavenger tax sale provided, of course, he has real estate upon which taxes are delinquent and have been previously advertised and offered for two years or more and not sold.

**TAXATION:** Newspaper is entitled to not to exceed 40 cents for each description of real estate published.

February 9, 1932. *County Attorney, Des Moines, Iowa:* The question has been submitted to us as to what rate of pay the Register & Tribune Company is entitled for printing the delinquent tax list for the year 1931, under the provisions of Sections 7246 and 7247 of the Code.

Attention is called specifically to the provisions of Sections 7246 and 7247 of the Code. Insofar as applicable, they provide as follows:

7246. "Notice of the time and place of such sale shall be given by the treasurer, and shall contain a description of each separate tract to be sold as taken from the tax list, the amount of taxes for which it is liable delinquent for each year, and the amount of penalty, interest, and costs thereon, the name of the owner, if known, or the person, if any, to whom it is taxed, by publica-

tion in some newspaper in the county, once each week, for three consecutive weeks," etc.

7247. "The compensation for such publication shall not exceed forty cents for each description, and shall be paid by the county."

The newspaper publishing the delinquent tax list must, of course, publish the same as directed by the county treasurer. The county treasurer, of course, in submitting his copy, must comply with the statute.

In the instant case we are advised that the delinquent tax list was published exactly in accordance with the copy furnished by the treasurer of Polk County, a copy of which printed list has been furnished to us. Upon examination of the same, we find that in some instances taxes for more than one year are delinquent against the same description of real estate and that the copy has repeated the description of the real estate and has opposite each such description shown the delinquent tax penalty, interest, and costs for each such year.

We are of the opinion that each such description of a tract of land, even though repeated for the different years, is a separate description, and that the newspaper would be entitled to the compensation provided by statute; namely, not to exceed forty cents for each such description.

**MOTOR VEHICLES:** Over-all length prescribed in Section 5067-d8, Code 1931, applies to trucks and not to load carried.

February 24, 1932. *Secretary of State:* This will acknowledge receipt of your request for an opinion upon the question whether the over-all length of 45 feet as prescribed in Section 5067-d8 of the Code applies to the length of truck and trailer or truck and semi-trailer or whether the over-all length applies to the load being carried.

The cited section applies to "the use of a truck, or truck and trailer of a length in excess of those specified in Section 5069-d4."

We find no provisions in the statute which limit the distance which a load may extend beyond the length of the vehicle. We are therefore, of the opinion that the over-all limitation specified in Section 5069-d8 applies to the vehicle or combination vehicle and not to the load carried.

**MOTOR VEHICLES:** Regular motor license should be granted to trucks and trailers by the county treasurer even though beyond length specified in Chapter 120 laws of the Forty-fourth General Assembly.

February 24, 1932. *Secretary of State:* You have requested orally the opinion of this Department as to whether semi-trailers more than 30 feet in length which are now the subject of an injunction suit to determine whether or not they are barred from operation on the highway after December 31, 1931, by Chapter 120, Laws of the Forty-fourth General Assembly, should be given a regular motor vehicle license plate by the county treasurer under the provisions of the statutes relating thereto.

The licensing of a motor vehicle by the county treasurer, does not give that vehicle the right to travel on the highways unless it complies with all of the other provisions of the statute. There is no limitation under the statutes, providing for the issuance of license plates by the county treasurer as to the operation of those vehicles or the issuance of the license.

We are therefore, of the opinion that the county treasurer should issue the regular motor vehicles license plate on these trailers if applied for. If the

limitations in Section 4, Chapter 120 are held to be valid, then these trailers, or semi-trailers more than 30 feet in length will be excluded from operation on the highways and those who have licensed them will lose thereby, but the issuance of the license plates by the county treasurer will not affect their use on the highway in any predicament.

**CITIES AND TOWNS—SCHOOLS AND SCHOOL DISTRICTS:** Duties of member of town council and school board not incompatible.

February 25, 1932. *County Attorney, Manchester, Iowa:*—This will acknowledge receipt of your letter in regard to the incompatibility of a member of the town council and the board of education of the school district where both occupy the same, or practically the same, territory and limitations.

This Department has held that the office of the city treasurer and the secretary of the school board are not incompatible. See page 48, Report of the Attorney General, 1929-1930.

The duties of a member of the town council and a member of the school board are in no way conflicting nor do these boards have any transactions between them which would be in conflict.

We are therefore of the opinion that these two offices are not incompatible.

**CORPORATIONS—VOTING POWER:** Common stockholders are entitled to one vote for each share of stock, and any attempt to limit or restrict this right is contrary to public policy.

February 26, 1932. *Secretary of State:* Pursuant to your request, we herewith hand you an opinion on the following question:

Under the laws of this state may the articles of incorporation of a corporation limit the voting rights of a common stockholder, or is a holder of common stock entitled to one vote for each share of stock owned by him?

We are of the opinion that under the laws of this State the holder of common stock in any corporation organized under the laws of this State is entitled to one vote for each share of stock owned by him, and that any attempt to limit or restrict this right is contrary to public policy, and, therefore, void.

**BOARD OF CONSERVATION:** The Board of Conservation may lease real estate for park purposes, but public funds cannot be used in connection with the improvement thereof. The board may enter into an agreement with a property owner whereby the property owner agrees to cut the timber on his real estate only under the direction of the board; and the board may purchase easements on privately owned land intending to beautify park property situated adjacent thereto. The board does not have authority to charge admission fees to state parks.

February 29, 1932. *Board of Conservation:* We have your request for an opinion under date of February 15th requesting opinions upon several matters, which will be considered separately.

#### I.

"Does the Board of Conservation have authority to lease privately owned lands, the said lands to be used for public purposes?"

Section 1799 of the 1931 Code of Iowa provides as follows:

"It shall be the duty of the board, under the supervision and direction of the executive council, to establish, maintain, improve and beautify public parks upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or



which by reason of their natural scenic beauty or location are adapted therefor."

It will be noted that the above provision enjoins upon the board the duty to establish, maintain, improve and beautify public parks.

No provision is found whereby the Board of Conservation is required to purchase the lands upon which a state park might be located.

No other provision is found providing for the acquisition of real estate by the Board of Conservation.

It is, therefore, our opinion that the Board of Conservation might for the purpose of establishing or maintaining a state park lease real estate within the state of Iowa. Such real estate, however, could not be improved for park purposes with the use of state moneys, for the reason that public funds can be expended only in improvement and beautification of real estate owned by the sovereign.

## II.

"Does the board have authority to enter into an agreement with a property owner whereby the property owner agrees to cut timber on said property only under the direction of said board?"

It is our opinion, in view of the statute above set forth, that the board does have the authority mentioned above and may expend moneys for the purpose above outlined, provided such moneys are expended under the provisions of such contract as that mentioned above for the purpose of beautifying some state park or stream or water actually in existence.

## III.

"Does the board have authority to purchase easements on privately owned lands, such as agreements not to obstruct views from certain points, or to cultivate or not to cultivate certain kinds of crops?"

For the reason set forth in Parts I and II hereof, we believe that the authority mentioned above does exist in the board, provided such easements had the direct effect of beautifying a state park, stream or water actually in existence.

## IV.

"Does the board have authority to charge fees for admission to state parks?"

State parks have been purchased by the state for the people without discrimination and without any idea, on the part of the state of making a charge therefor. They are purchased for the free use for recreation and enjoyment of the citizens of the state. No specified authority has been delegated for charging admissions thereto. In the absence of such authority it is therefore our opinion that the authority to charge admissions to state parks does not exist.

**SHERIFF—FEES:** Sheriff may determine whether or not he will furnish his own means of transportation or that furnished by the county. If he uses transportation furnished by the county, he can charge only expenses incurred in connection therewith.

March 2, 1932. *Sheriff, Audubon, Iowa:* You have requested the opinion of this Department upon the proposition as to what mileage fees shall be paid the county when the sheriff is furnished an automobile by the county for use in the performance of his official duties.

The fees which a sheriff is permitted to charge and receive are scheduled and set out in Section 5191 of the Code. There are a few other provisions in other

parts of the law providing fees for the sheriff for performing certain special services. It will be observed in sub-paragraph 10 of Section 5191, that the sheriff is entitled to mileage at the rate of ten cents per mile in all cases required by law. It was the purpose and intention of the law, when this provision was enacted, that the sheriff should furnish his own means of transportation, and the Legislature in its wisdom has fixed ten cents per mile as a fair compensation to cover the costs thereof.

It, therefore, follows perforce that if the county furnishes the sheriff his means of transportation, he would not be entitled to charge a fee therefor. Under such circumstances the county should pay the cost of maintaining such means of transportation, and should pay all repair bills and gasoline and oil bills made necessary because of the use of an automobile furnished by the county for official services.

The sheriff should charge all individuals from whom costs may be collected and which have been incurred the statutory rates, and in case mileage is recovered as a part of the costs in any matter where the sheriff has used transportation furnished by the county, such mileage fees should be paid to the county by the sheriff.

You are advised that it is optional with the sheriff as to whether or not he will use transportation furnished by the county, or his own transportation. In case he furnishes his own means of transportation, he is, of course, entitled to the statutory fees provided for mileage.

**ROADS AND HIGHWAYS—HIGHWAY COMMISSION:** Temporary injunction in *Harding vs. Board of Supervisors* maintained status quo only; further action should be taken on final disposition of case.

March 4, 1932. *County Attorney, Sibley, Iowa:* This will acknowledge receipt of your letter in regard to the status of the sale of road bonds in your county in view of the opinion of the supreme court in the case of *Harding vs. Board of Supervisors*, and others.

The appeal in this case determined only the question of whether or not the court erred in refusing the temporary injunction.

In *Chamberlain vs. Brown*, 144 Iowa 601 at 604, our supreme court said:

"The only purpose to be subserved by a temporary injunction would be to preserve the rights of the plaintiff until a trial could be had on the merits. \* \* \* \* A final decree of the trial court would supersede a temporary injunction, even though it were ordered by this court. If the final decree is in her (plaintiff-appellant's) favor, she will have no need of a temporary injunction. If such final decree is against her, an order for a temporary injunction will avail her nothing."

We are therefore of the opinion that no action could be taken toward the sale of these bonds until this case proceeds to final judgment upon a trial upon its merits or the entry of a judgment in conformity with the ruling of the supreme court in the cited case.

**SCHOOLS AND SCHOOL DISTRICTS:** Prosecution under Section 4468 of the Code not for each separate sale, but for acting as agent.

March 7, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"I am wondering if it would be possible to get a statement of Court Cases which have been settled under Section 4468? What I would like to know is the

number of convictions that have been secured under this section during the last few years. I would also like to know if you could get a ruling from the Attorney General whether any one who is guilty of violating this act could be prosecuted for each individual sale. For example, if a person who might be liable under this section furnished goods to the district at various times during the school year, could this person be prosecuted on each separate bill?"

So far as we have been able to learn from the annotations of the code there has been but one case taken to the supreme court under this statute. The case is *State vs. Wick*, 130 Iowa 31.

We doubt if each individual sale would constitute a violation of this statute as the statute does not make a sale a violation of the act but merely the acting as agent the violation.

**SCHOOLS AND SCHOOL DISTRICTS:** Mining camp fund appropriation by Forty-fourth General Assembly, Chapter 257, made by Superintendent of Public Instruction without the approval of executive council.

March 7, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in regard to the appropriation or distribution of the mining camp fund.

We find no general provisions in the statute providing for the distribution or appropriation of this fund. Under Chapter 287, Section 37 Laws of the Forty-third General Assembly, the appropriation was limited to a distribution by the Superintendent of Public Instruction "by and with the consent of the Executive Council." This is not a general law and applies only to the appropriation made by the said Chapter 287, of the Laws of the Forty-third General Assembly.

The appropriation made by the Forty-fourth General Assembly contains no such limitation and merely provides for an appropriation for state aid to mining camp schools of \$50,000 and an appropriation to mining camp schools for emergencies, of \$30,000.

In view of the fact that there is no general statute relating to this appropriation and the further fact that the limitation in Chapter 287, Laws of the Forty-third General Assembly is specific and not general in its application and the further fact that no such limitation is found in Chapter 257 of the Laws of the Forty-fourth General Assembly, we are of the opinion that this distribution of the mining camp fund is to be made by the Superintendent of Public Instruction without the approval of the Executive Council.

**BOARD OF EDUCATION:** Board has authority to furnish motor vehicle transportation for indigent patients and certify claims therefor and for transportation expenses to the State Board of Audit in same manner as other claims for such expenses.

March 7, 1932. *State Board of Education:* On June 29, 1931, this Department rendered an opinion to you holding that your Board does not have the legal authority to purchase automobiles or ambulances for the transportation of indigent patients committed to the university hospital.

After a reconsideration of this question, we withdraw the former opinion and render you in lieu thereof the following on the following proposition as submitted by you:

"1. Does the Iowa State Board of Education have the legal right and authority to purchase one or more automobiles to be used to transport indigent patients who will be committed to the hospitals of the College of Medicine

of the State University of Iowa, for medical or surgical treatment and hospital care, from their homes to Iowa City and return?

"2. In the event that the said board has the legal right to purchase automobiles for the purpose stated in No. 1, would the State University of Iowa have the right to submit claims for transporting indigent patients to the State Board of Audit, in lieu of railroad fare?

"3. What law or laws would apply to the State University of Iowa, or to the driver of an automobile when used to transport state patients?"

The provisions of the statute relating to the transportation and attendants of indigent patients committed to the hospital of the College of Medicine of the State University are found in Sections 4016-7 of the Code and are as follows:

"4016. Attendant—physician—compensation. The court or judge may appoint an attendant to accompany the patient to said hospital, who shall receive not exceeding three dollars per day for the time thus necessarily employed, *and his actual, necessary traveling expenses*; but if such appointee is a relative of the patient or a member of his immediate family, or receives a salary or other compensation from the public for his services, no such per diem shall be paid him. The physician appointed by the court to make the examination and report shall receive therefor five dollars for each examination and report so made, and his actual, necessary expenses incurred in making such examination. *The actual, necessary expenses of transporting and caring for the patient shall be paid.*"

"4017. Expenses—how paid. An itemized verified statement of all charges provided for in the preceding section, when approved by the judge under whose order the same were incurred, shall be filed with the superintendent of the hospital of the state university, and be charged on the regular bill for maintenance of the patient, *and be audited and paid in the same manner as the bills for treatment and hospital care of the patient.*"

It will be noted in the above sections that the provisions relating to transportation authorize the "necessary traveling expenses" and "necessary expenses of transportation."

No specific method of transportation is prescribed by the statute.

We therefore, reach the conclusion that it is within the jurisdiction and authority of your Board to provide one or more automobiles or motor ambulances for the transportation of indigent persons committed to the said hospital and to pay the cost thereof under the provisions of Section 4017 since the appropriation made by the General Assembly to your board for the medical and surgical treatment of indigent persons at the University hospital (Chapter 257 Section 50 (6) Laws of the Forty-fourth General Assembly) provides an appropriation of one million dollars annually, or so much thereof as may be necessary for the purpose of carrying out the provisions of Chapter 199 Code of 1927. The said Chapter 199 of which Sections 4016-7 are a part, provides for paying, as herein before noted, the necessary traveling expenses and the necessary expenses of transporting as well as caring for the patients.

The claims for expenses of transporting these patients should be submitted in the same manner to the State Board of Audit as the claims for the attendant and the railroad transportation are now submitted. It is our understanding that these services are not to supplant railway transportation but merely to supplement it so that the claims for the expenses of transporting the patients would all be submitted in the same manner.

It would be necessary, if your driver acts as attendant, to have the commitment made by the court, or a judge thereof, to provide for his appointment as such under the provisions of Section 4016 of the Code.

**SCHOOLS AND SCHOOL DISTRICTS:** It is optional with the teacher whether she have successful teaching experience endorsed on her certificate for the purpose of increasing her wage; registration alone does not constitute such endorsement; and a teacher may register such certificate as she desires and her wage will be determined by the certificate which she has in force.

March 8, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following propositions with reference to the interpretation of Sections 4341 and 4342 of the Code.

"1. After a teacher has taught one or two years, as the case may be, is it optional with her whether to present her certificate to the county superintendent for the purpose of having that officer establish the fact of successful teaching experience by indorsing the required statement on the back of her certificate?"

"2. Would the registration of a certificate over a period of one, two, or more years for purposes of validating it in the county where the holder is to teach also have the further effect automatically of establishing successful teaching experience for the purpose of the minimum salary law?"

"3. Would a county superintendent's recommending the renewal of a certificate at its expiration have the effect automatically of establishing successful teaching experience for the purposes of the minimum salary law?"

"4. If a teacher holds more than one certificate, which one shall govern her minimum salary?"

We shall answer your questions in the order submitted.

1. We are of the opinion that it is optional with the teacher whether she present her certificate to the county superintendent for the purpose of having the indorsement of successful teaching experience made thereon. The statute merely provides that she must do this "in order to become entitled to the increase in salary provided by the preceding section." The preceding section being Section 4341 of the Code. There is nothing in the statute which makes it mandatory on the teacher to so file and if the teacher does not desire the increase in salary, nor the advance standing provided for under the statute, she is not required to procure the indorsement.

2. The provisions of Section 4342 are mandatory if the teacher desire the advance standing. We are of the opinion that the mere registration of this certificate for the purpose of validating it in the county where the holder is to teach would not have the effect of automatically indorsing the successful teaching experience thereon for the purpose of the minimum salary law.

3. Neither would the recommendation of the county superintendent for renewal of the certificate at the expiration have the effect of establishing successful teaching experience for the purpose of the minimum salary law. The teacher must comply with the provisions of Section 4342 by procuring a special indorsement as provided therein by the county superintendent of successful teaching experience.

4. If a teacher has more than one grade of certificate in force by registration in a given county, the certificate of highest rank would govern the salary to which the teacher would be entitled under the minimum wage law. If a teacher hold certificates of more than one grade and has only one of said certificates registered and in force in a given county, then the certificate in force would govern the wage requirements.

**SOLDIERS AND SAILORS—INDIGENTS:** Soldiers and sailors are not in-

cluded in relief given county paupers, but come under soldiers' relief. (Section 5297, Code of 1931.)

March 14, 1932. *County Attorney, Boone, Iowa:* This will acknowledge receipt of your request of January 13th, which is as follows:

"Can, or would the medical care of ex-service men, who would come under the soldiers' relief, be properly included, with supervisors' consent, for medical care of county paupers?"

In reply we beg to state that under the provisions of the statute it was not contemplated that medical care for ex-service men, who come under the soldiers' relief commission, should be included as a part of the medical care given to county paupers, as they cannot be designated as paupers, unless they fall within the classification found in Section 5297, which is as follows:

"The words 'poor' and 'poor person' as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor;  
\* \* \*

However, in the event insufficient funds were levied for the care of indigent ex-service men and their families, the board of supervisors could relieve them, under the latter provision of Section 5297, which is as follows:

"\* \* \* but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public."

In other words, while there is a clear distinction between the provisions of Chapter 267 relating to the support of the poor and Chapter 273 relating to the relief for soldiers and their families, the board of supervisors can, under the provisions last above quoted, provide for any needy persons in their county when conducive to their welfare and the best interests of the public, regardless of whether they are ex-service men or not, when the funds raised under Chapter 273 have been exhausted.

**ELECTION—CITIES AND TOWNS:** At an election in a city where registration is not required a resident may be a candidate for city council on one ticket and city mayor on another.

March 21, 1932. *County Attorney, Logan, Iowa:* We have yours of March 12 wherein you ask in substance as follows:

At a city election may a resident be a candidate for the city council on one ticket, and mayor on the other?

We presume you refer to cities where registration is not required. The candidate at a city election is not required to furnish or file an affidavit of candidacy.

No prohibition is found in the Code that would limit or confine a resident to one of two or more city tickets being presented to the voters.

We are, therefore, of the opinion that a resident of a city or town where registration is not required, might be a candidate for office on each or all of the tickets in the field, although we do not attempt to say that such candidate could qualify for more than one of such offices, if elected to more than one.

**BOARD OF EDUCATION:** It is within the discretion of the State Board of Education whether the net income from rentals and dining service may be used for the purchase of real estate.

March 26, 1932. *Executive Council:* Under date of August 8, 1931, an opinion

was rendered by this Department to your Honorable Body on the following question:

"Is it within the power of the State Board of Education to purchase real estate for the use and benefit of the State University of Iowa, and pay for the same out of the property rentals income fund and the dining service fund?"

In that opinion we stated as a conclusion that the State Board of Education did not have power to use the dining service fund for the purpose of acquiring real estate.

We have given this matter further consideration and, after a careful reading of the statutes authorizing the building of dormitories and the installation of dining room service, we now reach the conclusion that if there is a profit left from the sources above referred to, after caring for any charges against the property, it is a matter entirely within the discretion of the Board of Education to determine how the excess in such funds may be used and, if it is the judgment of said Board that such funds should be used for the purchase of additional real estate for the use and benefit of the University, they may do so.

The opinion of August 8, 1931, to your Honorable Body is, therefore, annulled and superseded by this opinion.

**BOARDS OF SUPERVISORS—ELECTIONS:** In reducing number of board of supervisors under Section 5108 Code, proposition cannot be submitted at primary.

March 31, 1932. *County Attorney, Vinton, Iowa:* You submit the proposition that there has been circulated a petition in your county to reduce the number of members of the board of supervisors from five to three, and ask that in the event the petition is sufficient on its face if the proposition to reduce the number can be submitted at the Primary Election in June.

Section 5108 of the Code provides, on the question of decreasing the number of members, that the question shall be submitted at any regular election. A Primary election is not a regular election as it is simply a selection by each party of its candidates for office. There is no doubt about the intent of the legislature in this matter. The words "regular" election and "general" election are synonymous in this particular chapter of the Code. A reading of Section 5110 of the Code indicates the intention of the legislature to use these statements as synonymous. That section reads as follows:

"At the next general election following the *one* at which the proposition to reduce the number of members of the board was carried there shall be elected the number of members required by such proposition. \* \* \*"

A reading of the entire provisions and the set up made by the statute for the expiration of the terms of the existing members and the selection of new ones clearly indicates the purpose of the legislature to have the question submitted at a regular election. This matter being disposed of answers your other inquiries.

**CITIES AND TOWNS—PRIMARY ROAD FUND:** Cities and towns can receive aid from the primary road fund under the provisions of Sections 6044 to 6049, to assist in resurfacing streets, extension of primary roads. Resurfacing is an "improvement" and not a "repair."

April 1, 1932. *State Highway Commission, Ames, Iowa:* I have your favor of March 12th in which you request our opinion on the question of whether or not the Highway Commission has authority, under the provisions of Sections

6044 to 6049, inclusive, Code of Iowa, 1931, to assist a city in the resurfacing of a street or streets from the primary road fund.

Section 6044, *supra*, provides:

"If, in any city, extensions of primary roads are being improved or to be improved, under the provisions of subsection 2 of section 5975, any or all of that portion of the improvement not specially assessable on the property within the assessment district and which would under the law have to be met by a tax on the city as a whole, may be paid from the primary road fund allotted to the county in which such city is located."

Section 5975, Code, 1931, to which reference is made in the above quoted section, provides:

"Cities shall have power:

"1. \* \* \*

"2. To establish districts, the boundaries of which may be changed as may be just and equitable, for the improvement or repair, by paving or graveling, of such streets within the corporation as in the judgment of the council constitute main traveled ways into and out of such cities."

The question resolves itself into whether the phrase "for the improvement or repair", as used in the last quoted section, includes a resurfacing job, the resurfacing in question to be within the limits of a city on an extension of a primary road.

The term "repair" does not include a resurfacing job. Repair means to restore the paved surface and does not mean to repave or replace the old pavement with new. *People vs. Buffalo*, 137 N. Y. Sup. 464, 466; 77 Misc. Rep. 532. The Supreme Court of Nebraska has held that to remove the surface from an existing street and put on a new surface is "repaving" and not "repairing". *McCaffrey vs. Omaha*, 101 N. W. 251, 252. See also *Barber Asphalt Paving Company vs. Machenberger*, 78 S. W. (Mo.) 280, 282.

The term "repair" has been defined to mean to restore to a sound state or make good an existing thing. *Daugherty vs. Taylor et al.*, 63 S. E. (Ga.) 928, 930; *M. K. & T. Ry. vs. Bryan*, 107 S. W. (Texas) 572, 576.

The term "improvement", as used in the statute above quoted, however, has an entirely different and broader meaning. In the case of a canal the term has been defined to include any alteration as long as the canal continues to serve as a commercial highway. *People vs. Stevens*, 120 N. Y. Sup. 227, 230; 66 Misc. Rep. 35.

As applied to buildings, the term has been defined to include not only repairs and additions, but new buildings as well. *Peters v. Stone*, 79 N. E. (Mass.) 336, 337.

Our own Supreme Court has defined the term, and in the case of *Jenkins vs. State Highway Commission*, 218 N. W. 258, at 261 said:

"It will be noted that the words 'construction' and 'improvement' are used interchangeably in the various statutory sections. As applied to the subject matter, they are quite synonymous. \* \* \*. Throughout the intervening years there has been a continuing process of construction, improvement and maintenance. Grading, draining, bridging and surfacing have been the recognized requisites for construction and improvement of the highways. Thus is the road *constructed*; thus is it *improved*. Construction is improvement, and improvement is a part of the process of construction."

We are, therefore, of the opinion that under the provisions of the statute above referred to, the resurfacing of a city street is an "improvement" within the meaning of said statute; and the other provisions of the law being met, the



State Highway Commission has authority to extend aid for such improvement from the primary road fund.

**TAXATION—REFUNDS—ASSESSMENT:** Where the assessor has used an acreage basis in arriving at the value of a tract of land there is no error which would entitle the taxpayer to a refund. (See opinion.) (Sec. 7106, 7132, 7133, Code of 1931.)

April 1, 1932. *County Attorney, Red Oak, Iowa:* We beg to acknowledge receipt of your letter requesting the opinion of this department on the following question:

"We have a number of cases in this county wherein the assessor in assessing real estate in this county, has used for the purpose of computing the value of various tracts of land a certain number of acres at a price per acre. In some of these cases applications have been made for refunds for the following reasons:

"In one case the landowner had sold three or four acres to the Highway Commission for road purposes. In another case, a railroad right of way was sold off of the tract of land. However the assessor included in the number of acres used for computing the value, the acreage included in the railroad right of way and in the road. In another case, where application has been made for refund, the assessor used the number of acres shown on the plat at a price per acre in arriving at the value of the tract and the landowner now claims that the number of acres shown on the plat is incorrect. In another case, the number of acres actually in the tract was fifteen. The assessor in arriving at the value, used the acreage as sixty-five. The question has arisen in each of these cases as to whether or not the same come within the provisions of Section 7235 of the Code of Iowa, 1931, and whether or not therefore, the landowner is entitled to a refund of taxes for the past five years."

You are referred to Section 7106 of the Code of Iowa, 1931, particularly to that part of the said Section which reads as follows:

"\* \* \* He (referring to the assessor) shall personally affix valuations to all property assessed by him."

You are also referred to the case of *Griswold Land and Credit Company vs. Calhoun County*, et al., 198 Iowa, 1240. You are also referred to the case of *United States Express Company vs. Ellyson*, 28 Iowa 371 at 380. You are also referred to Sections 7132-33 of the Code of Iowa 1931. These sections provide the tax payer in each of the cases referred to by you, with a remedy. We are of the opinion that the method of arriving at the valuation of a tract of land is only an incident and detail used by the assessor in determining the total value of the tract. The statute does not direct the method to be used in arriving at the value. It merely commands and directs the assessor to fix the value of the property listed by him. The value arrived at by the assessor, right or wrong, can only be changed by an appeal by the tax payer to the local board of review. In the event objections are made within the proper time to the local board of review and relief denied, the tax payer then may appeal to the district court.

We are therefore of the opinion that in each of the cases above referred to, refunds should be denied.

This opinion is in conformance with opinions rendered by this Department under date of March 23, 1922, to John L. Cherney, county attorney, Independence, Iowa, found in the Report of the Attorney General for 1922, page 123, and also the opinion of this Department rendered April 28, 1925, to the county attorney at Glenwood, Iowa, found in the Report of the Attorney General for the years

1925-26, at pages 24 and 63, and also the opinion rendered by this Department under date of July 3, 1931, to J. M. C. Hamilton, county attorney, Fort Madison.

**ELECTIONS—NOMINATION PAPERS:** It is not the duty of the county auditor to check the nomination papers as to whether or not all the signers belong to a particular party. He only must determine whether there are sufficient signers. (Sec. 543, Code of 1931.)

April 1, 1932. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter of February 11, 1932, requesting the opinion of this department on the following question:

Where nomination papers are filed pursuant to the provisions of Chapter 36, Code of 1931, is it the duty of the county auditor to check these nomination papers with a view of determining whether or not those who have signed the nomination papers are all members of the party for which the candidate is nominated?

We are of the opinion that the county auditor has nothing to do with the determining of whether or not persons whose names are signed to the nomination papers are or are not members of the particular party. It is only his duty, to check the nomination papers for the purpose of determining only the number of signors thereon and that the affidavit required by Section 543, Code of 1931, has been properly executed.

**BOARD OF SUPERVISORS—MILEAGE:** Members entitled to mileage for one trip in going to and from session if it is a continuous session.

April 2, 1932. *County Attorney, Mt. Ayr, Iowa:* We are in receipt of your letter of March 2 requesting the opinion of this Department upon the following proposition:

“Regular sessions of the board of supervisors have as a rule extended for more than one day—usually two days and sometimes three days—the question arises as to whether they are entitled to mileage each night and morning or whether they are entitled to mileage only for the one trip coming for the start of the session and one for the trip home at the conclusion of the two or three-day session.”

Your attention is called to Section 5125 of the Code, 1931, the end of the second paragraph thereof, which provides as follows:

“When the board is in continuous session, mileage for only one trip in going to and from the session shall be allowed.”

We believe that the foregoing provision of law answers your question.

**SHERIFFS—FEES:** Sheriff is entitled to charge and collect fees provided in paragraph 1 of Section 5191 in serving notices to tenants to quit.

April 2, 1932. *County Attorney, Mt. Ayr, Iowa:* You have requested the opinion of this Department upon the following proposition:

“The sheriff has been serving a good many papers such as ‘Notices to Tenant to quit’ and has asked for an opinion as to whether he is entitled to keep the service fees for such service or whether he is required by law to pay over the service fees as in the case of original notices relative to cases pending in district court.”

You are advised that the sheriff is entitled to charge and collect fees provided in paragraph 1 of Section 5191 of the Code for service of such notices. Such fees should be accounted for in the same manner as all other fees collected under this provision of the law.

**FRUIT TREE RESERVATIONS—TAX EXEMPTIONS:** Fruit tree reservations, to be entitled to exemption, must be such as are specifically prescribed by Section 2606 of the Code.

April 2, 1932. *Iowa Fruit Growers' Association:* In answer to your letter as to whether an orchard planted in accordance with the requirements of the fruit tree reservation law, but containing twenty-four acres, is entitled to tax exemption, you are advised that we are of the opinion that the tax exemption is limited to reservations having not less than one, nor more than ten acres in total area. You will note that Section 2606 of the Code specifically prescribes the area of such a reservation.

**INTOXICATING LIQUOR—INJUNCTION CASES:** Under Section 11754 no execution shall be levied for costs until after sixty days from date of judgment.

April 2, 1932. *Auditor of State:* We are in receipt of your request for an opinion upon the following proposition:

"In liquor injunction cases prosecuted by the Polk county attorney, where conviction is obtained, the usual practice is to have a general execution issued and placed in the hands of the sheriff shortly after the decree is rendered to levy on property of the defendant for the costs assessed in the case, which include the attorney fees. As soon as execution is returned unsatisfied, the practice is to have the clerk issue a fee bill and file same with the board of supervisors for payment by the county. Please advise if this is the proper procedure, or if 60 days should elapse before fee bill is rendered as provided for in Section 11754 of the Code of Iowa."

Section 11754 of the Code reads as follows:

"After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court, or a justice of the peace in whose office the judgment is entered, may, and, upon demand of any party entitled to any part thereof, shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer; and shall be served and executed in the same manner."

You are advised that it is the opinion of this Department that under the provisions of law above set out no execution should be issued until after sixty days from the date of the rendition of the final judgment as provided in said section of law.

**CITIES AND TOWNS:** Limitation of interest in contract does not apply as to former contracts fully performed.

April 2, 1932. *Director of the Budget:* You have requested the opinion of this Department on the following propositions:

"1. Does Section 5673 of the Code which provides that no officer including members of the city council, shall be interested directly or indirectly in any contract or job of work, or material, or the profits thereof, or services to be furnished or performed for the city or town, prevent the managing officer of a corporation from accepting the office of member of the city council where the corporation has a contract already executed and completed, and for which settlement has been made, but on which work has not expired?

"2. Would any acts of the city council be void if he should be sworn in and act as a member of the council under the above conditions?"

We are of the opinion that Section 5673 of the Code, is not a condition of eligibility to office where the contract has already been performed. It applies only to any contracts made and entered into by and between the council and a

member thereof. The above described contract would be rendered void by reason of the induction into office of the president or managing officer of such corporation.

It is a settled rule, that even though one be disqualified from holding office, that so long as he does hold the same, he is a de facto officer, and his acts are legal and valid until his right to hold the office has been challenged by proper legal proceedings.

In the instant case, we are of the opinion that the existence of this contract does not in any manner disqualify or render ineligible the councilman-elect, and that he is entitled to be inducted into office and to perform the duties thereof.

**POLL TAX—EXEMPTION—SOLDIERS:** Trustees should pass on each case, requiring reasonable and fair proof—satisfactory to them. (Secs. 4644-c58; 4644-c60; 6946, Code of 1931.)

April 6, 1932. *County Attorney, Emmetsburg, Iowa:* This will acknowledge receipt of your request of April 4th, which is as follows:

"Some township trustees sitting as a Board of Review have come to me for an opinion regarding the exemption of a World War veteran from paying poll tax.

"1931 Code Section 4644-c58 provides for a poll tax covering such individuals as are in question here. Section 4644-c60 states that a person may be exempt 'because of physical disability and inability to pay.' Paragraph 3 of Section 6946 exempts World War veterans from paying taxes on property valued at not exceeding \$500.00 but this section does not provide exemption from poll tax as do the two preceding paragraphs with reference to veterans of the other wars.

"The particular cases which these trustees have in mind are cases of World War veterans who are drawing partial disability benefits from the United States Government because of partial physical disability. However, their physical condition is such that they are able to carry on ordinary farming operations. They are probably as financially able to pay as the ordinary tenant during these times.

"My opinion to the trustees was that they could not grant exemption from the poll tax in such cases as the veteran had no exemption because of being a veteran but only when he is both 'physically disabled and financially unable to pay.' However, the trustees wished me to get the opinion of your office as these veterans are very insistent that they are entitled to an exemption. The trustees would also like to know what would be considered as 'physical disability'."

In reply we would say that the Legislature, so far, has not seen fit to exempt world war veterans from the payment of poll tax, unless they are exempt due to physical disability and inability to pay, and that is a question of fact which can be passed upon only by the taxing board itself. There can be no measuring stick set up to govern all cases. The taxing board should be satisfied in its own mind as to the party's disability, and it might require such reasonable proof as it deems necessary before granting such exemption.

We have had a number of requests along this line in which veterans drawing disability compensation from the government have felt that they were entitled to poll tax exemption due to the fact that they were drawing disability from the Federal Government. We have held, however, that while the Federal Government may pay compensation to veterans, that this in itself was not sufficient evidence as to the veterans' disability, and that the state was not governed by the action of the Veterans' Bureau, and have advised the local taxing board

to pass upon each individual case to the best of its ability and require such proof as might be reasonable and which would be satisfactory to it.

**REHABILITATION:** Rehabilitation may be given foreign born if resident of Iowa—citizenship not necessary.

April 6, 1932. *Board of Vocational Education:* This will acknowledge receipt of your request of March 9th, which is as follows:

"I am writing relative to the eligibility of certain individuals for rehabilitation service as administered by the state board for vocational education.

"The question has arisen relative to the eligibility of a foreign-born applicant for rehabilitation service. Apparently this individual has resided in Iowa for several years but has not secured his naturalization papers. As additional explanation may I state that the federal rehabilitation act does not specify that a person eligible for rehabilitation must be a legal citizen of this country. Also no mention is made of this point in the Iowa acceptance act as given in the Iowa Code, Chapter 192. However, the official plan of the state board for vocational education does state: 'This service is confined to legal residents of Iowa.'

"Therefore, in view of the legal phase of this and similar cases, we would appreciate your written decision on the following questions:

"1. Can a citizen of some foreign country who has sojourned in Iowa for a number of years but neglected to secure naturalization papers be given an artificial arm or rehabilitation training at the expense of state and federal rehabilitation funds?"

"2. Would it affect the legality of such a case if the foreign citizen were now to register his intention to become a naturalized citizen?"

In reply we would say that the statutes of this state do not require that the disabled person be a citizen of this country before he is granted vocational rehabilitation, and while there is no specific mention that this work shall only be done to legal residents of the State of Iowa, nevertheless, we are inclined to believe that the Legislature meant that the money appropriated and the work to be done should be done among those who are legal residents of the State of Iowa, but as to naturalization, that statute being silent, we do not believe that it is essential that a disabled person be a citizen of this country.

**TAXES:** Exemption to ex-service man does not apply so that it may be granted to his grandmother. (Section 6946, Code of 1931.)

April 6, 1932. *County Attorney, Charles City, Iowa:* This will acknowledge receipt of your request of February 19th which is as follows:

"Section 6946, sub-section 3 of the 1931 Code of Iowa provides for an exemption to an honorably discharged soldier in the sum of \$500.00. Our local assessor has requested me to ask the opinion of your department as to whether or not this provision can be applied or extended in the following set of facts:

"Mr. Albright, who is an honorably discharged soldier of the war with Germany, has for some years been and is now employed as helper at a local garage. He has no living relatives or dependents, except a maternal grandmother with whom he makes his home. The grandmother also has no dependents or relatives on whom she can rely for support, except this grandson. She has no means of supporting herself and relies entirely on the earnings of this grandson for her support. She does, however, own a small home in this city in which she and the grandson are living. Not having any income she relies on the grandson for her entire support including payment of taxes, insurance and upkeep of this real estate. The grandson owns no property and his income is sufficient only to provide for his maintenance and his grandmother, including the taxes, insurance and upkeep above mentioned.

"The grandson has now applied for his soldier's exemption and asks that the

same be applied to this property, and the assessor would like the ruling of your department as to whether or not his exemption can be so applied."

We are of the opinion that the statute does not provide for an exemption of an honorably discharged soldier to be applied to real estate owned by his grandmother.

**POLL TAX—BOARD OF SUPERVISORS:** Board of Supervisors cannot suspend poll tax, and no provision to work same out.

April 6, 1932. *Auditor of State:* This will acknowledge receipt of your request of February 25th in which you submit the following:

"We are in receipt of the following from the County Auditor of Lyon County: "We have had several inquiries in this office regarding the payment of poll tax and I am asking if you will get an opinion from the Attorney-General's office and forward same to me at your earliest convenience as to whether the Board of Supervisors could be allowed to suspend collection on poll tax this year or if a special dispensation could be granted allowing poll tax to be worked this year."

There is no provision in the statute which would permit the Board of Supervisors to suspend the collection of poll tax for this year, and there is no provision in the statute for permission being granted allowing poll tax to be worked out.

**ELECTIONS—NOMINATION PAPERS:** Where nomination papers did not state term, new papers should be secured.

April 6, 1932. *County Attorney, Clarinda, Iowa:* This will acknowledge receipt of your request of March 22nd, which is as follows:

"I would like to have an opinion from your office on the following question and set of facts: A candidate has made his announcement in the papers of the county that he is a candidate for the office of county supervisor and has designated the term for which he is candidate, namely the term commencing January 1, 1933. His political cards also designate the term. His nomination papers, which are signed and ready to file, state that he is a candidate for the office of County Supervisor but do not state the term.

"The question arises, should he secure new nomination papers, stating that he is a candidate for the office of County Supervisor, term commencing January 1, 1933, and have these papers signed by the required percentage of voters, or will it be permissible to add, 'term commencing January 1, 1933' to each of his nominating petitions, which are already signed and ready to file?"

In reply, we would say that under the present statutes the candidate of whom you speak may not add to his nomination papers, and he should, therefore, secure new nomination papers designating the particular office and term for which he desires to become a candidate.

**SOLDIERS AND SAILORS—STEP-CHILDREN:** Unless step-children are adopted by veteran—not entitled to relief. (Sec. 5358, Code of 1931.)

April 6, 1932. *County Attorney, Perry, Iowa:* This will acknowledge receipt of your request of March 5th, which is as follows:

"In our county there is a World War Veteran who has married a woman with two children under the age of fourteen years by a former marriage. He is now in such a condition financially that he is unable to properly provide for his family. Does our Soldier's Relief Commission have the duty of providing for these children under the provision of Section 5385 of the 1931 Code of Iowa, which is the statute on soldiers' relief. The question being whether or not

these children of his wife's would be considered as his children under the wording of the statute on soldier's relief."

In reply we would say that when the ex-service man of whom you speak married his present wife, who had two children by a former marriage, he did not assume the paternal status which makes him responsible for the care and support of these children to the extent that they are now entitled to relief under the provisions of Section 5385, unless he had adopted said children; in which event he became legally responsible for their care and support.

**CITIES AND TOWNS:** If matron is a member of police department she may come under civil service. (Sec. 5694, Code of 1931.)

April 6, 1932. *County Attorney, Council Bluffs:* This will acknowledge receipt of your letter of February 27th in which you submit the following question:

"Council Bluffs has a police matron now on the police department pay roll but not under the civil service. She has held that position for six years and they report her very efficient.

"Question: Can this matron be placed under the civil service supervision and control so that she would be subject to the civil service examinations and all other civil service requirements and provisions? What would be the proper method to pursue to accomplish this result?"

It would appear from the provisions of Section 5694 that the status of this police matron relative to civil service would be governed somewhat by the provisions of the ordinance creating the position. If she is a member of the police force, she would be entitled to come within the civil service rights. If, however, she were not a member of the police force but, in fact, only a matron assigned to the police force and having the status of matrons hired to take care of rest-rooms and other work of this character, she would not come within the civil service provisions.

**TAXES—EXEMPTIONS:** Physician entitled to exemption from taxation of his library and equipment up to \$300.00.

April 6, 1932. *County Attorney, Forest City, Iowa:* This will acknowledge receipt of your request of February 23rd, which is as follows:

"We have a private hospital in our town maintained by Dr. T. J. Irish, who is the sole owner and proprietor. He has 20 beds and modern equipment of every sort, including latest type of X-ray machines, violet-ray, etc.

"Under the old practice of assessment, his equipment has never been assessed; this year however the assessor insists that the entire equipment is assessable; the Doctor has been advised that it is exempt from taxation. I have made some study of the statutes, but find nothing which would exempt any portion of it, except his professional library."

In reply we would say that the only exemption Dr. Irish is entitled to is statutory, and this would permit the exemption of his professional library and the tools or equipment used by him not to exceed three hundred dollars; the three hundred dollar limitation also applying to his professional library.

**BOARD OF HEALTH:** Should not pay travel expense for one not regularly employed in department.

April 6, 1932. *Commissioner of Health:* This will acknowledge receipt of your request of February 4th in which the following question was asked:

It has been customary in the past to pay the traveling expense of a physician who traveled to various points in the state and held t. b. clinics. This traveling

expense was paid from the appropriation made to the Department of Health for tuberculosis and other activities. Would it be legal and proper to certify the payment of traveling expenses of one not in the employ of this office or the state, from state funds?

In reply we would say that this question should be answered in the negative, and we are of the opinion that it was not the intention of the Legislature to appropriate the sum of \$3,000.00 to pay for the traveling expense of some one not employed by the State, as this appropriation comes under the heading of maternity and child hygiene. There is in addition to this appropriation another appropriation for traveling expense for the employees of the maternity and child hygiene department. We are of the opinion that it would not be legal or proper for your department to certify payment of traveling expense of one not employed by the State, to be taken from this appropriation.

**COUNTY OFFICERS:** Probation officers should file specific claim based on actual mileage each month. (Section 3616, Code of 1931.)

April 6, 1932. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your request of March 1st, which is as follows:

"Section 3616 of the 1931 Code provides that probation officers in addition to salaries shall receive their 'necessary and actual expenses incurred while performing their duties.'

"Is the board of supervisors authorized under this Section to make an estimate of the expenses of the probation officer in connection with the use of her automobile on a monthly basis and pay her an agreed stipulated amount per month to cover her automobile expenses or should she be required to file a specific claim based on mileage for such expenses at the end of each month?"

We would say that in view of the fact that the statute provides for actual and necessary expenses, the board of supervisors should require the probation officers to file a specific claim based on mileage for such expenses at the end of each month.

**BOARD OF CONTROL:** Where board of supervisors had a guarantee as to their deposit as well as a depository bond, they could only make assignment to bonding company for the amount of their deposit liability after crediting their account with guarantee.

April 6, 1932. *Board of Control:* This will acknowledge receipt of your request of March 24th, which is as follows:

1. Does the board have the legal right to assign its claim against the Niles & Watters Savings Bank after it has been fully reimbursed for its deposits in said Bank.

"2. Can the board legally execute an assignment for \$6,547.93, the amount paid by the United States Fidelity & Guaranty Company.

"3. Can the board legally execute an assignment for \$50,204.28, after it has been fully reimbursed for the amount in the Niles & Watters Savings Bank on the day of closing?"

In reply we would say, in answer to the three questions, that the board can legally execute an assignment for the amount paid to it by the United States Fidelity & Guaranty Company. However, the board is not authorized to execute an assignment for \$50,204.28 due to the fact that when the road bonds were sold for \$43,656.35, the deposit liability was wiped out in that sum, and the proceeds, having been converted to the use of the institution, there was only a deposit liability of \$6,547.93. The board should execute an assignment to the United States Fidelity & Guaranty Company only in the sum of \$6,547.93.



**COUNTY OFFICERS—FEES:** County recorder, under the statute, must collect fees for certificate provided for in Sec. 10031, Code of 1931, notwithstanding the fact that copies of the instruments are furnished him for said certificate. (Sec. 10025.)

April 6, 1932. *County Attorney, Ottumwa, Iowa:* We acknowledge receipt of letter under date of March 14, 1932, from your county recorder, requesting the opinion of this department on the following question:

The county recorder is requested very often to certify to copies of chattel mortgages. In some cases the one who requests a certified copy furnishes an exact copy of the mortgage and all that is necessary for the recorder to do is to proofread the same with the original and attach a certificate. The question has arisen as to what fees should be charged in such cases.

Section 10025, Code of Iowa, 1931, provides for the certification of duplicate or copies of chattel mortgages, bills of sale, or other instruments filed under the provisions of Chapter 437.

Section 10031 provides for the collection of a fee of fifty cents for the first four hundred words, and ten cents for each one hundred additional words or fraction thereof, in cases where the recorder makes a certified copy of the instrument. We do not find any provision in the statute which would authorize the recorder to make a certification and charge less than the fees provided in Section 10031. It would, therefore, make no difference, in our opinion, as to whether or not the party requesting the certification furnished the copy of the instrument or not, the fee would be as provided in Section 10031.

**TAXATION—PHYSICIANS—DENTISTS' TOOLS:** Instruments of a dentist and physician which are commonly used by such practitioners are exempt to them for the purpose of taxation in an amount not exceeding \$300. (Sec. 6944, Code of 1931.)

April 7, 1932. *Board of Assessment and Review:* We acknowledge receipt of your letter under date of March 22, 1932, requesting the opinion of this department on the following question:

The question has arisen as to whether or not physicians and dentists are to be classified as mechanics within the meaning of the exemption granted to mechanics in Section 6944, Code of Iowa, 1931.

Paragraph 17, Section 6944, so far as material to the question, provides as follows:

"\* \* \* the tools of any mechanic, not in any case to exceed \$300.00 in actual value."

Dentists and surgeons, because of the nature of their business, are required to use various instruments or tools. In this connection it might be suggested that it would appear from the various provisions of Section 6944 that it was the intent of the legislature to exempt up to \$300.00 those things which the head of a family used for the purpose of making his livelihood. It must also be conceded that a dentist and a surgeon are skilled mechanics practicing a profession.

We are therefore of the opinion that the instruments of a dentist and of a surgeon which are commonly used by such practitioners in connection with the practice of their professions are exempt to them for the purpose of taxation in an amount not exceeding \$300.00,—this, within the meaning of exemption contained in paragraph 17 of Section 6944, Code of Iowa, 1931.

**TAXATION—MORTGAGES—REAL ESTATE:** The holder of a first mortgage lien on real estate may, for the purpose of protecting his mortgage, pay the

county treasurer the real estate taxes without paying the personal taxes levied against the owner of said real estate provided the mortgage lien is prior in time to the date of the lien of personal taxes. The owner of real estate may pay his real estate taxes without paying his personal taxes if the same is done before the personal tax becomes a lien upon the real estate. (Secs. 7202, 7203, 7204, Code of 1931.)

April 7, 1932. *Auditor of State*: We acknowledge receipt of your letter of recent date requesting an opinion of this Department upon the following questions:

1. Can the holder of the first mortgage lien on real estate for the purpose of protecting a mortgage, pay to the county treasurer the real estate taxes without also paying the personal taxes levied against the owner of said real estate?

2. Can the owner of the real estate pay the real estate taxes without also paying his personal tax?

3. If the holder of a first mortgage lien on real estate can pay the real estate taxes without paying the personal tax of the owner, is it the duty of the county treasurer at the annual tax sale in December to advertise and offer for sale the real estate for, the lien of the unpaid personal tax of the owner?

#### 1.

Section 7202 of the Code of Iowa, 1931, makes taxes upon real estate a lien, thereon against all persons except the State. Section 7203 makes personal taxes a lien on any and all real estate owned by the person against whom the same were assessed for a period of ten years from and after December 31 following the levy. Section 7204 provides that as against a purchaser, such liens shall attach to real estate (referring to personal tax liens) on and after the thirty-first day of December in each year.

It would appear, therefore, that the mortgagee or holder of a first mortgage lien on real estate which is prior in time to the date the lien of personal taxes attaches, has a lien which is paramount and superior to the lien of said personal taxes. True, we are of the opinion that the mortgagee or holder of a first mortgage lien on real estate may, for the purpose of protecting his mortgage, pay the real estate taxes assessed against real estate covered by the mortgage without paying personal taxes levied against the owner of said real estate, provided said personal taxes became a lien subsequent to that of the first mortgage. Our Supreme Court has so held in the case of *Bibbins vs. Clark*, 90 Iowa 230; 57 N. W. 884; 59 N. W. 290. See also *Bibbins vs. Polk County*, 100 Iowa 493; 69 N. W. 1007; *Dayton vs. Rice*, 47 Iowa, 429; *Strong vs. Burdick*, 50 Iowa 630.

#### II

We are of the opinion that the owner of real estate may pay the real estate taxes without also paying his personal tax provided, however, such payment is made before the personal tax becomes a lien upon said real estate.

#### III.

For answer to your third question, we refer you to Section 7244.

WIDOW'S PENSIONS: (*Wright and Cerro Gordo counties—see opinion.*) (Sec. 3641, Code of 1931.)

April 7, 1932. *County Attorney, Eagle Grove, Iowa*: We acknowledge receipt of your letter under date of March 1, 1932, requesting an opinion of this department as directed by one of the judges of your district, on the following question:

In April, 1931, a Mrs. Lee married. At the time of her marriage she was a resident of Cerro Gordo county, living at Mason City, Iowa. Mr. Lee, her husband, at that time was a resident of Wright county, Iowa, residing at Clarion. After the marriage Mrs. Lee continued working in Mason City. Mr. Lee soon afterwards was sent by the district court of Wright county to the University Hospital at Iowa City for medical treatment. Shortly before her husband's death, which was in December, 1931, Mrs. Lee took up her residence with her husband in Wright county. Mrs. Lee, after her husband's death, again took up her residence at Mason City, Iowa, and is now making her home there.

Mrs. Lee has now made application to the district court of Wright county for a widow's pension. She has one minor child.

The question has arisen as to whether or not Mrs. Lee is entitled to receive a pension from Wright county or from Cerro Gordo county, or is she entitled to any widow's pension from either county.

From an examination of Section 3641, Code of Iowa, 1931, it is apparent that the right to a widow's pension is not dependent upon the question of legal settlement. The requirement of said section is that the applicant be a resident of a county for one year immediately preceding the filing of the application.

If I understand the facts correctly as stated in your letter, it would appear that the widow in your case has never had a residence in Wright County. If this is true, then, of course, her application should be denied. If she did have a residence in Wright County, but the residence was not for the year preceding the filing of her application, then she is not entitled to receive a pension from Wright County. If she did have a residence in Wright County for the period of a year, but before making her application for a widow's pension she abandoned that residence and took up a residence in another county, then she is not entitled to a widow's pension in Wright County, nor in the county of her new residence until she has had a residence there for a period of one year.

Let us assume that the rule with respect to legal settlement is applicable to the case. An examination of Section 5311 discloses that a married woman has the settlement of her husband if he has one in this state. If not, or *if she lives apart from* or is abandoned by him, she may acquire a settlement as though she were unmarried.

Again in said section, any settlement which the wife had at the time of the marriage (which in this case would be Cerro Gordo County) may at her election be resumed upon the death of her husband. Has she not, by her own action, elected to resume the legal settlement she had at the time of her marriage.

We have only attempted to assume certain hypotheses and give you a suggestion based on the same.

We are enclosing herewith for your information an opinion rendered by this department to F. C. Bush, County Attorney, Osage, Iowa, November 16, 1931, and one to Henry C. Meyer, County Attorney at Britt, Iowa, November 16, 1931. Both of these opinions deal with widow's pension.

If what we have given you is not sufficient to assist you in determining the question, we will be glad to give you any further help we may.

**ROADS AND HIGHWAYS—CONSTRUCTION:** Under the facts stated in the question it would be necessary to advertise and receive bids and then to follow the statute. (See opinion.) Also see opinion Highway Commission February 10, 1931.

April 7, 1932. *County Attorney, Oskaloosa, Iowa:* We acknowledge receipt of your letter under recent date requesting the opinion of this department on the following questions:

1. The board of supervisors of this county contemplate the construction of a five-mile stretch of road; the grading of two miles at one end of this stretch can be done for an amount less than \$1,500.00. Can these two miles be constructed by day labor and the other three miles be advertised and let at a public letting?

2. The board of supervisors of this county contemplate the construction of a four-mile stretch of road of which the grading of no one mile will exceed \$900.00. The estimated cost of grading for the four miles is \$3,500.00. Can this be done by day labor without advertising and letting?

3. The board of supervisors of this county contemplate maintenance resurfacing of present surfaced county roads involving work estimated at a cost of \$8,000.00 to \$10,000.00. Should this maintenance work be advertised and let at a public letting?

We are enclosing herewith copy of an opinion rendered by this department to the Iowa State Highway Commission under date of February 10, 1931. This opinion, we believe, will answer your questions 1 and 2. We might say that it would appear that the five mile stretch is one project, and that the four mile stretch is one project.

As to your third question, we question whether or not there is such a classification as "maintenance resurfacing" within the meaning of the statutes. It would appear to us that if there is any resurfacing, that that would be repair construction work. However, we suggest that the best policy probably to pursue, in view of the fact that the cost of maintenance resurfacing will run between \$8,000.00 and \$10,000.00, would be to advertise and receive bids, and then if the work can be done by day labor at a cost less than or not to exceed the lowest bid, the bids could be rejected and the work done by day labor if desired.

**WIDOW'S PENSION—DIVORCEE:** Where husband and wife have been divorced having dependent children and husband subsequently is convicted and confined in the state penitentiary, the divorcee is a widow within the meaning of Sec. 3641, Code of 1931.

April 7, 1932. *County Attorney, Davenport, Iowa:* We acknowledge receipt of your letter under date of February 29th requesting the opinion of this department on the following question:

One Clifford Andrews was convicted and sentenced to the penitentiary from this county. A short time after his conviction his wife, the mother of several children, obtained a divorce from him. He is still confined in the penitentiary. She now makes application for a widow's pension under Section 3641, Code of Iowa, 1931.

The question has arisen as to whether or not the fact that she is divorced would bar her right to a widow's pension under said section.

You are referred to Attorney General's opinion found at page 261, Attorney General's Report for 1928. In that opinion the case of *Debrot vs. Marion County*, 164 Iowa 208, is cited.

In your case it would appear from the facts that the applicant for widow's pension was divorced after her husband was confined in the penitentiary. It would also appear from the *Debrot* case that the theory upon which Section 3641 has been construed is that in cases where the husband is dead the mother with children has no means of support, but so long as the husband is living,

he, under the statutes, may be compelled to support his minor children, it being his duty under the law; and that in cases where the husband is confined in the penitentiary his means of making a livelihood have been taken away, and the mother, therefore, has no means of support for her minor children, and the legislature has provided that in such cases she is a widow.

We are, therefore, of the opinion that irrespective of whether or not the mother of dependent children is divorced from her husband, that if he at any time is convicted and confined in the state penitentiary, she then becomes a widow within the meaning of Section 3641, Code of Iowa, 1931. We are of this opinion, notwithstanding the opinion found on page 406 of the Attorney General's Report for the year 1928. The facts in connection with that opinion were that the husband of the divorced wife was still living and that opinion is only authority for such statement of facts.

**SCHOOLS AND SCHOOL DISTRICTS:** Neither the board nor the electors have authority to authorize the use of school buildings for public or private dances not connected with the school activities.

April 8, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date on the following proposition:

"Would a school board in a district that is within the limits of a city or town have authority to permit organizations or individuals acting in a private capacity to use, without compensation to the district, public school buildings for public dances, for which dances such parties charge a fee?

"If the board does not have authority to permit such use without compensation to the district, would it have authority if the district were compensated to at least the extent of the cost to the district?

"If the board were unwilling to permit such use, whether the district was compensated or not, would the electors, under Section 4217, have power to instruct the board that the school buildings may be used for such public dances, whether with or without compensation to the district?"

The only limitation on the board of education in a district within the limits of a city or town, is found in Section 4217 (4). The limitations in Section 4371-3 are as to buildings and grounds within the limits of the school district but without the limits of a city or town.

The power of the board of education therefore, is unlimited unless the proposed use of the building is contrary to the purposes and inimical to the interests of the school corporation.

The only case which we have been able to find on this subject is *Lewis vs. Bateman*, 26 Utah 434, which case involved the question of the power of the trustees of the school district to permit a public school house to be used for holding public and private dances which were in no way connected with the schools or any school activity.

In the cited case, the court said:

"The private use which it is thus proposed to make of this public school building is unauthorized and contrary to public policy, as it would in effect, be an appropriation of trust property, and it would also be opposed to the principle that the sovereignty cannot tax its citizens for private purposes."

The power of the electors found in Section 4217 (4) is as follows:

"Instruct the board that school buildings may or may not be used for meetings of public interest."

This limitation applies to all school districts whether within the limits of a city or town.

It is a well settled rule that the inclusion of one thing in a statute means the exclusion of others not mentioned therein. See *Talbott vs. Blackledge*, 22 Iowa, 572; *State vs. Santee*, 111 Iowa 1.

The power of the electors therefore would be limited to the authorization to the board to permit the use of buildings for "meetings of public interest." Since the board is merely the agent or representative of the corporation, and since the inherent power of government of a corporation is in the electors, we are of the opinion that the power of the board would be no broader than the limitations placed on the electors in the last quoted section unless there are exceptions in grants of power to the board. The only grants of power to the board in this regard found in the statutes, are in Section 4371 which do not apply to the use of buildings and grounds within the limits of a city or town.

A public dance is not a matter of public interest. This would be especially true if a charge were made by those who were conducting it.

We are therefore of the opinion that neither the board of education nor the electors have the power to authorize the use of a school building for either public or private dances not connected with some activity of the school and regardless of whether or not a compensation is paid to the district for the use of the building or whether or not a charge is made for admission to the dance.

**SCHOOLS AND SCHOOL DISTRICTS:** Seven-month period as used in Section, 4230 Code, means seven school months; time begins to run from beginning of services as superintendent; limitation does not apply on contracts for one year.

April 8, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following questions relating to the provision of Section 4230 of the Code:

"1. Is 'seven months' to be interpreted as seven calendar months or as seven school months of four weeks each, or does it depend on whether the contract provides for pay by the calendar month or by the school month for four weeks?

"2. When shall the seven months' period be presumed to begin, with the date of the contract, the time when pay begins, or with the opening of the school?

"3. Is seven months' employment limited to employment in the capacity of superintendent?

"4. Is seven months' previous employment a prerequisite only when re-employment is for more than one year or does it apply also to re-employment for even one year?"

The statute in question provides as follows:

"4230. Superintendent—term. *The board of directors of any independent school district or school township where there is a township high school shall have power to employ a superintendent of schools for one year. After serving at least seven months, he may be employed for a term of not to exceed three years. He shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section.*"

We shall answer your questions in the order submitted.

1. The term "month" is defined in the statutes, Section 63 (11) and provides as follows:

"In the construction of the statutes, the following rules shall be observed,

unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:

"11. The word 'month' means a calendar month, and the word 'year' and the abbreviation 'A. D.' are equivalent to the expression 'year of our Lord'."

However, in the school statutes in Section 4229, we find that with reference to contracts with teachers, the contract month or school month is defined as "month of four weeks."

Inasmuch as this is an exception to the general provision in Section 63, we reach the conclusion that the term "seven months" was intended to mean seven school months of four weeks each.

2. Holding as we do that the term "seven months" means seven school months, it necessarily follows that this period is to begin with the opening of school, or at least the beginning of the services of the superintendent under his contract. For instance, if his services under the contract were required to be performed on a date beginning prior to the actual opening of school, the period would begin to run from the former date.

3. We are of the opinion that the services rendered during the seven months employment must be in the capacity of a superintendent before the three year contract can be entered into.

4. We are also of the opinion that the seven months previous employment is a prerequisite only when the re-employment is for more than one year.

**BOARD OF CONSERVATION—PARKS:** State Board of Conservation may close a road leading into a public park provided that road is used solely for park purposes, and is not in general use to the public as a road. Section 4631, Code, 1931; Section 1799-b1, Code, 1931.

April 14, 1932. *Board of Conservation:* Yours of March 31st, is at hand wherein you ask in substance whether or not the Board of Conservation has the right to close roads in state parks to the public during certain seasons of the year.

Section 4631 of the 1931 Code provides as follows:

"Highways on lands of the state and highways on which such lands abut shall constitute a separate road district for each state institution, or state park, in connection with which such lands are used, and shall be under the jurisdiction of the board of control thereof."

Section 1799-b1 of the 1931 Code provides as follows:

"It shall be the duty of the board to adopt and enforce such rules and regulations as it may deem necessary, regulating or restricting the use by the public of any of the state parks or state-owned property or waters under their jurisdiction. It shall also be the duty of said board to adopt and enforce rules and regulations prohibiting, restricting or controlling the speed of boats, ships, or water craft of any kind upon the lakes and waters under their jurisdiction; and traffic upon the roads and drives upon state lands and parks under their supervision.

"Said rules shall be printed and kept posted in conspicuous places wherever they apply, and any person violating any such rule or regulation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days."

It is, therefore, our opinion that providing the road is used solely for park purposes, or is not in general travel to the public for purposes other than those connected with the park, the State Board of Conservation has the right and power to close such roads in state parks.

**BANKS AND BANKING:** Receiver of closed state bank, savings bank or trust company in Iowa has authority to borrow from the Reconstruction Finance Corporation and to pledge assets to the repayment of the loan.

April 18, 1932. *Reconstruction Finance Corporation:* In order to approve loans to receivers of closed state and savings banks and trust companies organized under the laws of the State of Iowa, you require an opinion of this Department upon the following proposition:

Is the Superintendent of Banking of the State of Iowa, as receiver of closed state and savings banks and trust companies in said state, clothed with authority to borrow money from and incur indebtedness to, the Reconstruction Finance Corporation for the purpose of liquidation, by making available to the depositors and creditors of any such bank or trust company dividends out of the proceeds thereof, and to pledge for the repayment of any such loans, the assets of the trust estate in his hands as receiver of any such bank or trust company.

Under the statutes of this State, the Superintendent of Banking is the sole and only receiver for insolvent state and savings banks and trust companies and the provisions of the statutes making him such are as follows:

"9238. Liquidation—right of levy suspended. If any such bank shall fail or refuse to comply with the demands made by the said superintendent, or if the said superintendent shall become satisfied that any such bank is in an insolvent or unsafe condition, or that the interests of creditors require the closing of any such bank, he may appoint an additional bank examiner to assist him in the duty of liquidation and distribution, whereupon the right of levy, or execution, or attachment against said bank or its assets shall be suspended.

"9239. Receivership—distribution. The superintendent of banking may apply to the district court for that district in which said bank is located, or a judge thereof, for the appointment of said superintendent as receiver for such bank, and its affairs shall thereafter be under the direction of the court, and the assets thereof after the payment of the expenses of liquidation and distribution shall be ratably distributed among the creditors thereof, giving preference in payment to depositors.

"9242. Superintendent as receiver. The superintendent of banking henceforth shall be the sole and only receiver or liquidating officer for state incorporated banks and trust companies and he shall serve without compensation other than his stated compensation as superintendent of banking, but he shall be allowed clerical and other expenses necessary in the conduct of the receivership."

Construing these sections, the Supreme Court of this state, in the case of *Orr vs. Andrew*, 210 Iowa Reports, page 581, 231 Northwestern Reporter, page 342, decided in 1930, said:

"In case of liquidation by the Superintendent of Banking under the direction of the court, pursuant to statute, the court does not take possession of the assets and wind up the business. The Superintendent takes charge and possession, and the bank's affairs are thereafter under the direction of the court. The duty and responsibility for winding up, and the administration of the affairs of the insolvent bank, are upon the Superintendent of Banking. \* \* \* The Superintendent of Banking, notwithstanding his appointment as Receiver of a particular bank, pursuant to statute, remains a state officer. \* \* \* The court has merely the power of approving, not of originating."

From this, it will be seen that the Superintendent of Banking is not bound by the ordinary statutes governing so-called "common law" receivers, but is charged by statute with the duty and responsibility of liquidating the assets of the bank and distributing the same ratably among the depositors and creditors without any of the limitations placed upon so-called "common law" receivers.



In a case presenting the precise question, prior to the enactment of the present statute making the Superintendent of Banking the sole liquidating officer of an insolvent bank, the Supreme Court of this state adopted the rule that the receiver of a state bank may, when properly authorized by the Court, and when acting with the consent and advice of the Superintendent of Banking and the Attorney General, borrow funds with which to liquidate the assets of such bank. See *Andrew vs. Bevington Savings Bank*, 206 Iowa Reports, page 869, 221 Northwestern Reporter, page 668, decided in 1928. While there were other questions involved in that case, it appears that one Enright was appointed receiver of the Bevington Savings Bank, and that, acting upon the advice and at the suggestion of the District Court, the Attorney General and the State Superintendent of Banking, he borrowed money which was used to pay the bank's debts to depositors and creditors, and issued receiver's certificates in an amount equal to the sum borrowed. The certificates were issued without order of court but the issue was liquidated by court order but no notice was given to the appellant stockholder.

The action was instituted to establish the liability of the defendants for stock assessments and the defendants set up among other things that the assessments sought could not be made because the certificates were not valid and were issued without property authority. The effect of the decision is that the receiver's certificates were valid and were a lien upon the assets of the bank and also upon all sources available to the receiver for the payment of corporate debts, necessarily including the amount to be realized by the receiver on the stockholders' liability. Therefore, it was the settled law of this jurisdiction that a so-called "common law" receiver could, with authority of court borrow money and pledge the assets of the bank in his hands to the repayment thereof prior to the passage of the above statutes. The fact, that since that case, the present statute making the Superintendent of Bank the sole liquidating officer of an insolvent bank was enacted, does not affect the decision therein touching on the rights and powers of a receiver of a closed bank since the power and authority of the Superintendent of Banking as a liquidation officer, are broader than those of a receiver under the general statutes. See *Orr vs. Andrew, supra*.

Furthermore, in cases of reorganization of closed banks, the Superintendent of Banking now has the power, subject to the approval of the Court having jurisdiction of the receivership, to order any disposition and distribution of the assets of an insolvent bank, sell to any other bank, or carry out any other plan of distribution or disposition which he may see fit to recommend, subject to obtaining the necessary consent of creditors of the bank, and the approval of the Court. This authority is contained in Section 9239-a1 of the 1931 Code of Iowa, which provides as follows:

"Agreement as to reorganization, consolidation, or sale. If a majority of the creditors holding direct unsecured and unpreferred obligations of such bank in excess of ten dollars each, and totalling in the aggregate amount seventy-five per cent of all direct unsecured and unpreferred obligations, shall agree in writing to a plan of disposition and distribution of assets through sale to another bank, reopening, reorganization, or consolidation of the bank, the district court in which such receivership is pending, upon application of the superintendent of banking, may order a disposition and distribution, sale to another bank, or reopening, conforming in general to the provisions of such plan."

It is then provided by statute that the matter shall be submitted to the creditors upon notice, the provisions being contained in Sections 9239-a3 and 9239-a4 as follows:

"Hearing—notice. Prior to ordering any such disposition or distribution of assets, the court or judge thereof shall fix the time and place of hearing upon said application and shall by order prescribe the kind and character of notice to be given to all creditors and stockholders.

"Court to determine. At such hearing the court shall determine the equities of all parties and also determine whether such disposition and distribution is for the best interest of the unsecured creditors. If the plan shall be approved, thereafter and until the assets are distributed, the court shall have power to make such requirements as in his sound discretion will conserve the assets and insure the distribution thereof as provided by law."

In such cases it would seem that the power of the receiver to borrow money as part of the plan would be beyond argument. Any plan of disposition and distribution which expressly provided for the making of loans, and which had the necessary consent of the creditors of said bank, and the approval of the Superintendent of Banking and of the Court, is expressly authorized. There are no limitations upon the details of the plan as long as the plan contemplates effecting the purposes set forth in the statute.

We are, therefore, of the opinion that the Superintendent of Banking of the State of Iowa, as statutory receiver for insolvent state and savings banks and trust companies chartered under the laws of the State of Iowa, has the power, with the approval of the District Court having jurisdiction of the receivership, to borrow money for liquidation purposes by making available to the depositors and creditors of such bank, the proceeds of such a loan and the attendant power to pledge the assets in his hands as such receiver for the repayment thereof. See also: *Andrew vs. First Trust & Savings Bank*, 244 N. W. 394.

**PUBLIC FUNDS:** Public corporations may accept dividends and credit the same on claim against state sinking fund for public deposits; cannot do so after assignment of the claim.

April 19, 1932. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this Department on the following proposition:

"May a school district or other corporation or person protected under the above named law, accept dividends from the receiver of a closed bank prior to the assignment of said public deposits to the State Treasurer without waiving the rights to reimbursement from the state sinking fund and when the proper time for assignment arrives assign any balance remaining over and above the dividend or dividends received?"

Two plans have been followed under the administration of the Brookhart-Lovrien law. One is to have the claim assigned and filed with the Treasurer of State at once whereupon the Treasurer of State, for the use and benefit of the sinking fund, is entitled to the dividends and the claim would be paid out of the sinking fund as soon as funds are available.

The other is to have the public body await the final liquidation or partial liquidation of the bank and file the claim against the sinking fund for the balance after the credit had been given on any dividends received.

This Department has held both plans valid. Your public bodies may therefore delay the filing of their claims with the Treasurer of State and accept whatever dividends are paid and thereafter file their claim against the sinking fund,

giving credit for such dividends. The public body, however, cannot accept the dividends if the claim has been assigned to the Treasurer of State for the use and benefit of the state sinking fund.

**FISH AND GAME—LICENSE:** The application for license to fish, trap and hunt must be subscribed and sworn to by the applicant. (Sec. 1724, Code of 1931.)

April 27, 1932. *Fish and Game Commission:* We acknowledge receipt of your letter under date of April 18, 1932, requesting an opinion of this department on the following question:

Must the application for a license to fish, trap and hunt, either or both or all be subscribed and sworn to by the individual to whom the license is to be issued or may one person make application for several persons and have the licenses issued upon the respective applications?

You are referred to Section 1724, Code of Iowa 1931. It will be seen from reading this section that the applicant himself must subscribe and swear to the same before the county recorder or a notary public or a justice of the peace. This being true it necessarily follows that all applications must be filed by the individual to whom the license is issued.

**BOARD OF SUPERVISORS:** Person residing in same township with hold over member on board, may be candidate in primary if he removes from the township prior to the election.

April 28, 1932. *County Attorney, Fairfield, Iowa:* This will acknowledge receipt of your letter of recent date in regard to the candidacy of a person for member of the board of supervisors for the term beginning January 1, 1933, where a person residing in the same township is on the board and whose term will not expire until December 31, 1933.

Under Section 522 of the Code, it is provided that no person shall be elected a member of the board of supervisors who is a resident of the same township with any member holding over. It is apparent that the person now on the board and whose term does not expire until December 31, 1933, is a hold over within the meaning of this statute. See *State vs. Boyles*, 199 Iowa, 398. It is also apparent that the date of eligibility is at the time of the election. In *State vs. Boyles*, *supra*, our supreme court has said:

"The time fixed by the legislature for determining qualifications was, for some reason, the time of election, and not the time for taking the office. The prohibition which the legislature saw fit to fix is against the election of one from the same township as a member of the board of supervisors 'holding over'."

Were it not for this wording of the statute, the eligibility would be determined as of the date of qualifying for the office. See *State vs. Huegle*, 135 Iowa, 100; *State vs. Van Beck*, 87 Iowa, 569.

The Van Beck case also holds that where the test of eligibility is to be determined at the time of qualifying one may be elected to office while ineligible if the ineligibility is removed before the time arrives for qualifying.

Reasoning from an analogy of that case, we reach the conclusion that in the case of a member of the board of supervisors where the date of eligibility is to be determined by the date of the election, that a person may be a candidate at the primary even though he is ineligible at that time, if he removes the condition of

ineligibility prior to the election. It is our opinion that this necessarily follows from the rules laid down in the cited cases.

**PUBLIC FUNDS:** Warrants stamped not paid for want of funds draw interest on basis of years, months and days; not by actual days and not both day of presentation and day of payment.

April 28, 1932. *Auditor of State:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following propositions:

"1. In computing interest on warrants stamped by the city treasurer 'not paid for want of funds' should the actual number of days or the intervening time as determined by ordinary subtraction be used to ascertain the time same draw interest?"

"2. Should warrants draw interest for the day stamped and the day paid also?"

"3. If actual number of days warrant is held are used, should interest be computed on the basis of 360 days or 365 days to the year. For example, warrant for \$7,900.00 stamped December 15, 1930, was paid August 24, 1931. The elapsed time (by subtraction) was eight months and nine days and the accrued interest as we compute it should be \$331.59. The bank apparently computed actual number of days, 252, or eight months and 12 days on a 360-day basis, and charged interest of \$335.58 or \$3.99 more. Which is correct?"

The statute providing for interest upon city warrants stamped "not paid for want of funds" is contained in Section 5645 of the Code and provides that the said warrant shall be stamped with the date of presentation and that it is not paid for want of funds" and thereafter it shall draw interest at the rate of 6 per cent *per annum* unless issued under a resolution or contract providing that it shall not draw interest, or shall draw interest at a lower rate." The words "per annum" mean by the year. We are therefore of the opinion that the interest should be computed on the basis of years, months and days, arrived at by subtraction of the year, month and day of presentation from the year, month and day of payment.

The warrants would not draw interest for the day stamped and the day paid also for the reason that our statutes provide that in computing time, the first shall be excluded and the last included.

In the specific example you submit, we are of the opinion that the interest should be computed on the basis of eight months, nine days instead of by counting the actual days during the time the interest period ran. We reach this conclusion by reason, of the fact that the statute provides for interest on a "per annum" or "by the year" basis instead of by the day.

**STATE OFFICERS—SUSPENSION:** Where a person has been suspended under the provisions of Chap. 57, Code of 1931, as Auditor of State he is entitled to receive the salary of Auditor notwithstanding the suspension until his term of office expires or he is impeached by the legislature. (Secs. 19, 20, 22, Constitution of Iowa.)

April 30, 1932. *Auditor of State:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

On April 20, 1932, an order was entered by the Governor of this state, pursuant to the provisions of Chapter 57, Code of Iowa 1931, suspending J. W. Long from the exercise of the duties of the office of Auditor of State. In view of this suspension order the question has arisen as to whether or not, under the constitution and laws of this state, Mr. Long is entitled to receive his

regular compensation and a warrant issued to him monthly or semi-monthly in payment of the same.

Section 19, Article III, Constitution of the State of Iowa, provides as follows:

"The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present."

Section 20, Article III, Constitution of the State of Iowa, provides as follows:

"The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide."

Section 22, Article IV, Constitution of the State of Iowa, provides as follows:

"A Secretary of State, Auditor of State and Treasurer of State, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law."

Under Section 19, Article III, of the Constitution, the House of Representatives has the sole power of impeachment and all impeachments are to be tried by the Senate.

Under Section 20, Article III, of the Constitution, the following officers are subject to removal from office only by impeachment:

The Governor, Judges of the Supreme Court and District Courts, and other State officers.

Under Section 22, Article IV, of the Constitution, the office of Auditor of State is provided for and his term of office is fixed at two years and until his successor is elected and qualified.

Chapter 57, Code of Iowa 1931, provides that if the Governor finds that a State officer is guilty of such practices, acts, and irregularities in the conduct of his office as that, the public interest demands that the State be protected, he, the Governor, shall then suspend said officer from the performance of the duties of said office.

In the case of *Brown vs. Duffus*, 66 Iowa, 193, the Supreme Court of our state considered the question of the constitutionality of the law providing for suspension of a State officer by the Governor as it is contained in Chapter 57, Code of Iowa, 1931. Brown was Auditor of State of the State of Iowa; he was suspended by order of the Governor and was later arrested for attempting to exercise the functions of the office of Auditor contrary to the provisions of the law. He petitioned for the issuance of a writ of habeas corpus contending, among other things that the statute authorizing the Governor to suspend the State officer was unconstitutional and void and that the order of suspension entered by Governor Sherman in 1885 was a void act.

Our Supreme Court in this case, speaking through Justice Adams, stated, as follows: (Page 199.)

"In our opinion the suspension of an officer from the exercise of his office is not necessarily to be construed as a removal. It would, perhaps, be equivalent to a removal during the time of suspension, so far as the officer's most

important right is concerned, if the officer by such suspension were to be deprived of his emoluments; but the statute does not provide that he shall be. \* \* \* \* Now, it seems to us clear that an officer might be suspended from the exercise of his office in such limited sense as to affect merely his duties. If this is so, the act of the governor is not open to the objection set forth, nor to the objection, also made, that the governor is not vested with judicial power. His act does not amount to a judicial determination. Our view is strengthened by the fact that the manifest object of the statute can be secured by something less than a removal. The object is to secure the state from loss. This object is secured, so far as it can be by merely suspending the officer's acts, and by gaining possession of the books, papers, etc., of the office."

Thus it will be seen that our Supreme Court has held that the statute providing for the order of suspension does not provide that he shall be deprived of the emoluments (compensation) of his office, but only of the right to exercise the duties thereof. The court also said that if the statute deprived him of the employments of the office it would be unconstitutional because it would then amount to a permanent removal from office, and under the Constitution an elective State officer can only be removed permanently from office by impeachment.

The Supreme Court has distinguished between a suspension of a State officer by the Governor and a removal by impeachment by the Legislature. A suspension by the Governor only deprives the officer suspended of the right to exercise and perform the duties of the office. A removal by impeachment by the Legislature not only deprives the officer of the exercise and performance of the duties of the office but also of the emoluments thereof, and the right to hold any office of honor, trust, or profit in this state. A suspension order has for its purpose only the immediate protection of the state.

In view of the law, as above stated, we hold that Mr. Long, although suspended from the exercise of the duties of the office of Auditor of State, is entitled to receive the compensation of the Auditor of State during such suspension and until he is removed by impeachment or his successor is elected and qualified.

**FARM BUREAU—BOARD OF SUPERVISORS:** If at the time certificate is made by the Farm Bureau there is no money in the county fund, but the receipts for the current year would be sufficient to take care of said appropriation, warrants should be immediately issued in anticipation of said receipts. (Sec. 2930, Code of 1931.)

May 4, 1932. *County Attorney, Emmetsburg, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Section 2930, Code of Iowa 1927, provides for an appropriation to farm improvement associations, such as are cooperating with the United States Department of Agriculture, State Department of Agriculture, and the Iowa State College at Ames, Iowa. The question has arisen as to when this appropriation should be made by the county board of supervisors.

We are of the opinion that it is the mandatory duty of the county board of supervisors, upon proper certification by the secretary and treasurer of such farm improvement association that it has included in its membership at least 200 bona fide members in the county and has raised from among its members yearly membership dues and pledges of not less than \$1,000.00, to immediately appropriate out of the county general fund a sum double the amount of such

membership dues and pledges within the limitations contained in Section 2930, Code of Iowa 1927.

The fact that at the time the certification is made there is no money in the county general fund would make no difference. If the current receipts for said fund would be sufficient to take care of the amount of the appropriation, warrants should then be immediately issued in anticipation of the current receipts.

**TAXATION:** Taxpayers not entitled to refund of tax on deposit in closed bank; nor on mortgage where he takes over real estate in satisfaction thereof during assessment year.

May 6, 1932. *County Attorney, Audubon, Iowa:* This will acknowledge receipt of your letter in regard to the following questions:

1. Applications for refund of depositors in a closed bank;
2. Applications for refunds where both real estate and mortgages were taxed but the real estate taken over in settlement of the mortgage after the assessment and during the year;
3. Applications for refund of persons who paid the tax on the mortgage and were also required to pay the tax on the real estate.

We are of the opinion that no refund is obtainable on the taxes paid on these bank deposits. The tax payer's recourse was to have the assessor evaluate the property on some basis, or appeal to the local board of review from the assessor's evaluation. Inasmuch as this is purely a question of the value of the property assessed, the only recourse is to the board of review. The property was not erroneously or illegally assessed; it was merely assessed at a value greater than its actual value.

We have held that the taxpayer is not entitled to a refund where he has paid the tax on a mortgage and also required to pay the tax on the real estate, or required to take over the real estate subject to the taxes. This is for the reason that the taxes are upon different kinds of property and are the taxes of different taxpayers. The person who is required to pay taxes on land which he takes over is not paying his own taxes or the taxes of another, but is merely paying the tax on the land in order to clear the title thereto, the taxes being a lien thereon.

**ELECTIONS—PREFIXES:** A candidate cannot use the prefix "Dr." or "M. D.", he is only entitled to have his name, whatever it is, printed on the ballot.

May 10, 1932. *County Attorney, Storm Lake, Iowa:* We acknowledge receipt of your letter under date of May 8, 1932, requesting an opinion of this department on the following question:

Is a candidate for county office entitled to use the prefix "Dr." before his name and "M. D." after it on the ballot in the primary election?"

You are advised that a candidate for office, either county or otherwise, is not entitled to have his name printed upon the ballot with the prefix "Dr." before it or with the initials "M.D." after it. He is only entitled to have his name, such as "John J. Jones," printed on the ballot. The fact that his name appeared on his nomination papers with the "Dr." and "M.D." in front and after his name would not affect his right to a place upon the ballot, but the "Dr." and "M.D." must be eliminated upon the ballot.

**BUILDING AND LOAN ASSOCIATIONS:** Building and loan associations organized under the laws of this state have authority to borrow money and pledge as security therefor their assets whether it be real estate, mortgages or other personal property. (Chaps. 384, 417; Secs. 63, 8341, 9329, Code of 1931.)

May 11, 1932. *Acting Auditor of State:* We acknowledge receipt of your letter under recent date requesting the opinion of this Department on the following question:

"Do building loan and savings associations organized under the laws of this state, have authority to borrow money and pledge as security therefor, their assets, whether they be real estate, mortgages, or other personal property?"

Building loan and savings associations are organized in accordance with the general corporation statutes of this state, Chapter 384, and also in accordance with Chapter 417, Code of Iowa, 1931, applicable to the building loan and savings associations. Under Chapter 384, Code of Iowa, 1931, the general corporation statutes, corporations with respect to the power to make contracts and to acquire and transfer property, have the same powers as do natural persons. Section 8341 (6) provides as follows:

"8341. Powers. Among the powers of such corporations are the following:  
"6. To make contracts, acquire and transfer property—possessing the same powers in such respects as natural persons."

Under Chapter 417, particularly applicable to building loan and savings associations, such associations are specifically granted the power to acquire, hold, incumber and convey such real estate and personal property as may be necessary for the transaction of their business. Section 9329 (4) Code of Iowa 1931, provides as follows:

"9329. Powers. All building and loan or savings and loan associations, upon receiving the certificate from the auditor, shall have power, subject to the terms and conditions contained in their articles of incorporation and by-laws:

"4. To acquire, hold, incumber, and convey such real estate and personal property as may be necessary for the transaction of their business."

Thus it will be seen that building loan and savings associations are specifically authorized by statute to incumber or convey their property whether it be real or personal. Such corporations have this power irrespective of whether or not the same is specifically provided in the articles of incorporation as the statute is as much a part of the articles of incorporation as though they were written therein, unless, of course, there is a prohibition against borrowing contained in the articles or by-laws. Personal property is defined under Paragraph 9, Section 63, Code of Iowa, 1931, as follows:

"The word 'personal property' includes money, goods, chattels, evidences of debt and things in action."

The words "land," "real estate," or "real property" are defined, Paragraph 8, Section 63, as follows:

"The word 'land' and phrases 'real estate' and 'real property' includes lands, tenements, hereditaments, and all rights thereto and interests therein, equitably as well as legally."

The term "property" is defined in our statutes, Section 63 (10) of the Code as follows:

"The word 'property' includes personal and real property."

Our supreme court has specifically held that such association has the power



to borrow money. In *Bohn vs. Boone Building and Loan Association*, 135 Iowa, 140, 112 N. W. 199, our supreme court, speaking through Mr. Chief Justice Weaver, said:

"There is no statute of this state denying to building and loan associations the power to borrow money, and, in the absence of such restrictions, we think the power is implied from the general nature of the business they are organized to carry on."

Therefore, unless there is some restriction in the articles of incorporation and by-laws denying to such association the power to borrow money, it would have such power under the general statutes and under the above cited opinion of our supreme court.

We are therefore, of the opinion that building loan and savings associations organized under the laws of this state, in the absence of any prohibition either in the articles or by-laws, have the power to borrow money for the conduct of their business and to pledge or incumber their assets as security for the same whether said assets be real, real estate, mortgages, or, other personal property.

Your attention is called to memorandum opinion rendered by this Department under date of October 8, 1931, to your Department, and in connection with said opinion, we call your attention to the fact that the same is in harmony with this opinion, said opinion being only authority for one proposition, that building loan and savings associations may borrow money and pledge or incumber their real estate as security for the same.

**INSURANCE—LLOYDS':** The Lloyds' plan cannot be licensed to do business in this state. See opinion.

May 11, 1932. *Commissioner of Insurance:* We acknowledge receipt of your request for the opinion of this department on the following matter:

The Lloyds' is a plan of insurance other than life whereby a group of individuals, as underwriters, authorized by power of attorney the appointment of management or agency corporation to act as attorney in fact for the said underwriters. The underwriters propose to raise a fund consisting of securities which are legal investments for insurance companies in the state of Iowa which are to be deposited as a guarantee for the fulfillment of the insurance contracts entered into by the attorney in fact for the underwriters. The underwriters are individuals only, not an association or corporation. The underwriters are the obligees under all of the insurance contracts being liable for their proportionate share of the risk, limited, however, to the amount they have invested in the fund.

The question has arisen as to whether or not the plan known as "The Lloyds'" can, under the provisions of the laws of this state, be licensed by this department to write insurance in accordance with the provisions of Chapter 404, Code of Iowa 1931?

We have examined the statutes of this state pertaining to insurance and we find no statute which would authorize the licensing of individuals or partnerships to do an insurance business in this state. Only corporations either on the mutual or stock plan may be licensed to transact an insurance business in this state. Of course, under the provisions of Chapter 408, Code of Iowa 1931, individuals, partnerships, and corporations are specifically authorized to transact inter-insurance or reciprocal insurance. This is, however, only in accordance with the provisions of said chapter.

The Lloyds' plan is not inter or reciprocal insurance.

According to your letter this plan has been licensed in Missouri, Illinois and another state or two. We have examined the statutes of Missouri and have also

considered the case of *State vs. Stone*, 24 S. W., 164, which is a decision on the question of whether or not under the laws of Missouri such a plan may be licensed to transact an insurance business.

The Missouri court points out specifically that under the laws of Missouri individuals and partnerships are authorized to transact an insurance business. The case indicates that were it not for this specific authorization by the legislature of that state that they would not be permitted to transact business within the state.

The plan itself an examination seems to have some merits. However, until the law is changed you are not authorized to issue a license to such group to transact business in this state.

**ELECTIONS—BOARD OF SUPERVISORS:** Candidate for office of board of supervisors must be eligible at the time of the election. See opinion Otto J. Eckey, County Atty., Fairfield, April 28, 1932.

May 12, 1932. *County Attorney, Council Bluffs, Iowa:* We acknowledge receipt of your letter of May 5, 1932, requesting an opinion of this department on the following question:

"A", a resident of Kane township, has filed as a candidate for member of the board of supervisors for the term beginning January 1, 1933. Now it happens that "B" and "C" both live in Kane township and are already members of the board of supervisors, their terms expiring January 1, 1934. The question has arisen in view of Section 522, Code of Iowa 1931, can "A" be a candidate for member of the board of supervisors in the June primary in view of the fact that "B" and "C", residents of the same township, are already members of the board of supervisors their term expiring in January, 1934.

We are enclosing herewith copy of opinion rendered by this department, under date of April 2, 1932, to Otto J. Eckey, County Attorney, Fairfield, Iowa. You will note that in accordance with this opinion the question of eligibility, as determined by our Supreme Court, for a member of the board of supervisors is as of the date of the election, meaning the general election. That is, he must be eligible at the time of the election.

It should be suggested also in connection with this opinion that the primary is not an election within the meaning of the statutes of this state.

Applying the opinion of April 28th to the facts in your case, we would say so far as "A's" being a candidate for a member of the board of supervisors at the June primary is concerned there is nothing in the statutes which would prevent this. However, if at the time of the general election "B" and "C" either one, or both, members of the board of supervisors are still residents of Kane Township then "A" would be ineligible for the office of the member of the board of supervisors under and by virtue of the provisions of Section 522, Code of Iowa 1931. "A" at said time is still a resident of Kane Township. However, if at the time of the general election "A" should have acquired a residence in another township where no member of the board of supervisors resided he, under the Supreme Court decision, would be eligible for the office. The eligibility of the candidate is not fixed as of the time of the primary but as of the time of the general election.

**TAXATION—SUSPENSION—BOARD OF SUPERVISORS:** Under Sec. 6951, Code of 1931, board of supervisors may remit suspended taxes assessed against a person, his polls, or estate, or both.

May 12, 1932. *County Attorney, Bedford, Iowa:* Under date of February 8,

1932, we wrote you an opinion with respect to suspended taxes and the right of the board to compromise the same.

In connection with that opinion we should call your attention to Section 6951, which reads as follows:

"6951. Additional order. The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner, cancel and remit the taxes assessed against the petitioner, his polls or estate or both, even though said taxes have previously been suspended as provided in the preceding section."

It would appear that under this section the board has authority if in its judgment it is for the best interests of the public and the petitioner to cancel and remit the taxes assessed against the petitioner, his polls, or estate, or both, even though said taxes have previously been suspended.

This being true we must reverse the conclusion reached in that opinion.

**COUNTY OFFICERS:** Where a decree of foreclosure fails to contain the book and page in which it is recorded in the county recorder's office it may be recorded if the identity of the mortgage can be made. (Sec. 12387, Code of 1931.)

May 14, 1932. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter under date of May 9, 1932, requesting an opinion of this department on the following question:

A decree of foreclosure fails to state the book and page where this mortgage foreclosed is of record in the recorder's office. The question has arisen whether it will be necessary for this record to be in the decree in order to make the foreclosure a matter of record on the mortgage record in the recorder's office.

Your attention is called to Section 12387, Code of Iowa 1931. We are of the opinion that under this section it would not be necessary that the book and page of the mortgage record in the recorder's office be a part of the decree of foreclosure in order to entitle the entry to be made as provided for in Section 12387. All that would be necessary would be that the recorder be satisfied as to the identity of the mortgage as shown on his records with the mortgage which was foreclosed as evidenced by the decree.

**COUNTY OFFICERS—DEPUTIES:** Under the statute it is not mandatory that a county officer have deputies, and a candidate for a county office who states that he will not have any deputies is not violating any law. (Sec. 5238, Code of 1931.)

May 14, 1932. *County Attorney, Bedford, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

The question has arisen as to whether or not, in view of the provisions of Section 5238, Code of Iowa, 1931, it is mandatory that the county officers therein mentioned have deputies, or is it only permissive.

This question has arisen in connection with statements made by candidates for county office in which a candidate says that he will do the work without a deputy.

An examination of Section 5238, Code of Iowa, 1931, discloses the fact that the county officers therein mentioned *may* with the approval of the board of supervisors appoint one or more deputies or assistants, respectively.

Clearly it is not mandatory, under this section, that deputies be appointed. The statute only permits the appointment of the same with the approval of the

board of supervisors. Any county officer mentioned in that section would not be required to make an appointment of a deputy.

It would clearly be a matter within his discretion as to whether or not the same were necessary.

**MOTOR CARRIERS:** The amendment to Chapter 129 laws of the Forty-third General Assembly by Chapter 129 laws of the Forty-fourth General Assembly striking the words "but principally" did not change the legal status of one who hauls a load occasionally for others for hire and who does not hold himself out generally to carry for all who desire to employ him.

May 18, 1932. *Board of Railroad Commissioners:* This will acknowledge receipt of your request for an opinion upon the following proposition:

"The Forty-third General Assembly in Chapter 129, Section 1 (1) defined a motor truck as follows:

'Section 1. When used in this act:

1. The term "motor truck" shall mean any automobile, automobile truck, or other self propelled vehicle, not operated upon fixed rails or track, but principally used for the public transportation of freight for compensation, not operating between fixed termini, nor over a regular route.'

"The Forty-fourth General Assembly, Chapter 129, amended this section by striking therefrom the words 'but principally.'

"Will you kindly give us your opinion on the effect of this amendment with reference to one who owns a truck for his own use and hauls a load occasionally for others for hire?"

We are of the opinion that the amendment striking the words "but principally" made by the Forty-fourth General Assembly, did not change the effect of this statute. It applies to automobiles, automobile trucks and other self-propelled vehicles used for the public transportation of freight for compensation. "Public transportation" has been defined as "carriage for all who may choose to employ." We therefore reach the conclusion that this statute includes only those truck operators who "carry for all who may choose to employ" them.

Therefore, one who hauls occasionally for another for hire, and who does not hold himself out to the public generally by advertising or other means, or who does not carry for all persons who may choose to employ him, would not come within the meaning of the statute and would not be required to secure a permit from your Board. A single advertisement, or printing the name with a hauling sign on the truck, or any other means of holding out to the public, would constitute use for public transportation and would render the owner of the truck subject to the regulation of the statute.

**COUNTY OFFICERS:** A farm lease which contains a chattel mortgage clause may be filed as a chattel mortgage. (Sec. 10015, Code of 1931.)

May 18, 1932. *County Attorney, Albia, Iowa:* Your county recorder some time ago requested an opinion upon the following question:

May a farm lease be filed or must it be recorded?

At that time we forwarded to him a copy of the opinion rendered by this department under date of February 8, 1932, to Elmer Johnson, County Attorney at Greenfield. Since that time our attention has been called to the particular farm lease in question, and from examination of that lease, it would appear that the same is not an ordinary farm lease but that said lease contains a chattel mortgage clause covering not only non-exempt property but exempt property.

We have examined Section 10015, which deals with the recording or filing of chattel mortgages, and we find that our Supreme Court has passed upon this section and the question of whether or not a clause such as is contained in said lease makes the lease, in fact, with respect to personal property a chattel mortgage.

In the case of *Sioux Valley State Bank vs. Honod*, 85 Iowa, 352, and in the case of *Brenton vs. Bream*, 202 Iowa, 575, our Supreme Court has held that a farm lease containing a chattel mortgage clause is a chattel mortgage within the meaning of the recording act as contained in Section 10015 and may either be recorded or filed.

For your information we are enclosing herewith a copy of the particular chattel mortgage clause incorporated in the lease to which this opinion is applicable.

POOR RELIEF: (See opinion.) (Boone and Story county controversy.) (Sec. 5311, 5312, 5315, Code of 1931.)

May 20, 1932. *County Attorney, Nevada, Iowa*: We acknowledge receipt of your letter of May 10th, 1932, requesting an opinion of this department on the following question:

Family "S", residents of Boone county, moved to Story county June 20, 1929. On June 19, 1930, notice to depart, as provided by statute, was served on the family. The family continued to reside in Story county and a second notice to depart was served on the family June 4, 1931. The family moved back to Boone county and took up its residence there in September, 1931.

The question has arisen as to whether or not the family ever acquired a legal settlement in Story county or whether their legal settlement continued as of Boone county.

Under Section 5312, Code of 1931, a legal settlement once acquired continues until lost by the acquisition of a new one.

Under Section 5311, Code of 1931, a legal settlement may be acquired by an adult person residing in this state one year without being warned to depart.

Under Section 5315, Code of 1931, a person may be prevented from acquiring a legal settlement in a county by the serving of a notice or warning to depart. Such warning or notice must be given before the person has had a residence in the county of a year or more. After the warning has been served the person cannot acquire a legal residence in the county without residing another year from the date the warning or notice to depart was served upon them.

From the facts as stated above it would appear that "S" family had a legal residence in Boone County at the time they moved to Story County; that they moved to Story County on the 20th day of June, 1929 and that a notice to depart was served upon them June 19, 1930. Under this state of facts "S" family would be prevented, under the statutes, from acquiring a legal settlement in Story County until after a residence there of one year from June 19, 1930 without again receiving notice to depart.

You stated that a second notice to depart was served upon the family June 4, 1931, and that the family returned to Boone County in September, 1931.

We are, therefore, of the opinion that under this state of facts "S" family never acquired a legal settlement in Story County and this being true they never, under Section 5312, Code of 1931, lost the legal settlement which they had in Boone County. The notice which you mention in your letter which was given the County Auditor of Boone County would, in our opinion, have nothing

to do with the question of legal settlement, as the only notice provided for is the one provided for in Section 5315, Code of 1931, and this notice is upon the pauper.

**COUNTY RECORDER:** Where three persons own an interest in a mortgage and desire to satisfy the same where there is in fact only one release which is executed notwithstanding the fact that there may be more than one signature on the margin. (Par. 3, Sec. 5177, Code of 1931.)

May 20, 1932. *County Attorney, Keosauqua, Iowa:* We acknowledge receipt of a letter under date of April 22, 1932, from your County Recorder requesting an opinion of this department on the following question:

We have in this county a real estate mortgage which is owned by three different persons one of whom is now deceased and the other two are executors of his estate. In releasing this mortgage the executors of the estate of the deceased executed the marginal release for the deceased, one-third owner of the mortgage. The other two owners executed as individuals the marginal release. The question has arisen as to what fee should be charged for the marginal release of this mortgage.

We call your attention to Paragraph 3, Section 5177, Code of Iowa 1931. Under this paragraph the fees for a marginal release are fixed at twenty-five cents. We are of the opinion that there is in fact only one marginal release of the mortgage under the above statement of facts and that the only authorized fee would be twenty-five cents, notwithstanding the fact that there are several signatures to the marginal release.

**POOR RELIEF—BOARD OF SUPERVISORS—TOWNSHIP TRUSTEES:** The board of supervisors acts only in a supervisory capacity in connection with the granting of poor relief. The township trustees determine in the first instance the necessity for relief and the board simply approves or disapproves claims for the same. (Sec. 5320, 5328, 5333, 5329, Code of 1931.)

May 20, 1932. *County Attorney, Algona, Iowa:* We acknowledge receipt of your letter of April 21, 1932, requesting an opinion of this department on the following question:

Kossuth county, up until recently, had a social service worker who handled all the poor relief. Her services have now been dispensed with and the question has arisen as to what authority a supervisor has in his respective district in connection with the supervising and administering of poor relief. The board of supervisors feels that a much more economical administration can be obtained in this manner and that to leave the matter to the various township trustees would destroy the efficiency of the administration considerably.

Under Section 5320, Code of Iowa 1931, the township trustees of each township are *subject to general rules that may be adopted by the board of supervisors* directed to provide for the relief of such poor persons in their respective townships as should not in their judgment be sent to the county home.

Under Section 5328, Code of 1931, all poor persons are required to make application for relief to the township trustees of their respective townships.

Under Section 5333, Code of 1931, where the township trustees have denied an application to a poor person the poor person may apply directly to the board of supervisors who may if they so determine direct the trustees to grant relief.

Under Section 5329, Code of 1931, the board of supervisors is authorized to examine into all claims for the support of the poor as allowed by the various township trustees and may reject or diminish the claim in their judgment right and proper.

Under Section 5330, Code of 1931, all claims and bills for the care and support of the poor should be certified by the township trustees and approved by the board if they are satisfied the same are reasonable and proper and payable out of the county treasury.

It would appear that under these sections, in the first instance a poor person must make application to the township trustees of the respective townships, and that the township trustees, subject to the general rules adopted by the board of supervisors, must provide relief for such poor persons. In other words, the board of supervisors is authorized to lay down general rules with respect to the kind and amount of relief, of course, subject to the provisions of the statute.

The board of supervisors is authorized to examine into all claims for relief including medical attendance and determine the reasonableness or unreasonableness of the same and reject or diminish the amount thereof.

The board of supervisors, or a member thereof, is not authorized, however, in the first instance to allow or disallow the application of a poor person. It would appear to us, from an examination of the statutes, that the board of supervisors acts primarily in a supervisory capacity, and that after it has adopted the general rules with respect to the relief of the poor it can only examine into the reasonableness or the justice of said claims.

**TAXATION:** A tax levy for retiring primary road bonds should be based upon only the personal and real property of the county exclusive of monies and credits. The millage should be based upon the taxable value of the property within the county and not upon the assessable value. (Sec. 63, par. 10, 6986, 4753-a17, Code of 1931.)

May 21, 1932. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter under date of May 9, 1932, requesting an opinion of this department on the following question:

This county proposes submitting to a vote of the people the question of issuing primary road bonds in accordance with the provisions of Chapter 241, Code of Iowa 1931.

The question has arisen as to whether or not the tax levy which must be authorized is a tax on all of the property in the county including monies and credits, and whether it is based upon the assessed value or the taxable value.

Under Paragraph 10, Section 63, Chapter 4, Code of 1931, the word "property", when used in the code includes both personal and real property.

Under Section 6986, Code of 1931, the tax on monies and credits is in lieu of all other taxes on the same.

We are, therefore, of the opinion that the tax levy which must be provided for in connection with the road bond issue should be based only upon the personal and real property of your county exclusive of monies and credits.

We are also of the opinion that the millage should be based upon the taxable value of the property within the county and not upon the assessable value. Understand, of course, that the taxable value is one-fourth of the assessed value.

It is suggested, for your information, that for the purposes of determining the constitutional debt limitation and also of the limitation on indebtedness, as is contained in Section 4753-a17, that the percentage is based upon the actual value of the taxable property within the county, and that for this purpose both personal and real property, including monies and credits, should be considered.

**TAXATIONS—BANKS AND BANKING:** Contingent reserve for depreciation

is subject to taxation and should be included in the capital structure as a part of the surplus and undivided profits until the same has been expended.

May 23, 1932. *County Attorney, Vinton, Iowa*: We acknowledge receipt of your letter under date of May 12, 1932, requesting an opinion of this department on the following question:

Under date of June 5, 1931, you rendered an opinion to the State Board of Assessment and Review with respect to the manner and method of assessing capital stock, surplus and undivided profits of banks. It has been called to my attention that the banks are setting aside an amount as a reserve for depreciation.

The question has arisen as to whether or not this reserve for depreciation should be included in the capital structure as a part of the surplus or undivided profits.

We are of the opinion that until this contingent reserve for depreciation has been expended it should be, for the purposes of taxation, included in the capital structure as a part of the surplus and undivided profits.

**ELECTIONS:** The question of legal settlement has nothing to do with the right of a person to vote: all that is required to entitle one to vote is the residence in the state six months, the county sixty days, and the precinct ten days. A person may have a voting residence and a business residence.

June 2, 1932. *Auditor of State*: We acknowledge receipt of your letter of May 18, 1932, requesting an opinion of this department on the following question:

"In 1929 certain residents moved from Monroe county to Marion county where they were served with a notice to vacate, so they could not gain residence and become a charge upon the county. In the 1930 election they were allowed to vote in Marion county. They now wish to vote in Monroe county by absent voters' ballot in the 1932 June primaries.

"Should they be allowed this privilege?"

You are advised that the question of legal settlement has nothing to do with the privilege of voting. So far as the qualifications of the voter are concerned the person must have a domicile in the state for six months, in the county sixty days, and in the precinct ten days.

A "domicile" is where a person takes up his abode with the good faith intention of making that his home. For example: a person may remove with his family from one county to another and acquire a new domicile in the new county immediately, and if he has been in that county sixty days and has resided in the voting precinct ten days, of course having had a six months' residence in the state, he is entitled to vote.

If the person who removed from Monroe County to Marion County has resided in Marion County sixty days and in his precinct ten days and took up his domicile in Marion County with the good faith intention of making that his home, he could not vote by absent voters ballot in Monroe County. However, if his sojourn in Marion County was only temporary and he had no intention of making that his home but had the intention of returning to Monroe County calling that his home for voting purposes, then he would have the right to vote by absent voter's ballot in Monroe County.

**ELECTIONS:** Persons temporarily employed and having a temporary residence for a business purpose only acquire no voting residence within the precinct.

June 2, 1932. *County Attorney, Des Moines, Iowa*: I am in receipt of your



communication in which you request the opinion of this Department upon the following proposition:

"Whether employees of a grading gang who are located in a certain township within a county can vote in that township when their place of residence, if any, is only a shack on wheels which they travel in from one grading job to another and only remain in one place for a short period of time."

Your attention is called to the provisions of Section I, Article 2, of the constitution, and to the provisions of Section 727 of the Code which provide as follows:

"No person shall vote in any precinct but that of his residence, except as provided in Section 5628."

The exception referred to is not applicable to the general primary election to be held on June 6, 1932.

Your attention is also called to the case of *Vanderpoel vs. O'Hanlon*, the opinion to which is reported in 53 Iowa at page 246, and particularly to the language commencing on page 248, which is as follows:

"He is entitled to vote only in the county where his home is—where his fixed place of residence is for the time being—and such place is, and must be, his domicile, or place of abode, as distinguished from a residence acquired as a sojourner for business purposes, the attainment of an education, or any other purpose of a temporary character."

It is the opinion of this Department that under the rule announced in the above mentioned decision of the Supreme Court, a shack on wheels in which a person resides while he is working in a certain locality is not a fixed place of residence, but is only a temporary residence for a business purpose and is of a temporary character. Therefore, no voting right is acquired by any such a person as is referred to in the submitted proposition in a voting precinct under such circumstances as are described by you.

**ELECTIONS:** Where precincts have once been established in various wards of a city and the council passes an ordinance changing the precincts and there is not enough time before the primary election to complete the publication of the necessary notice the old precincts would be the precincts for the primary. (Secs. 723, 729, Code of 1931.)

June 3, 1932. *County Attorney, Clarinda, Iowa:* Pursuant to your request over the telephone we are enclosing herewith copy of an opinion rendered by this department to Victor D. Vifquain, County Attorney, Vinton, Iowa, under date of March 31, 1932.

We trust that this opinion will answer one of your questions.

You have stated that in the city of Clarinda there is a city ordinance passed by the council which divides the city into two wards; that there are two city ordinances which provide for two precincts in each ward. That recently the city council passed an ordinance repealing the two ordinances which created the precincts in each of the wards; that they later passed an ordinance repealing the ordinance which did away with the precincts and passed an ordinance providing for two precincts in two wards.

Section 723, Code of Iowa 1931, authorizes the council of a city or town to by ordinance definitely fix the boundaries and divide the city in such number of election precincts as will best serve the convenience of the voters.

Section 729, Code of Iowa 1931, requires that the council shall number or name the several precincts established and cause the boundaries of each to be

recorded in the records of said council and publish notice thereof in some newspaper of general circulation published in said city once each week for three consecutive weeks, the last publication to be made at least thirty days before the next *general election*. The section also provides that the *precinct thus established shall continue until changed*.

We are of the opinion that, under the facts above stated, it would be necessary for the city council to publish notice of the new ordinances which define and fix the boundary of the precincts in the various wards in the city of Clarinda.

We are also of the opinion that before any change would take place in the precincts as previously defined and fixed by ordinance, that the publication of the notice as provided in Section 729, would have to be completed, and in view of the fact that said publication could not be completed now so that thirty days would elapse before the primary that the precincts originally established before the passage of the several ordinances referred to would be the legal precincts for the primary in June, 1932. In other words, no change in the precincts would take place before the completed publication which would be after the primary.

**BOARD OF EDUCATION:** The Finance Committee of the State Board of Education may not purchase indemnity insurance for any state institution or for the state.

June 17, 1932. *Board of Education:* We have yours of April 30th wherein you ask:

"What kinds of insurance on an automobile or an ambulance which is used to transport state patients, has the Finance Committee the legal right to purchase?"

We assume you refer to indemnity insurance.

A careful search of the Code fails to reveal any legislative authority for the purchase of indemnity insurance by the Finance Committee, and we are, therefore, of the opinion that the right to purchase such insurance by the Board of Education does not exist.

**PAROLES:** Board of Parole has power to parole a person who has been sentenced to two terms and committed to the penitentiary even though no time has been served upon the second sentence.

June 17, 1932. *Board of Parole:* You have requested the opinion of this Department upon the question of whether or not a person who has been convicted of a crime and sentenced to the State Penitentiary or Reformatory, and while serving said sentence or while on parole escapes or violates the parole and is thereafter convicted and sentenced to a further term therefor, said term to commence at the expiration of the first sentence, can be given a parole by the Board of Parole without having served any time upon the second sentence.

Your attention is called to the provisions of Section 3786 of the Code which read as follows:

"The board of parole shall, except as to prisoners serving life terms, or under sentence of death, or infected with venereal disease in communicable stage, have power to parole persons convicted of crime and committed to either the penitentiary or the men's or women's reformatory."

If the prisoner who has been returned to the institution after his second conviction for being an escape or parole violator, has been committed under said second conviction, he, it will be observed, is eligible for a parole under the

provisions of law just quoted. There is no requirement in the statute that he shall have served any particular length of time. The Board has the power, if it so desires, to parole such a person even though none of the second sentence has been served.

On the other hand, we call attention to the provisions of Section 3788 of the Code which are as follows:

"Said board may, on the recommendation of the trial judge and prosecuting attorney, and when it appears that the good of society will not suffer thereby, parole, after sentence for less than life imprisonment and before commitment, prisoners who have not been previously convicted of a felony."

Under this section of the law, if the prisoner has not been committed for the second conviction, then there is no authority or power to parole said person.

**ELECTIONS:** If a name of a candidate is erroneously printed upon the official ballot and there is a person within the voting district of that same name qualified to receive the office, and a sufficient number of votes are cast to nominate him, said person whose name is printed upon the ballot is nominated.

June 17, 1932. *County Attorney, Toledo, Iowa:* We have your letter of June 10 in which you request an opinion of this Department upon the following situation as presented by you:

"One L. C. Dobson qualified as candidate for the office of Justice of the Peace in and for Carlton Township, this county. Through mistake the name J. C. Dobson was printed on the ballot. There is a J. C. Dobson resident in the township, but he did not file any affidavit of candidacy.

"The mistake was not discovered in time to rectify the error in initials and J. C. Dobson received the great majority of votes. L. C. Dobson, however, received some, as some people wrote his name in.

"Will you please advise me as to the relative rights of the parties, and in this connection I might say that J. C. Dobson, now that he has been elected, is desirous of keeping the office."

We are of the opinion that inasmuch as there was a person qualified to receive the office described, residing in the township by the name printed upon the official ballot, said person having received a sufficient number of votes to nominate him for the office, is the duly elected nominee of the party for that office. The sole remedy of the other party was to have required the county auditor, by writ of mandamus, to include his name upon the ballot in the same form as was certified by him in his affidavit of candidacy.

It will be noted that voters can write in the name of any person for whom they desire to vote for any office, although said person may not be an avowed candidate under the statute. A person may be elected as a nominee to any office if he is qualified. If a majority of the voters of the township had written in the name of J. C. Dobson he would have been the nominee. Under the circumstances as described by you, the will of the people is expressed by the vote recorded, and L. C. Dobson is not now in a position to complain.

**COUNTY OFFICERS:** The county is liable to the sheriff for fees for serving an execution in a liquor case.

June 18, 1932. *County Attorney, Davenport, Iowa:* You have requested the opinion of this Department upon the proposition as to whether or not the county is required to pay the sheriff's fees for serving an execution in a liquor case whether it be a criminal or an injunction case.

Your attention is called to the provisions of Section 5191-a of the Code, 1931, which provide as follows:

"In all criminal cases where the prosecution fails, or where the money cannot be made from the person liable to pay the same, the facts being certified by the clerk or justice as far as their knowledge extends, and verified by the affidavit of the sheriff, the fees allowed by law in such cases shall be audited by the county auditor and paid out of the county treasury."

Any costs or fees taxed under the provisions of Section 1930 of the Code are necessarily taxed in a criminal proceeding. Therefore, the fee for serving an execution under a judgment rendered under that section would be payable under the provisions of Section 5191-a of the Code, if and when the same cannot be collected from the defendant or the person liable to pay the same.

It will be observed in Chapter 93 relative to intoxicating liquor injunctions, there appears Section 2050 which provides that if the costs cannot be collected of the defendant, that they shall be paid in the same manner as in criminal causes. Under this provision of the law, Section 5191-a is again applicable in the case of sheriff's fees for serving executions, and the county would again be liable.

However, your attention is called specifically to the requirements of Section 5191-a, and before the county shall pay any such fees, those requirements must be met.

**SCHOOLS AND SCHOOL DISTRICTS—COUNTIES:** The board of supervisors has the power to sell buildings no longer needed for county purposes and school districts have power to purchase the same.

June 21, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following proposition:

"Is it within the authority of the board of supervisors to lease or sell buildings no longer needed for county purposes, to a school district within the county; and does the school district have the authority to lease or purchase such buildings and if so upon what terms and conditions?"

Under Section 5130 (17), the board of supervisors has the following power:

"To lease or sell to school districts real estate owned by the county and not needed for county purposes."

It is, therefore, within the statutory power of the board of supervisors to lease or sell the above described real estate if it is no longer needed for county purposes and this implies the power to sell upon such terms and conditions as the board of supervisors determines.

Under Section 4374 of the Code, the school board has the power when necessary to rent a room and employ a teacher where there are ten children for whose accommodation there is no school house; the school board also has the power to determine what schools shall be taught and what courses shall be included therein. See Sections 4250 and 4267 of the Code of Iowa 1931.

We are therefore of the opinion that both of your questions are to be answered in the affirmative; that the board of supervisors of the county does have the power to lease or sell buildings no longer needed for county purposes to a school district within the county and on such terms and conditions as the boards shall determine; and that the school district has the authority to lease such building upon such terms within its discretion.

**BOARD OF EDUCATION—COSTS:** Court costs and attorney fees incurred by the State Board of Education for any of the educational institutions should be paid out of the general court cost fund. General repairs, improvements, and abstracts of title to real estate should be paid from the particular fund for the benefit of which such property is held.

June 22, 1932. Board of Education: We have yours of April 30th wherein you ask in substance:

From what fund should expenses incurred for court costs, attorneys' fees, and abstracts of title, be paid when such expense is incurred in connection with the business of the State University?

From what fund should expense such as repairs on buildings and general improvements on properties owned by the University be paid?

You are hereby advised that court costs and attorneys' fees incurred should be paid out of the General Court Cost Fund of the State of Iowa, and that the costs of abstracts of title and general repairs and improvements on buildings owned by the University should be paid from the particular fund for the benefit of which such property is held.

**DRAINAGE AND DRAINAGE DISTRICTS:** (1) The statute of limitations runs against drainage warrants from the date of issue; (2) Holder of a drainage warrant has a remedy by mandamus to enforce the county board to spread and levy an assessment on the benefited district; (3) New drainage warrants may be provided as in Section 7496, Code of 1931. (Par. 6, Sec. 11007; Sec. 7509-b1, Code of 1931.)

June 23, 1932. *County Attorney, Eldora, Iowa:* Pursuant to your request we herewith render you an opinion on the following questions:

(1) Does the statute of limitations run against warrants issued by a drainage district?

(2) Does the holder of a drainage warrant which has been presented for payment and marked by the treasurer "not paid for want of funds" have a remedy whereby he may enforce collection and payment of the same?

(3) Where drainage warrants have been issued and stamped "not paid for want of funds," as provided for in Section 7496, Code of Iowa 1931, has anyone any authority to issue new warrants to take up the old warrants or to issue funding bonds to take up the old warrants?

(1)

Under the drainage statutes of this state drainage warrants, certificates, and bonds are payable from funds collected from special assessments against the land in the benefited district.

Drainage warrants, certificates, and bonds are not payable out of county funds, they are payable out of a special fund which is realized from special assessments.

The statute of limitations on written contracts, as provided in Paragraph 6, Section 11007, Chapter 487, Code of Iowa 1931, is ten years.

Our Supreme Court has held, in the case of *Bodman vs. Johnson County*, 115 Iowa, 296, that the statute of limitations begins to run against drainage warrants payable out of drainage funds derived from special assessments levied against benefited land within the drainage district from the date of their issue and not from the date when there are assets actually in the fund from which they are payable. This case was a case wherein the plaintiff brought an action on two warrants which were respectively payable out of a particular ditch fund. The warrants had been presented for payment and endorsed by the county treasurer "not paid for want of funds". The court held also that it was the

duty of the county to raise the necessary funds by assessment and that the plaintiff was not justified in postponing the bringing of his action until such funds were actually on hand.

When this decision was rendered Section 7496, Code of 1931, was not a part of the drainage law. The law with respect to county warrants was substantially as it now appears in Sections 5158, 5160, 5161 and 5162, Code of Iowa 1931. These sections were construed by the court, in the above decision, as being applicable to drainage warrants. Since this decision the Thirty-seventh and Thirty-eighth General Assemblies have amended the drainage laws and these amendments are now the law as it appears in Section 7496, Chapter 353, Code of Iowa 1931. The question then resolves itself to whether or not the amendment of the drainage law (Section 7496, Code of 1931) changes the rule as laid down in the above decision with respect to the statute of limitations. We are of the opinion that it does not, for an examination of Sections 5158-5162, inclusive, Code of 1931, applicable to county warrants generally substantially includes everything of substance that is contained in Section 7496, Code of 1931.

We are, therefore, of the opinion that the statute of limitations runs against drainage warrants from the date of their issue. Drainage warrants would, therefore, be barred by the statute of limitations ten years after the date of issue. See Section 11007 (paragraph 6), Code of 1931.

Another question which may arise in this connection is, where it appears that the statute of limitations has run against drainage warrants, certificates, or bonds would the board have the power to forego the benefit of the statute and proceed to spread and levy assessments and pay the same? Inasmuch as the board of supervisors, acting as a drainage board only, acts in a representative capacity, with its powers defined by statute, we are of the opinion that the board would not have authority to forego the statute of limitations and could not pay an obligation which has been barred by the statute.

(2)

The question as to whether or not the holder of a drainage warrant which has been presented to the county treasurer for payment and endorsed by him "not paid for want of funds" has a remedy whereby he may enforce payment of the same, has been passed upon by our Supreme Court in the cases of *Mills County National Bank vs. Mills County*, 67 Iowa 697, *First National Bank vs. Webster County*, 204 Iowa 720, and also *Board of Supervisors vs. District Court*, 209 Iowa 1030. In the last cited case the court held that a drainage district is sui generis; that it is not a corporation and that it cannot, therefore, sue or be sued. It is merely a segregated area of land which has been set out by legal proceedings and is subject to assessment for the construction of said drainage improvements within said territory. It can incur no corporate liability. The board of supervisors is by statute made the manager of said district and acts in a representative capacity with such powers as are defined by statute.

The board, in contracting in behalf of the district, incurs no liability other than to take the proper and necessary proceedings for the levy of special assessments and to devote the proceeds thereto.

From what has been said heretofore it appears that the holder of a drainage warrant, certificate or bond must look to the funds derived from the assessments against the benefited lands for the payment of his warrant. If the funds derived from the assessment have been exhausted and there are obligations still out-

standing against the drainage district, under the statute it is the duty of the board to spread and levy additional assessments sufficient to take care of said obligation. The holder of a drainage warrant, certificate or bond may, therefore, and must if he desires to enforce payment bring an action to compel the board to proceed as by law provided to spread and levy additional assessments sufficient to take care of the obligations. The proper remedy would be an action in mandamus.

It is suggested that even though the amount due the holder of a drainage warrant, certificate or bond was determined and judgment entered it would still be necessary for the holder thereof to bring an action in mandamus to compel the board to spread and levy additional assessments sufficient to take care of the same.

(3)

Section 7509-b1, Code of 1931, provides as follows:

"Funding or refunding indebtedness. Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in Section 7663."

This section of the code was enacted by the Forty-first General Assembly as an amendment to Section 7509, Code of Iowa 1931. Under this section drainage districts are authorized to settle, adjust, renew or extend time of payment of the legal indebtedness they may have or any part thereof provided the amount of the indebtedness is \$1,000 or upwards, and whether the same is evidenced by bonds, warrants, certificates or judgments. This would authorize the board to issue new warrants, new certificates, and to extend by agreement judgments.

Under this section they are also authorized to fund or refund the same and issue bonds therefor as provided in Section 7663, Code of Iowa 1931.

**QUERY:** What benefit would be derived by the issuance of new drainage warrants for old outstanding warrants?

We can see none, except in a case where the statute of limitations is about to run on an old warrant. The issuance of a new warrant in this case, of course, would be of benefit to the owner of the old warrant for it would toll the running of the statute. There would be no benefit to the drainage district, for warrants are usually payable on presentment unless no funds are available with which to pay the same, in which event, under the statute, the treasurer would endorse on the same "not paid for want of funds." This would place the new warrant in exactly the same status as the old one with respect to bringing an action against the board to compel the board to spread and levy an assessment for the purpose of paying the same. This opinion overrules an opinion of this department to the Superintendent of Banking dated September 29, 1925.

**ELECTIONS:** It is necessary that a precinct committeeman be a resident of the precinct for which he is elected. Where one is elected who is not a resident of the precinct for which he is elected there is a vacancy in the office. (Sec. 627, Code of 1931.)

June 24, 1932. *Secretary of State:* Pursuant to your request we herewith render you an opinion on the following question:

Under the laws of this state is it necessary that a precinct committeeman be a resident of the precinct?

If one who was not a resident of the precinct was in the primaries elected committeeman is there a vacancy, and if so how should said vacancy be filled?

We are of the opinion that the precinct committeeman must be a resident of the precinct.

We are also of the opinion that if a person who is not a resident of the precinct has been elected in the Primaries as a committeeman that there is a vacancy in the office of committeeman in said precinct, and that said vacancy should be filled in the manner provided in Section 627, Code of Iowa 1931.

**CITIES AND TOWNS:** A municipality which owns a municipal light plant does not have power to pay the 3% federal tax assessed against the customers on the amount of the light used.

June 25, 1932. *Auditor of State:* We acknowledge receipt of your letter of June 24, 1932, requesting an opinion of this department on the following question:

May a city which operates a municipally owned light plant waive the collection of the government tax on its customers' light bills and pay the same from the profits of the plant?

A municipally owned light plant is owned and operated by the city for the benefit of all of the residents of said city. To permit the payment of the Federal tax on the customers' light bills out of the profits of the plant would permit discrimination, and the taxpayers in the city who were not power users could, in our opinion, bring an action to enjoin such a practice.

We are, therefore, of the opinion that a city which owns a municipal light plant cannot waive the collection of the Federal tax on the customers' light bills and pay the same from the profits of said plant. (This opinion is supported by ruling of U. S. Internal Revenue Collector.)

**DRAINAGE—TAXATION:** (1) A house owned by a church and abandoned as a parsonage and now rented is subject to taxation. (2) A drainage district is not liable for damages sustained because of stoppage of the same. Proper action is that the landowner compel the board to repair the same. (Par. 9, Sec. 6944, Code of 1931; Secs. 7556, 7558, Code of 1931.)

June 25, 1932. *County Attorney, Nevada, Iowa:* We acknowledge receipt of your letter under date of June 14, 1932, requesting an opinion of this department on the following questions:

(1) In this county we have a house which is owned by a church and has been used as a parsonage up until the last year or so. Since that time the church has been renting it and collecting the rents therefrom for its own benefits. The question has arisen as to whether or not this house is now subject to taxation.

(2) In one of the drainage districts of this county certain drainage ditches have become stopped up with tile broken in places, and the water has by reason of the same flooded the land adjoining the laterals. This has done considerable damage to the crops on the land flooded. The question has arisen as to whether or not the drainage district is liable for the resultant damages.

(1)

From the facts stated in your question it would appear that the parsonage has been abandoned as a parsonage and is now being rented for pecuniary profit. This being true, we are of the opinion that under Paragraph 9, Section 6944, Code of Iowa 1931, said property is not now exempt from taxation. As authority



for this see the case of *The Trustees of Griswold College vs. State of Iowa*, 46 Iowa 275.

(2)

Our Supreme Court has held in a number of cases that a drainage district is sui generis; that it is not a corporation and that it neither can sue nor be sued; that it can incur no corporate liability; that its affairs are managed by the board of supervisors of a county in a representative capacity, the powers of such board being limited and defined by statute; that there can be no judgment at law rendered against a drainage district in any case; that the county cannot be sued as the members of the board in their official capacity are only representatives of the district and not of the county; that the only remedy which one who has a claim for damages or otherwise against a drainage district is the method provided for by the drainage statutes.

Under Section 7556, Code of Iowa 1931, it is made the mandatory duty of the board of supervisors, acting as a drainage board, to keep a levee or drainage district under its supervision in repair, and that the board may cause the ditches, drains and water courses thereof to be enlarged, reopened, deepened, widened, straightened or lengthened, and the board is authorized to pay the cost of such work out of funds of the levee or drainage district in the hands of the county treasurer if there be any, and if there is not to proceed as provided for in Section 7558, or Section 7559, Code of 1931, as the case may be.

Our Supreme Court, in the case of *Smittle vs. Haag*, 140 Iowa 492, at 496, has held that after the Legislature enacted the statute which granted to the board of supervisors, acting as a drainage board, the power of re-assessment and levy, the power to repair, etc., that the statute furnished a remedy and that the same was adequate and as against the members of the board of supervisors in the absence of bad faith it must be deemed to be exclusive.

We are, therefore, of the opinion that where a lateral drain in a drainage district has been stopped up so that the water has escaped and flooded surrounding lands damaging the crops, that the one who has suffered damages thereby must invoke the remedy provided for in the statute with respect to having the same repaired, cleaned out, etc., and that he cannot sue the drainage district or the board of supervisors unless, of course, there is unconscionable bad faith shown on the part of the board.

It would seem that the theory back of all these cases is that when a drainage district is established the damages awarded in the first instance to the landowners within the district takes into consideration such damages as may be sustained by reason of overflowage caused by stoppage of a drain.

See *First National Bank of Ft. Dodge vs. Webster County*, et al., 204 Iowa 720. See also 19 Corpus Juris, Section 199; *Board of Supervisors vs. District Court*, 209 Iowa, 1030; *Dashner vs. Mills County*, 88 Iowa, 401.

**ELECTIONS:** County convention cannot make a nomination for an office for which no one was voted for in the primary election.

June 29, 1932. *County Auditor, Des Moines, Iowa:* You have requested the opinion of this Department upon the question of whether the Republican County Convention can nominate a candidate for Sheriff for the short term extending from the date of the general election until the regular term commencing January 2, 1933, in Polk County this year. You also state that in the Primary election just held no person was voted for by any voter for that term.

Your attention is called particularly to the provisions of Sections 593, 594, 624 and 625 of the Code, 1931. It is provided in Sections 593 and 594 of the Code that a candidate, to receive the nomination, must receive the highest number of votes cast by this party for the office, and also receive 35% of the total vote cast for that office. Also, if the candidate's name were not printed upon the official ballot but written in by the voters, he must receive a vote equal to 10% of the vote cast by his party for Governor in the county in the case of Sheriff at the last general election in addition to these other two requirements.

We now call your attention specifically to the duties performable by the County Convention. It is provided in Section 624, paragraph 1, of the Code, 1931, that the County Convention shall:

"Make nominations of candidates for the party for any office to be filled by the voters of a county when no candidate for such office has been nominated at the preceding primary election *by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor.* \* \* \*"

Section 625 of the Code provides as follows:

"In no case shall the county convention make a nomination for an office for which *no person was voted for in the primary election of such party*, except nominations to fill vacancies in office when such vacancies occurred too late for the filing of nomination papers."

In the proposition presented by you no one was voted for at all for the office of sheriff for the short term and hence no candidate failed to receive "the legally required number of votes cast by such party therefor". When the provisions of Section 625 are noted, it will be observed that there is a prohibition against nomination by a party convention where "no party was voted for in the primary election". This matter is referred to by the Supreme Court in the recent decision in *Zellner vs. Smith*, 206 Iowa 725, and particularly at 729.

We are, therefore, of the opinion that under the facts submitted by you a County Convention is without power or authority to make a nomination for the office of Sheriff for the short term this year.

**FISH AND GAME—CITIES AND TOWNS:** Mayor of a city or town is not authorized under the statute to take acknowledgments on applications for hunting and fishing licenses. (Sec. 1724, Code of 1931.)

June 30, 1932. *County Attorney, Belmond, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Has a mayor authority to take acknowledgments on application for hunting and fishing licenses?

You are referred to Section 724, Code of Iowa 1931. Clearly under this section only the county recorder, a notary public or a justice of the peace may take such an acknowledgment. This is a legislative matter and until they authorize acknowledgments by mayors there is no authority for the same.

**POOR FUNDS:** Under Sec. 5259, Code of 1931, it is permissible to draw warrants on the county poor fund notwithstanding the fact that said fund is overdrawn. These warrants are payable only out of said fund and upon presentment should be stamped "not paid for want of funds." (Sec. 5259, 5258, Code of 1931.)

June 30, 1932. *County Attorney, Marshalltown, Iowa:* We acknowledge receipt of your letter under date of June 15, 1932, requesting an opinion of this department on the following question:

The poor fund in this county is now overdrawn but warrants continue to be drawn on the same. The county treasurer has asked for an opinion as to whether warrants should be cashed by him or should be stamped "not paid for want of funds."

Under the provisions of Section 5259, Code of Iowa 1931, expenditures for the benefit of any person entitled to receive help from public funds is made an exception to the Tuck Law (Section 5258). In other words, it is legal for warrants to be drawn against the poor fund notwithstanding the fact that the same has been exhausted and the expenditures for any one year will exceed the collected revenues for said year plus any unexpended balance.

The poor fund being overdrawn, of course, the treasurer does not have funds with which to pay warrants drawn on the poor fund which are presented to him.

We are, therefore, of the opinion that the treasurer cannot cash these warrants paying the same out of funds other than the poor fund but must necessarily, the poor fund being exhausted, endorse the same "not paid for want of funds."

**CIGARETTES:** Stamps which have been affixed are used within the purview of Section 1575 and no refunds can be paid thereon.

July 5, 1932. *Treasurer of State:* You have requested the opinion of this Department upon the question as to whether or not cigarette stamps which have been affixed to packages of cigarettes are "used" in the sense that no refund shall be made upon them under the provisions of Section 1575 of the Code.

Section 1575 of the Code reads as follows, insofar as applicable:

"Upon the written request of the original purchaser thereof and the return of any unused stamps, the treasurer of state shall redeem such stamps and cause a refund to be made therefor. \* \* \*"

Section 1574-a1 of the Code provides also that any spoiled or unused stamps in the hands of either the Auditor or Treasurer shall be destroyed upon making the proper certificate, which certificate shall relieve the accounting officer from liability therefor.

The purpose of the statute is to permit refunds to be made for all "unused" stamps turned in by purchasers. The law requires stamps to be affixed to packages of cigarettes which are for sale or to be sold by the dealer. When the dealer has affixed stamps to any package of cigarettes, these stamps immediately have been used and are, therefore, not subject to refund even though the package of cigarettes has not been sold.

**BOARD OF EDUCATION:** There is no liability on the part of the State of Iowa for injuries to patients transported under the provisions of Chapter 195, Code, 1931, to the state hospital at Iowa City.

July 6, 1932. *Board of Education:* In reply to yours of June 30th will say that there is no liability on the part of the State on account of injuries inflicted to the person of any indigent patient committed to the state hospital under the provisions of Chapter 195, Code, 1931, regardless of how such person is transported to the hospital from his place of residence.

The individual who is acting as escort for such patient would be liable in case of his own negligence, but the State is a sovereign and no action could be maintained against it because of the negligence of any of its agents.

**FISH AND GAME:** There is no authority under the statutes of this state for confiscating a boat which is being used in connection with illegal fishing. (Sec. 1715, Code of 1931.)

July 6, 1932. *Fish and Game Commission:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

May a boat which is being used in connection with illegal fishing be confiscated under the laws of this state? We have cases where trammel nets are being used contrary to the law, and, of course, the nets are operated from boats.

You are advised that we are of the opinion that there is no statute which would authorize the confiscating of a boat. Under Section 1715, Code of Iowa 1931, nets and seines being used illegally may be confiscated.

**FISH AND GAME.** Person who holds a Federal banding permit must also secure scientific collection permit as provided in Section 1779, Code of 1931.

July 8, 1932. *Fish and Game Commission:* We acknowledge receipt of your letter of recent date, requesting an opinion of this department on the following question:

Is it necessary for a person who holds a Federal banding permit to also secure the scientific collection permit as required under Section 1779, Code of 1931?

We are of the opinion that it would be necessary for such a person to have a permit as required under Section 1779, Code of Iowa 1931.

**MOTOR VEHICLES:** The exemptions in Sections 5067-d4—d5, Code of Iowa 1931, have no application to nonresident motor vehicles and apply only to vehicles licensed in this state on February 16, 1931.

July 15, 1932. *Secretary of State:* This will acknowledge receipt of your request for the opinion of this Department on the following proposition:

"May a non-resident owner of a combination of motor vehicles more than 45 feet in length or which contains a single unit more than 30 feet in length be licensed in the State of Iowa in view of Sections 5067-d4 and 5067-d5, Code of Iowa 1931?"

Section 5067-d4 specifically prohibits the use or operation of any motor vehicle, trailer, semi-trailer, or vehicle except fire fighting apparatus, which exceeds 30 feet in length over all or any combination of vehicles which exceeds 45 feet in length over all.

Section 5067-d5 exempts from the operation of the foregoing section any vehicle or combination of vehicles which was licensed in this state on February 16, 1931.

The exception therefore of Section 5067-d5 would not apply to non-resident vehicles unless they were licensed in Iowa on February 16, 1931, and such non-resident vehicles are specifically prohibited from operation upon the highways of this state under Section 5067-d4 if the length of the combination exceeds 45 feet in length over all, or the length of any one unit exceeds 30 feet in length over all.

BOARD OF PAROLE: 1. Board of Parole has power to parole person committed for bank robbery when sentence has been commuted to term of years.  
2. A commitment for bank robbery is for life.

July 18, 1932. *Board of Parole*: We have your request for an opinion as to the interpretation to be given Section 13002, and whether a person sentenced under the provisions of that section and whose sentence has been committed to a term of years can be paroled before said person has served ten years.

Section 13002 was enacted by the Thirty-seventh General Assembly as Chapter 247 of its Acts, and reads as follows:

"If any person shall enter or attempt to enter the premises of a bank or trust company or banking association, with intent to hold up and rob any bank or trust company or any banking association, or any person, or persons therein, or thought to be therein, of any money or currency or silver or gold or nickels or pennies or of anything of value belonging to said bank or trust company or banking association, or from any person or persons therein; or shall intimidate, injure, wound, or maim any person therein with intent to commit such holdup or 'stick-up' or robbery, he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor for life, or for any term not less than ten years."

The portion thereof in question is the language relative to the punishment, which provides that the person convicted of the crime shall "be imprisoned in the penitentiary at hard labor for life, or for any term not less than ten years".

This law became effective on July 4, 1917. In considering this question, notice must be given to the provisions of Section 13960 of the Code which was in effect prior to the enactment of Chapter 243 of the Acts of the Thirty-seventh General Assembly. Section 13960 of the Code reads as follows:

"When any person over sixteen years of age is convicted of a felony, except treason or murder, the court imposing a sentence of confinement in the penitentiary, men's or women's reformatory shall not fix the limit or duration of the same, but the term of such imprisonment shall not exceed the maximum term provided by law for the crime of which the prisoner was convicted."

It will be observed that there is no exception in Chapter 247 of the Acts of the Thirty-seventh General Assembly, or as hereafter will be described as Section 13002 of the Code of 1931, to the provisions of the indeterminate sentence law known in the 1931 Code as Section 13960. The same question was raised in the case of *State vs. Draden*, 199 Iowa, 231. The discussion commencing particularly on page 236 of the opinion is as to the effect of the indeterminate sentence law on the statute defining the crime of rape and the punishment for conviction thereof. In that case, the rape statute had been enacted subsequently to and while the indeterminate sentence law was in effect. The rape statute provides for imprisonment for life, or for any term of years, and it was contended in that case that that language resulted in an exception to the indeterminate sentence law, and that the court would have power to impose sentence for a term of years less than life. There was no exception in the rape statute to the indeterminate sentence law. This court held in its opinion that the indeterminate sentence law would apply to the punishment prescribed for rape and that a person sentenced upon the conviction for rape was sentenced for life notwithstanding the language of the rape statute.

It will be noted in that connection that the Legislature did thereafter in what appears now as Section 12966 of the Code, specifically exempt the provisions of the rape law relative to the sentence from the provisions of the indeterminate

sentence law. The effect of the holding of the Supreme Court in the Draden case upon this proposition is that there is absolutely no weight or consideration to be given to the language of the rape statute relative to the punishment except the maximum punishment provided, namely, life. The reference to "any term of years" has no effect.

So, likewise, applying the same rules to the situation presented in the case before us, that portion of Section 13002 providing for the punishment upon conviction and stating "or for any term not less than ten years" must be disregarded and held to have no effect.

We are, therefore, of the opinion that the last phrase in the section, "or for any term not less than ten years" is to be disregarded and that any person convicted under the provisions of Section 13002 of the Code must be committed for life.

As to the other question, namely, whether a person committed under the provisions of Section 13002 must serve at least ten years before he can be released from the institution either by a pardon by the Governor or by parole after commutation of the life sentence to a term of years has been granted, the specific language of the statute itself must be considered. It will be noted that the statute states: "he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor for life, or for any term not less than ten years." The Board of Parole, under the authority granted to it by the provisions of Section 3786 of the Code, has power to parole any person eligible to parole otherwise under the provisions of that section who has been committed to one of the State penal institutions. There is no exception in the restriction in the statute on that power other than the specific provisions of Section 3786. We are of the opinion that the phrase in Section 13002 "or for any term not less than ten years" is surplusage and has no effect upon the powers of the Board of Parole to parole a person convicted under that section and whose life sentence has been commuted to a term of years, and that likewise said provisions have no effect either upon the power of the Governor to commute, pardon or suspend such a sentence.

The question as to whether or not a person who has been sentenced under the provisions of Section 13002 of the Code, when said sentence has been commuted to a term of years, should be paroled when he has served less than ten years, or any other period, is a matter resting within the sound discretion of the Board, and the Board has the power to parole such a person if said person is otherwise qualified and entitled to a parole.

**TAXATION—SOLDIERS AND SAILORS:** Step-mother of deceased soldier not entitled to tax exemption. (Sec. 6946, Code of 1931.)

July 19, 1932. *County Attorney, Mt. Pleasant, Iowa:* This will acknowledge receipt of your request of May 27, 1932, which is as follows:

"I would like for your office to inform me as to whether or not a step-mother of a deceased soldier can claim exemption under Section 6946 of the Code of Iowa, 1931, paragraph 4."

We are of the opinion that a step-mother would not be included in the provisions of Paragraph 4, Section 6946, Code of Iowa, 1931.

**LABOR COMMISSIONER:** Cannot limit agencies to 5% for placing a licensed professional person. (Sec. 1546-a1, Code of 1931.)

July 19, 1932. *Employment Commission*: This will acknowledge receipt of your request of May 27, 1932, which is as follows:

"Section 1546-a1 of the Code of 1931 in the first paragraph limits the fees to be charged by employment agencies to 5% of the first month's wages.

"The second paragraph makes certain exemptions to this provision. This exception including certain organizations and following this in the exceptions states as follows: 'or in any profession for which a license or certificate to engage therein is required by the laws of the state.'

"We assume that an employment agency chartered by the state and not included in the exempted organizations is limited to 5% of the first month's wages. In their general transactions in the event of their placing any person of a profession requiring a state license or certificate to engage therein, would such licensed bureau be permitted to charge a sum in excess of the 5% for such licensed persons placement?"

In reply we would say that in our opinion the second paragraph of Section 1546 a1 would permit an employment agency chartered by the state and which was confined to 5% of the first month's wages for all other classes of work to charge a sum in excess of 5% for the placement of anyone engaged in a profession for which a license or certificate to engage therein is required by the laws of this state.

**TAXATION—SOLDIERS AND SAILORS:** Member of one of our allied armies, since naturalized, not entitled to exemption. (Sec. 6946, Code of 1931.)

July 19, 1932. *County Attorney, Creston, Iowa*: This will acknowledge receipt of your request of May 19, 1932, which is as follows:

"I have had some inquiries in connection with the interpretation of the third paragraph of Section 6946, 1931 Code of Iowa.

"Suppose a British or a subject of one of our allies, during the World War, served for his country in the World War as a subject of the crown or of his country and was honorably discharged as a soldier, sailor, marine or nurse.

"Then suppose he came to this country and has been duly naturalized and now is a citizen and subject of this country, can he claim property exemptions under said statute?"

We would say that one of the requisites of securing exemption on taxation for service to this country is an honorable discharge from the United States Army, Navy, or Marine Corps. Of course, that absolutely forecloses anyone who served in any of the foreign armies, for the reason that they would not be able to produce a discharge from the United States Army, Navy, or Marine Corps. So that I am inclined to believe that a British or a subject of one of our allies, during the war, would not be entitled to exemption even though he has since become naturalized in this country.

**SOLDIERS' RELIEF COMMISSION—SOLDIERS AND SAILORS:** Member of U. S. Coast Guard entitled to relief under Chapter 273 provided Coast Guard was in fact a part of the U. S. Navy.

July 19, 1932. *County Attorney, Cedar Rapids, Iowa*: This will acknowledge receipt of your request of April 27th, which is as follows:

"The Soldiers' Relief Commission of Linn County has asked us for an opinion as to whether or not a person who served for the duration of the World War in the U. S. Coast Guard, and who has received an honorable discharge therefrom is entitled to the benefits provided for in Chapter 273 of the Code of 1931.

"As we understand it, the U. S. Coast Guard was under the jurisdiction of the Navy Department during the World War, but we feel that we should have

some ruling on this from your department before any action is taken by the local commission."

We might say that the question you submit above is governed entirely by whether or not the United States Coast Guard was under the jurisdiction of the Navy Department during the World War and was in fact a branch of the United States Navy at that time. In the event this is true we presume that the members would be entitled to relief, under the provisions of Chapter 273. Unfortunately, we do not have any record available which would permit us to determine whether the Coast Guard was in fact a part of the United States Navy during the World War but this could be ascertained from the Navy Department at Washington, D. C.

**WITNESS FEES--JUVENILE COURT:** Witnesses may be subpoenaed and payment made from juvenile court fund.

July 19, 1932. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your request of June 21st, which is as follows:

- "1. May witnesses be subpoenaed in hearings before Juvenile Courts?
- "2. May witness' fees be paid to witnesses subpoenaed on juvenile hearings in Juvenile Court?
- "3. May witness' fees be paid to witnesses voluntarily appearing on hearings in Juvenile Court?
- "4. In the event such witness' fees may be paid by whom should they be paid and from what fund?"

In answer to your first question we are of the opinion that it should be answered in the affirmative.

As to the second question this also should be answered in the affirmative.

As to the third question, witness' fees could be paid to witnesses voluntarily appearing, provided a judge sitting as the juvenile court so ordered.

Replying to your fourth question, such witness' fees should be paid from the juvenile court fund.

**MINORS:** Radio station not place of amusement under statute. (Secs. 1526 and 1527, Code of 1931.)

July 19, 1932. *Labor Commissioner:* This will acknowledge receipt of your request of June 9, which is as follows:

"A boy of thirteen in charge of the Juvenile Court is taking music lessons, from the manager of an orchestra that has an engagement with a radio station upon a salary basis. He uses the boy as part of the orchestra. The compensation of the boy is applied on his musical instruction.

"Does this boy come under the provisions of Sections 1526 and 1527 of the Code of 1931? The first of these sections applies to prohibited age of employment and the second, to hours of labor, the work of the orchestra in part being after 6 P. M.

"Does a radio station come under the provisions of Section 1526 under the classification of places of amusement? And if not under such classification, does it come under any other of the occupations or places of business in which a child under the age of fourteen cannot be employed?

"The child in this case does not have any parent or guardian operating such radio station."

We are of the opinion that a radio station does not come under the classification of a place of amusement, as found in Section 1526, nor would it come within any of the other classifications in that section. We are also of the opin-



ion that the prohibitions contained in Sections 1526 and 1527 would not apply to the boy mentioned in your letter.

**CITIES AND TOWNS:** City council cannot reimburse water fund for rent cancelled in favor of fair association.

July 19, 1932. *Auditor of State:* This will acknowledge receipt of your request of June 18th, which is as follows:

"Granting that a City Council has the right to cancel water rentals due from a Fair Association or Exposition Park, operated for private gain, can they legally reimburse the water department for this loss of revenue by paying same from the Consolidated (General) Fund?"

In reply we would say that we are not aware of any provision that would permit a city council to reimburse the water department for the loss of revenue where they had cancelled the water rentals due from a fair association or exposition park.

**TAXATION—COUNTY AUDITOR—DOG LICENSE:** County auditor has no authority to waive penalty that may accrue. (Sec. 5435, Code of 1931.)

July 19, 1932. *County Attorney, Eldora, Iowa:* This will acknowledge receipt of your request of April 7th, which is as follows:

"In connection with the application of Section 5435 of the 1931 Code of Iowa dealing with the penalty for failure to pay dog licenses before April 1st of each year, there seems to be no uniformity among the County Auditors of the state.

"In fact, I am advised that the County Auditor of Polk County, under advice of the County Attorney, is waiving this provision of this section, and permitting people to pay up to April 15th without paying any penalty.

"Our County Auditor is anxious to know what his legal rights are in this matter. I told him that as far as I could see, there was no authority on the part of the auditor or anyone else, under any circumstances, to waive this penalty once it accrued.

"Won't you kindly advise me at your earliest convenience whether in your opinion, the County Auditor has any right to accept payments of dog licenses after April 1st, without collecting a penalty, and if he does, isn't he accountable for the penalty personally?"

In reply we would say that there is no provision in the statutes of this state for the county auditor to waive the collection of the penalty for failure to secure a dog license before April 1st.

**PUBLIC FUNDS—BROOKHART-LOVRIEN LAW:** (See opinion—in re Council Bluffs matter.) (Sec. 7420-d1, d2, d6, a6, a11, a13, a14, Code of 1931.)

July 26, 1932. *Auditor of State:* Pursuant to your request we herewith render you an opinion on the following question:

The City of Council Bluffs has bonds outstanding payable at a bank in New York on a monthly basis. The plan of handling this account is as follows: All bonds and coupons that are payable in New York are listed for each month of the year, then on the 27th or 28th of each month the city treasurer transfers from his regular depository account to the coupon account an amount sufficient to take up the bonds and coupons due on the first day of the month. The First National Bank of Council Bluffs, one of the city's depositories, has arrangements with its correspondent in New York, that when the bonds and coupons of the city are due—for example: on the first of the month—they immediately make a charge to the First National Bank of Council Bluffs for the purpose of taking care of said bonds and coupons; then when these bonds and coupons are finally returned to the First National Bank of Council Bluffs

the city treasurer draws a check on the coupon account for the amount due. The money which is transferred to the coupon account in the First National Bank lays there on deposit sometimes for fifteen days, sometimes for thirty days, until the coupons and bonds are delivered to the First National Bank of Council Bluffs. During the interim between the due date of the coupons and bonds and the date the same are finally delivered no interest is diverted on said deposit to the state, as provided for in the Brookhart-Lovrien law.

The question has arisen as to whether or not, under the above state of facts, the City of Council Bluffs is protected, so far as the coupon deposit is concerned, under the Brookhart-Lovrien law?

The further question arises as to whether or not, under the above state of facts, under the Brookhart-Lovrien law the interest must be diverted to the state on the coupon account during the interim between the due date of the bonds and coupons and the date the check is actually drawn by the treasurer disbursing the same.

Section 7420-d1, Code of 1931, provides in substance that among others a city shall deposit all public funds in its hands in such bank or banks as is or are first approved and designated as a depository or depositories by the council.

Section 7420-d2, Code of 1931, requires that the designation and approval of the depository or depositories be by written resolution or order entered in the minutes of the approving board.

Section 7420-d6, Code of 1931, provides in substance that such public funds when deposited shall draw interest at the rate of not less than 2% per annum on 90% of the collected daily balances. Said interest payable by the bank at the end of each month, etc.

Section 7420-a6, Code of 1931, provides that all interest hereafter collected under 7420-d1 to 7420-d8, inclusive, and any other interest hereafter collected from deposits on public funds, is hereby diverted into the general fund and shall be paid into the State Treasury and kept in a fund known as the State Sinking Fund for Public Deposits.

After order of the State Treasurer it is made the duty, under Section 7420-a11, Code of 1931, of the depository bank or banks to pay such interest to the county treasurer.

Section 7420-a13, Code of 1931, provides in substance that where any depository bank refuses or fails to pay to the county treasurer or the State Treasurer said interest on public funds on or before the 10th day of the month the same becomes due, that said bank shall be liable for a 10% penalty on the amount of the interest due and that the same may be recovered by the State Treasurer or the County Treasurer.

Section 7420-a14, Code of 1931, provides that the fiscal governing officers of every city, and others named, shall be personally liable to the sinking fund for any misappropriation of interest on public balances or for withholding the same when proper call has been made by the Treasurer of State.

We are of the opinion that under the statutes above noted, it being assumed for the purpose of this opinion that the First National Bank is the designated depository, the coupon account deposited in that bank in the name of the city treasurer in his official capacity, is such a public fund as is contemplated by the Brookhart-Lovrien Law and that the city would be protected under the Brookhart-Lovrien Law.

We are also of the opinion that under the above noted sections of the 1931 Iowa Code it is the duty of the bank, upon proper order from the Treasurer of State, to divert the interest on this coupon account during the interim period

between the due date of the bonds and coupons and the date the same are delivered to the First National Bank and check is drawn by the city treasurer. In other words, it is made the mandatory duty of the bank to pay the same to the county treasurer. Where the bank refuses or fails to pay said interest, as by statute provided, a penalty of 10% is added on the amount of the interest due for which the bank is made liable.

The fact that the bank renders the service in connection with the paying of the bonds and coupons for the use of the money during this interim period and does charge the city a fee for said services would not in any way effect or change the law.

**OSTEOPATHS—INTOXICATING LIQUORS:** Osteopaths may secure alcohol for disinfecting instruments used in minor surgery.

July 26, 1932. *County Attorney, Ottumwa, Iowa:* You have requested an opinion from this Department, interpreting Sub-section 9 of Code Section 2136, wherein it was held that osteopathic physicians were not entitled to purchase alcohol for professional use.

While it is true that osteopaths are prohibited from giving internal medicines and there would be no occasion for their using alcohol for compounding any preparations for internal use, as stated in the opinion given to you above referred to, yet they are authorized to perform minor surgery and for that purpose might have occasion to use alcohol as a disinfectant and for sterilization purposes.

It is, therefore, the opinion of this Department that osteopaths would have the right to purchase alcohol for these purposes as distinguished from its use by other practitioners in compounding medicines for internal use.

**CIGARETTES:** Receiver for defunct concern cannot sell cigarettes without complying with Iowa law and securing stamps and permit.

July 28, 1932. *Treasurer of State:* We have your letter of July 28 as follows:

"The attorney for the Referee in Bankruptcy in United States Courts of Scott County advises that the referee has charge of five of the Martin Cigar Stores and that the court advised him that he would not have to pay the mulct tax for the coming year nor buy stamps for cigarettes sold.

"The attorney has called this office for verification of this statement. We advised him that they would have to take out a cigarette permit and buy stamps the same as any other individual.

"We desire an opinion whether or not we are correct in this statement."

You are advised that it is the opinion of this Department that no receiver for a bankrupt, even though appointed by a Judge of the United States District Court or the Referee in Bankruptcy, has any power, right or authority to sell or give away any cigarettes, cigarette papers, or any paper or other substance made and prepared for the purpose and use of making cigarettes, in Iowa, unless the laws of the State of Iowa are complied with relative thereto.

This proposition is no different from one where real estate is involved in bankruptcy proceedings and is under the control and management of a receiver appointed by the United States District Court insofar as the regular property taxes due the local and state government are concerned.

In addition to being a regulatory law the cigarette law is a revenue measure and the State has not yet delegated or released its power in such matters to the Federal Government.

**PRISONERS—BOARD OF CONTROL:** The care, custody and control of all prisoners in state penal institutions are vested in the Board of Control and it is discretionary with them in permitting prisoners to be taken outside the walls under guard for medical treatment, and this power is vested in them solely and alone.

July 29, 1932. *Board of Control:* This will acknowledge receipt of your letter of July 15, 1932, which is as follows:

"I am asking for an opinion in regard to the statutory authority of the Board of Control to grant a 'leave of absence' to an inmate in the State Penitentiary, Fort Madison, Men's Reformatory, Anamosa, or the Women's Reformatory, Rockwell City.

"It appears to have been the custom of the Board of Control for some years past to grant upon request of convict, permission to leave the institution under guard and at the expense of the convict, for the purpose of visiting the bedside of a dying relative or to attend the funeral of a relative. Recently this practice seems to have been extended to allowing the convict to go to a hospital for outside treatment.

"The question arises in the mind of the board as to just how far they can go, if at all, in the practice of this procedure, the thought being that if we are violating any statutory provision by granting this leniency to convicts it should be discontinued."

In reply we would say that the Board of Control, of course, is charged with the care, custody and control of inmates at Fort Madison, Anamosa and Rockwell City. However, the question of permitting them to leave under guard is discretionary with the Board of Control, who, being advised of the facts in each case, can take such action as they deem best for all persons interested, and in the event that they deem that it would be to the best interests of all concerned, it is certainly within your jurisdiction to continue the practice of permitting prisoners to be taken under guard outside the institution for medical treatment, where they cannot receive the necessary treatment inside the institution. This power is, however, vested solely in the Board of Control and no other state executive or department head can exercise this power.

**CONSTABLES:** Constable is entitled to charge 75 cents for each defendant served with a warrant. (Sec. 10637-13, Code of 1931.)

July 29, 1932. *County Attorney, Winterset, Iowa:* This will acknowledge receipt of your request of June 28, 1932, which is as follows:

"Section 10637-13 of the 1931 Code of Iowa provides that 'a constable shall be entitled to charge and receive for service each warrant of any kind, seventy-five cents.'

"In a particular case a number of defendants were named in the same warrant. The constable demanded a seventy-five cent service fee for each defendant while the justice would only allow seventy-five cents for the warrant even though it were directed against a number of defendants.

"I have advised the constable that he is entitled to charge and receive seventy-five cents for each defendant served with a warrant."

You are correct in your opinion that the constable would be entitled to charge seventy-five cents for each defendant served with a warrant.

**SOLDIERS AND SAILORS—TAXATION:** One in the naval reserve not entitled to tax exemption. (Sec. 6946, Code of 1931.)

July 29, 1932. *Auditor of State:* We desire to acknowledge receipt of your request of July 18, 1932, which is as follows:

"We are in receipt of a letter from the County Auditor of Black Hawk

County, requesting opinion as to whether Section 6946 of the Code, relative to soldier's exemption, would apply in the case of a man who was a member of the United States Naval Reserve Force.

"The record in this case indicates that the man was enrolled at Des Moines, Iowa, on July 25, 1918, for a period of four years in the Naval Reserve Service. The record further shows an honorable discharge from the United States Naval Reserve Force on September 30, 1921.

"Kindly advise if this party is entitled to soldier's exemption as provided for in Section 6946 of the 1931 Code of Iowa."

In reply we would say that inasmuch as the provision of Section 6946 of the Code provides for an exemption for ex-service men, it was intended, as we understand it, to provide exemption for those soldiers, sailors, marines and nurses in active service, and this provision would not apply to one who is in the reserve service.

**SHERIFFS:** Where life interest is sold under general execution a certificate of sale should be issued to the purchaser.

July 29, 1932. *County Attorney, Rock Rapids, Iowa:* This will acknowledge receipt of your request of July 18, 1932, which is as follows:

"The Sheriff of Lyon County sold under general execution the life interest of a widow, which life interest was subject to the condition that it terminate if she would get married. He now wants to know whether he should get a certificate of sale or a bill of sale to the purchaser."

In reply we would say that a life estate such as you speak of would be considered real property and a certificate of sale should be issued to the purchaser.

**BOARD OF HEALTH—CORPORATIONS:** An incorporated clinic is a violation of the present statutes. (Section 2439, Code of Iowa, 1931.)

July 29, 1932. *Commissioner of Health:* This will acknowledge receipt of your letter of July 23, 1932, in which you submit the following:

The Board of Health of the State of Iowa assumes that if medical clinics are incorporated and practice medicine as an organization the matter is in conflict with the recent decision in the Bailey Dental case and is a violation of the practice acts.

In reply we would say that this assumption is absolutely correct, and we desire to quote Section 2439, Code of Iowa, 1931.

"No person shall engage in the practice of medicine and surgery, podiatry, 'osteopathy,' 'osteopathy and surgery,' chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, cosmetology, barbering, or embalming as defined in the following chapters of this title, unless he shall have obtained from the state department of health a license for that purpose."

It seems to be the opinion among many professional men that their licenses to practice are a personal or property right, when, in truth, it is a personal privilege granted to them by the State because of their education, character and fitness. The State, while recognizing merit, always retains the privilege of revoking the license, if, in the eyes of the law, the licensee, for any reason, becomes unfit to continue the practice or fails or refuses to uphold the standards required by the State and which have been set up as a safeguard by the public.

In view of the fact that the employees of an incorporated clinic would be under the supervision and direction of the officers of the corporation, they would not be free agents and the public would be left unprotected if un-

licensed persons and corporations were permitted to practice through and under the cloak of the licensed individual, and this would open the road for quacks, charlatans and others whose greed would be masked under the practice of one of the healing arts, and who, through liberal promises and compensation, would and could employ licensed practitioners who would be obliged to submerge their own ideas and teachings at the request of the unlicensed quacks and corporations by whom they were employed. There would soon spring up throughout the country corporations which would be controlled by laymen who would go out and secure the professional services of unethical licensed men in the different professions, and who would, through cut rates, extravagant advertisements, and the use of cappers and steerers, soon develop a large following, not only to the disadvantage of the different professions but to the danger of the public.

When a licensed practitioner of any of the professions attempts to contract his professional services to an individual, or a group of individuals, he is in reality attempting to serve two masters, his employer and his patient. The law has repeatedly, not only in this state but in other states, stepped in and laid down the rule that this practice was against public policy, for the reason that the law takes into consideration human frailties and also recognizes the fact that in many instances, at least, the employee will serve that master from whom he receives the highest remuneration, and that as a result the patients and the public would suffer if any conflict existed between them and the employer. For that reason and the impossibility on the part of clinics and corporations to meet the required standards laid down by the legislature of this state, corporations and clinics would be violating the law if, and when, they employed medical men in their professional capacity to treat the public and held themselves out for that purpose. In addition, the professional licensee is endangering his right to continue to practice in this state if he lends his assistance and encouragement to this sort of practice, and there are two thoughts which might be brought up here;—one, that the protection of the public demands that licensees of that character be eliminated from this state, and the other, that a licensee of this character is a constant menace to his own profession, in that he is encouraging and assisting in violating the law and prostituting his profession, and by so doing, demonstrates the fact that he has misled the State of Iowa into believing that his character was such that reliance might be placed upon it, when in truth, he was unfit to be granted the privilege which the state had extended to him.

As so well said by the Colorado Supreme Court in the recent case of *People vs. Painless Parker Dentist*, 275 Pac., 928, at pages 930 and 931—

“Law, medicine, and dentistry are generally considered as learned professions. Neither is an ordinary trade nor calling which all citizens alike may pursue. The state in its sovereign capacity is vested with the indefinable police power, which includes the power to conserve and protect the public health. Only those who are qualified by statute and experience to practice dentistry may do so, if the legislature sees fit so to ordain. That body may lawfully provide, as it has done in Colorado, that only those who by study of the science and art of dentistry show that they are properly qualified may practice dentistry. \* \* \* And if a natural person, a human being, or a private corporation, an artificial person, is unable to meet or fulfill the reasonable conditions by compliance with which only the state confers a right to engage in the practice of a profession, he or it may not be heard to complain. He is deprived of no constitutional or statutory right whether the inability

to comply with the regulations of the legislature is due, as in the case of a corporation, to natural or inherent difficulties or inability, or in the case of a natural person or a human being, to bring himself within the requirements because of his mental or moral unfitness."

Again, in perhaps what is the parent case in this country relative to the practice of a profession by a corporation, it was said by the Supreme Court of New York in the case of *Re Co-operative Law Co.*, 32 L. R. A. (N. S.) at page 58:

"The right to practice law is in the nature of a franchise from the state, conferred only for merit. It cannot be assigned or inherited, but must be earned by hard study and good conduct. It is attested by a certificate of the supreme court, and is protected by registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts. As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in. As it cannot practice law directly, it cannot indirectly, by employing competent lawyers to practice for it, as that would be an evasion which the law will not tolerate."

In addition to the legal restraints and prohibitions which I have mentioned, there is an additional one which all the healing professions should take into consideration—the danger of grouping into clinics with lay managers and which to all outward appearances is in no way different from corporation practice in that it misleads the public into believing that this sort of practice is proper and correct and molds public opinion, and permits the public mind to become imbued with the thought that corporation and clinical practice is right and proper and a great benefit to the public, for the reason that the patient is lead to believe that for one fee he secures the services of a number of specialists, and the result is that a dangerous practice has crept into the profession, and with the public opinion molded along those lines it is only natural that the ultimate climax would be that legislation would be passed recognizing this sort of practice and this would leave the door wide open for its misuse by quacks, charlatans and laymen who have but one idea in view and that would be their financial gain, even to the detriment of their patients and the public.

In conclusion I can only repeat that there is no question but that a clinic, incorporated and employing licensees, is absolutely violating the present statutes.

**MOTOR VEHICLE FUEL:** Where trucks and busses bring in more than 20 gallons of gasoline a tax should be collected on the surplus. (Sec. 5093-a2, Code of 1931.)

July 29, 1932. *Treasurer of State:* This will acknowledge receipt of your request of July 15, 1932, which is as follows:

"The last sentence of paragraph one of Section 5093-a2 of the 1931 Code provides that a person may drive into Iowa having not to exceed twenty gallons of motor vehicle fuel in his car without being classified as a distributor.

"At this time we find large trucks and busses that carry more than twenty gallons in their main fuel tank and in numerous instances an auxiliary tank filled with motor vehicle fuel is also carried.

"Your opinion is asked as to whether or not we may collect the fee imposed

upon motor vehicle fuel on all gallonage brought into the state of Iowa in excess of twenty gallons as carried by the trucks and busses."

In view of the statutory prohibition against bringing into this state more than twenty gallons of gasoline in any vehicle without first securing a distributor's license, we are of the opinion that you should collect the fee imposed on all excess over twenty gallons carried by trucks and busses.

**TAXATION—BOARD OF SUPERVISORS:** Board of supervisors has no authority to remit or set aside to a taxpayer millage which has been assessed against property. (See opinion.)

August 2, 1932. *County Attorney, Fort Madison, Iowa:* We acknowledge receipt of your letter dated July 14, 1932, requesting an opinion of this Department on the following question:

There has been presented to the Board of Supervisors an application to cancel, set aside and remit moneys and credits millage. The facts as shown by the application are a petitioner held a note secured by a mortgage on certain real estate in this county prior to January 31, 1932. The title of the mortgagor or title holder of said real estate continued to hold the title after and subsequent to January 1, 1932. The petitioner claims that some time prior to January 1, 1932, it was understood and agreed between herself and the title holder to said real estate that she would have to take the farm back, cancel the note and satisfy the mortgage; that the deed of the title holder was not executed until some months after the first of January and the note and mortgage were not cancelled and satisfied until the time of the execution of the deed. The real estate was assessed to the title holder as of January 1, 1932, the note and mortgage was assessed as moneys and credits as of the date of January 1 to the mortgagee and petitioner. The petitioner now claims that at the time of the assessment of the note and mortgage as moneys and credits the same was not in fact moneys and credits, but that the title to the farm was in truth and in fact in her by reason of the oral understanding, and that now she is entitled to have set aside and cancelled the millage on said moneys and credits.

The question is, does the Board of Supervisors have any power under the law to cancel, remit and set aside the moneys and credits millage assessed against the petitioner's note and mortgage.

We find no statute which would authorize the Board of Supervisors of any county to remit, cancel or set aside the millage which has been assessed against any kind of property. It was the duty of the petitioner at the time the assessment was made to have the property properly listed and if she had any complaint as to the note and mortgage being assessed as moneys and credits, it was her duty to make the same known at the time the assessment was made. At least she should have presented her objections to the Board of Review, and not having done so she has waived the same.

**COUNTY RECORDER—STAMP TAX:** The Federal act does not impose upon the county recorder any duty of requiring the affixing of stamp tax to instruments filed or recorded in said office. The county recorder has no duty in the matter whatsoever.

August 3, 1932. *County Attorney, Keosauqua, Iowa:* We acknowledge receipt of a letter from your County Recorder under date of July 15, 1932, and are rendering you the information requested therein.

She desires information concerning new stamps for deeds and whether she should receive and record deeds which do not have revenue stamps thereon as required by a recent act of Congress.



You are advised that there is no duty imposed upon the County Recorder requiring her to see to it that the proper stamps are affixed to instruments which are filed in her office. The laws of this State define the duties of the County Recorder and it is not up to him to determine whether or not an instrument filed with him for filing or recording is in legal form or is executed according to law.

It would, therefore, follow that the County Recorder has no duty to perform with respect to the affixing of stamps to instruments presented to his office for recording or filing.

**COUNTY OFFICERS—SCHOOLS AND SCHOOL DISTRICTS:** Service as deputy county superintendent does not constitute experience as teacher or superintendent within the requirements of Section 4097, Code 1931.

August 3, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the question of whether service as deputy county superintendent would qualify one for the office of county superintendent, as required by Section 4097 of the Code.

Said Section 4097 requires that a county superintendent have at least five years' experience in teaching or superintending. Section 5242 provides that a deputy shall perform the duties of the principal, except the deputy county superintendent shall not perform the duty of the county superintendent in visiting schools or hearing appeals.

None of the duties thus performed by the deputy consist of teaching or superintending. We, therefore, reach the conclusion that experience as deputy county superintendent would not qualify the deputy for the office of county superintendent.

**ROADS AND HIGHWAYS:** Warrants may be drawn against the secondary road construction and maintenance fund provided that the same will not exceed the collectible revenues for said fund or funds for the year, notwithstanding the fact that the county treasurer may not have any money in said treasury at the time of the issue of the warrants. Where the fund has been exhausted warrants should be indorsed "not paid for want of funds." (Sec. 5258; 5160; 4644-c48, c49, c50, Code of 1931.)

August 3, 1932. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following questions:

(1) Mitchell county's secondary road construction program for 1932 and also its maintenance program contemplates only expenditure of funds to be collected during the year 1932. All funds collected up to date have been expended and there is still work to be done on the construction program. The question arises as to whether warrants may now be issued against said fund, either construction or maintenance, and indorsed "not paid for want of funds" in anticipation of the revenues which will be collected into said funds during the balance of the year?

(2) May anticipatory certificates be issued as provided for in Sections 4644-c48, c49, c50, Code of Iowa 1931, anticipating the estimated funds which will accrue to the secondary road construction fund from the receipts to said fund during the balance of the year 1932?

(1)

Your attention is called to Section 5258, Code of 1931. Under this section the only restraint, so far as expenditures are concerned, is that you do not enter into

contracts which will expend or cause an expenditure to exceed the collectible revenues in said fund for said year, meaning the year of 1932. Within the limitation contained in said sections you are authorized, under Section 5160, Code of Iowa, 1931, when a warrant is presented to the Treasurer for payment which has been issued against either the secondary road construction or maintenance funds, and he has no current funds with which to pay said warrant or warrants, he should indorse the same as "not paid for want of funds," and when the funds are received with which to redeem the warrants he should proceed as provided for in Section 5161, Code of Iowa 1931.

(2)

Under Sections 4644-c48, c49, c50, Code of Iowa 1931, you are only authorized to issue anticipatory certificates, anticipating not to exceed 50% of the funds which will accrue to the *secondary road construction fund* for a period of not less than one (1) nor for more than two (2) years.

**FISH AND GAME—CITIES AND TOWNS:** A deputy game warden may file an information in the mayor's court for the violation of the game laws notwithstanding that there may be a justice of the peace court in the same town or township where the city is located. (Sec. 5732, Code of 1931.)

August 4, 1932. *Fish and Game Commission:* We acknowledge receipt of your letter under date of July 14, 1932, requesting the opinion of this department on the following questions:

May a deputy game warden file an information in a mayor's court for violation of any of the game laws where there is a justice of the peace in the same township?

If he can, may the defendant demand a change of venue, and may he demand a jury trial?

Who has authority to suspend fines?

Can anyone except the Governor remit a fine?

You attention is called to section 5732, Code of Iowa, 1931. Under this section the mayor is granted jurisdiction in criminal matters the same as that of the justice of the peace, said jurisdiction being co-extensive with the county, and in civil cases co-extensive with the city or town the same as the justice of the peace would have.

We are, therefore, of the opinion that a deputy game warden may take a case into a mayor's court if it is such a case as a justice of the peace would have jurisdiction over.

We are of the opinion that the same rule with respect to a change of venue would apply to a mayor's court and that a jury trial may be had in the same manner as in a justice court.

You are also advised that any court having jurisdiction of criminal cases and having authority to impose fines, has authority at the time a fine is imposed to suspend the same. No court has jurisdiction after judgment has once been entered and the fine imposed to suspend the fine.

This simply means that at the time sentence and the fine is imposed, the judge may suspend the same, afterwards he cannot.

No one except the Governor has authority to remit fines.

**POOR RELIEF:** The statute does not require the service of a notice on the county of the pauper's legal settlement. (Sec. 5315, Code of 1931.)

August 5, 1932. *County Attorney, Storm Lake, Iowa:* We acknowledge receipt of your letter of June 2, 1932, requesting an opinion of this department on the following question:

About two years ago a family moved into this county from a neighboring county and applied for aid from the county and notice to depart was served on the family and on the county from which they came. Within less than a year from the date of the service of that notice a similar notice was served on the family, but was not served on the county.

The question has arisen as to whether or not the statute requires the giving of any notice to the county of the legal settlement of a pauper or whether it is only necessary to serve the pauper in order to prevent the acquisition of a new legal settlement.

Section 5315, Code of Iowa 1931, provides for the service of notice to depart on persons who are public charges or likely to become public charges. There is no provision requiring the service of such notice on the county of such person's legal settlement.

We are, therefore, of the opinion that it is not necessary to serve notice to depart on the county of a pauper's legal settlement. It is only necessary to serve upon the pauper himself.

**CORPORATIONS—EXECUTIVE COUNCIL:** The Executive Council has authority within its discretion to fix the value of property to be exchanged for stock of a corporation organized under the laws of this state, whether said property is tangible or intangible. (Sec. 8414, Code of 1931.)

August 5, 1932. *Executive Council:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Where an application is filed with the Executive Council pursuant to Section 8413 and the following sections, Chapter 385, Code of Iowa 1931, has the Executive Council authority to consider as assets to be valued any property except tangible property?

We are of the opinion that the Executive Council has authority, within its discretion, to fix the value of the property whether it is tangible or intangible. See Section 8414, Code of Iowa 1931.

**COUNTY OFFICERS—SHERIFF:** Sheriff has power to make investigations where he has reason to believe that a crime has been committed, and that the same is for the best interest, peace and safety of the public in said county. (Sec. 5184, Code of 1931.)

August 8, 1932. *County Attorney, Harlan, Iowa:* We acknowledge receipt of a letter of recent date from the sheriff of your county, Mr. Jensen, requesting an opinion of this department and we herewith render the opinion on the following question:

Does the sheriff of a county have authority to make investigations where he has good reason to believe that a crime has been committed or is about to be committed, or before making an investigation must he secure the authority and approval from the county attorney as provided for in Section 5184, Code of Iowa 1931?

It is the duty of the sheriff to protect the peace and safety of the citizens of his county, to ferret out crime and apprehend criminals and law violators. He must necessarily, therefore, make investigations where he has good reason to believe that a crime has been committed or is about to be committed within

his county, and is entitled to collect either mileage or expenses, as the case may be, for the expense incurred in connection with said investigation.

Of course, all claims for such expenses are subject to the approval and allowance of the board of supervisors of the county. The board of supervisors has authority not only to pass upon the amount of the claim but upon the reasonableness of the same. Section 5184, Code of 1931, has no application to investigations made by the sheriff except where the county attorney upon his own motion directs the sheriff in writing to make a special investigation.

Where there has been a serious accident on the highway and the sheriff is called to investigate the circumstances surrounding the accident, if in his judgment the leaving of a wrecked car on the highway would be a menace to the safety of the public it would be his duty, under the law, to remove the same and he would be entitled to collect the expense of such investigation.

**WIDOW'S PENSION:** Where a husband and wife have legally adopted a child and the father dies or becomes an inmate of a penal institution the mother becomes a widow within the meaning of Sec. 3641, Code of 1931.

August 8, 1932. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

We have in this county a woman who is an indigent widow having an adopted child who is dependent. The question has arisen as to whether or not such a woman is entitled to a widow's pension within the meaning of Section 3641, Code of Iowa 1931.

We are of the opinion that if the adopted child were adopted by both the mother and father before the mother became a widow that then she is a widow within the meaning of Section 3641, Code of Iowa, 1931.

**CITIES AND TOWNS—MAYOR'S COURT:** Where, by city ordinance, it is provided that the mayor shall tax for himself the same fees as the justice of the peace, and in the event he cannot collect his fees for cases involving infraction of city ordinances, the costs are to be paid by the city. (Sec. 5665, Code of 1931.)

August 8, 1932. *Auditor of State:* We are in receipt of your letter under date of April 6, 1932, requesting an opinion of this department on the following question:

Can the mayor of a city or town file a claim against the city for costs taxed in cases where violation of municipal ordinances which have not been paid, either because of the fact that the prosecution failed or because the same cannot be collected from the defendant?

The city ordinance in the particular case provides as follows:

"Section 8. *Fees.* The Mayor shall tax the same fees for himself, the Marshal and witnesses as are taxed in like cases under the law by a justice of the peace, and the fees in all other respects shall be the same as in a Justice Court.

"Section 9. *Costs.* In all prosecutions before the Mayor for violations of the City Ordinances, if the defendant should prove to be insolvent, the city shall pay the costs."

You are referred to Section 5665, Code of Iowa, 1931. Under this section the mayor of a city or town, where no salary is provided by ordinance in lieu of fees, shall receive for holding a mayor's court compensation allowed by law for similar services for such officer.

Under the ordinance Section 8, above set out, the mayor is entitled to claim and tax as fees the same as are taxed under the law by justices of the peace.

Under Section 9 of the ordinance, where the defendant is unable to pay the costs, the city is directed to pay the same.

It would appear, therefore, in a prosecution under the city ordinance of the particular city or town that the mayor, where it is properly shown that the costs cannot be collected from the defendant, may file a claim with the city and collect the costs to which he is entitled. It would appear that he may file such a claim at any time within five years from the date the same accrued.

**TAXATION—CITIES AND TOWNS:** Where a city or town makes a consolidated levy they cannot in their appropriation ordinance appropriate the receipts from said consolidated levy to part of the funds which make up the consolidated levy to the exclusion of others. (Section 6217, Code of 1931.)

August 8, 1932. *Auditor of State:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Under Section 6217, Code of 1931, cities and towns are authorized to make a consolidated levy in lieu of separate annual levies for the general fund, grading fund, improvement fund, city or town sewer fund, water fund, and the gas or electric light or power fund, the total of the consolidated levy not to exceed the total amount which may have been levied for all of said funds. Under the same section, where a city or town makes a consolidated levy, it is mandatory that prior to April first the council shall pass an appropriation ordinance appropriating the estimated revenue to be collected from the consolidated levy in such amounts for any purpose for which said funds might have been used.

The question has arisen as to whether or not a council may make a consolidated levy which will include the authorized levies for the general fund, the grading fund, improvement fund, the city or town sewer fund, the water fund, the gas or electric light or power fund, and then in its appropriation appropriate the estimated revenue to be received from the consolidated levy to only say three of said authorized funds, that is, the general fund, grading fund and the improvement fund.

In making out the levies for a particular year it is the duty of the council of a city or town to levy only such number of mills for each particular fund or purpose as in its judgment is reasonably necessary to take care of the needs for the ensuing year, and if a particular fund or purpose will need no funds for the ensuing year it is the duty of the council not to make a levy for that purpose or fund. This would likewise hold true where a city or town chose to make a consolidated levy as is authorized by Section 6217, Code of Iowa 1931.

The purpose of the consolidated levy is to allow some latitude in finally making up the budget for the year so that if the council finds that a particular fund will not need all that was levied for said fund for said year but will need it in one of the other funds included in the consolidated levy they may do so. In other words, it gives the council an opportunity to efficiently balance the budget.

We are of the opinion that a city council would not have power, where they have adopted the consolidated levy, to appropriate the estimated revenue to three or four of said funds, but that they would have to make an appropriation to all of the funds for which the consolidated levy was made. In other words, it must be assumed that when the council made the consolidated levy that they in good faith included in the millage for each of the funds for which said levy was made in lieu of. The council could not arbitrarily appropriate all of the estimated

revenue to be received from the consolidated levy to any particular fund or funds and exclude others. This would be contrary to the purpose of the consolidated levy and to the statute authorizing the levy of a certain number of mills for the particular funds.

**COUNTY HOSPITALS—POOR RELIEF:** Board of hospital trustees of a county public hospital are the managers of the hospital and determine whether an applicant is an indigent. The expense for the care and keep of an indigent patient at a county public hospital must be paid out of the hospital maintenance fund and not out of the county poor fund. (Sec. 5359, 5354, 5362, Code of 1931—Chap. 269, Code of 1931.)

August 8, 1932. *County Attorney, Oskaloosa, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following questions:

1. Does the board or the trustees of the county hospital determine the admission of indigent patients, the length of their stay, and no longer requiring professional care and whose duty it is to remove them?

2. If an indigent patient is taken to the county hospital for treatment and the patient requires special drugs, supplies or special care should the drugs and supplies for the indigent patient be furnished free by the county hospital, or should the county furnish such special drugs and supplies from the county poor fund?

3. When the board of trustees of the county hospital have certified to the board of supervisors that a statement for supplies purchased for the board of trustees for the hospital is correct, has the board of supervisors any authority to refuse to direct the county auditor to draw a warrant on the hospital fund for the payment of said account?

1.

Section 5359, Code of Iowa 1931, defines the powers and duties of the board of hospital trustees. An examination of this section discloses that the board of hospital trustees are the managers of the hospital, and under paragraph 8 of said section they determine whether or not an applicant is an indigent and entitled to free treatment therein. The board of supervisors has nothing to do with respect to the matter. The board of hospital trustees has complete supervision of the hospital.

2.

Indigent patients of the county are entitled to be treated at the hospital under such reasonable rules and regulations as may be prescribed by the board of hospital trustees. All drugs and supplies furnished an indigent patient of the hospital must be paid for out of hospital funds. Section 5354, Code of Iowa 1931, provides for the levy of a tax on the property in the county for the maintenance of said hospital.

Where there is a county public hospital the county board of supervisors is relieved from paying for the treatment, drugs, supplies, etc., furnished an indigent patient by the hospital. See Section 5362, Code of Iowa 1931.

3.

It is the duty of the board of hospital trustees of a county hospital to certify as to the correctness of all claims for supplies purchased by said board for hospital use. These claims are then presented to the board of supervisors, and upon the board of supervisors order the county auditor draws the warrants against the hospital fund in payment of the same. The board of supervisors acts

as a board of audit on all such claims and if the claim is one which the board of hospital trustees may properly incur within the powers granted it in Chapter 2692, Code of Iowa 1931, and is reasonable, it is the duty of the board of supervisors to approve the same. Of course, the board of supervisors has the power and authority within its discretion, acting as a board of audit, to disapprove and disallow a claim which is not one which may properly be incurred by the board of hospital trustees or one which is unreasonable.

For your information also find enclosed copies of opinions rendered to Hon. J. W. Long, Auditor of State, under date of August 9, 1927, and to William W. Simmons, County Attorney, Fairfield, under date of October 10, 1929.

**COUNTY TREASURER—TAXATION:** Under Sec. 7208, Code of 1931, a treasurer is authorized to receive county warrants in payment of the ordinary county taxes. This, however, applies only to warrants drawn against existing balances.

August 8, 1932. *County Attorney, Waterloo, Iowa:* We acknowledge receipt of your letter of July 22, 1932, requesting an opinion of this department on the following question:

Section 7208, of the Code, provides that auditor's warrants, meaning warrants issued by the Auditor of State, shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received by the treasurer of the proper county for ordinary taxes, but money only shall be received for school taxes.

We have in this county at the present time an overdraft in the county poor fund. In other words, warrants have been issued against the poor fund and upon presentment have been endorsed "not paid for want of funds" and are now outstanding and in the hands of local parties and are drawing 5% interest.

Can such warrants be received by the county treasurer in payment of the ordinary county taxes?

We are of the opinion that where the county poor fund is exhausted and county warrants have been drawn against the same and endorsed "not paid for want of funds" that the same cannot be received by the county treasurer of the proper county for payment of the ordinary taxes of the county. This for the reason that we are of the opinion that under Section 7208, Code of 1931, it is only contemplated that county warrants drawn against existing balances shall be received by the county treasurer in payment of the ordinary county taxes.

**BOARD OF ENGINEERING EXAMINERS:** Expense of annual reports for Engineering Examiners shall be paid out of funds in their hands. See Section 1861, Code of 1931.

August 8, 1932. *Executive Council:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

Section 1863, Chapter 89, Code of Iowa 1931, provides in part as follows: "That the state board of engineering examiners shall prepare an annual report and that said report shall be printed by the state, \* \* \*."

The question has arisen as to whether or not the expense of the printing of such report shall be paid out of the funds in the hands of the Board of Engineering Examiners or by the State Printing Board.

We are of the opinion that the expense of printing the annual report of the

Board of Engineering Examiners is only and properly payable out of the funds in the hands of the engineering examiners.

An examination of the law applying to engineering examiners would indicate that it is intended that said board shall be self-supporting. See Section 1861, Code of Iowa 1931.

**GASOLINE LICENSE FEES:** The cost of printing warrants used for gasoline tax refunds should be paid out of the appropriation provided for in Section 37, Chap. 257, Acts of the 44th G. A. (Sec. 5093-a11, Code of 1931; Sec. 68, Chap. 257, Acts 44th G. A.)

August 9, 1932. *Auditor of State:* We acknowledge receipt of your letter of July 13, 1932, requesting an opinion of this department on the following question:

In connection with the administration of a gasoline fund in this department, it is necessary to have certain forms printed, such as warrants which are used in connection with the payment of claims for refunds. The question has arisen as to whether or not the expense of printing refund warrants shall be paid out of the gasoline tax funds or shall be paid out of the appropriation from the Auditor of State for printing and supplies.

Another question in connection with the motor fuel act is one as to out of what fund should court costs be paid, said costs being costs incurred in connection with the administration of said law.

In Section 68, Chapter 257, Acts of the 44th General Assembly, we find an appropriation of \$2,500 annually out of gasoline tax receipts for the payment of help employed in writing gas tax refund receipts. We find no other appropriation to the Auditor of State.

The appropriation providing for the payment of the help employed in the Treasurer of State's office and for the payment of refunds and to pay the cost of postage, equipment, supplies and printing used by the Gasoline Tax Department of the Treasurer of State's office is found in Section 5093-a11 of the Code. This appropriation would not take care of the printing of warrants issued by the Auditor of State.

Under Section 5093-a11, of the Code of Iowa 1931, the Auditor of State is directed to issue his warrants for refunds certified to him by the Treasurer of State.

We are, therefore, of the opinion that the cost of printing refund warrants used by the Auditor of State should be paid out of the appropriation provided for in Section 37, Chapter 257, Acts of the 44th General Assembly.

As to the court costs in connection with the administration of the motor vehicle fuel tax we are of the opinion that the Legislature has not made any appropriation out of the gasoline tax receipts to take care of these costs; that the same should be paid as other court costs are generally paid.

**TAXATION—PERSONAL TAXES:** Delinquent personal taxes which have been entered upon the delinquent tax list are a lien against the real estate, including the buildings. However, said lien does not follow a building which has been removed.

August 9, 1932. *County Attorney, Creston, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

We have a case in this county where delinquent personal taxes were entered as a lien against a parcel of real estate. After these taxes became a lien on the property, the owner of the same sold the buildings located on



the real estate and the purchaser removed them to his own land. The question is, are the delinquent personal taxes still a lien upon the buildings which were removed?

We are of the opinion that the lien for the delinquent personal taxes would only be a lien against the buildings so long as they remain attached to the real estate, and that after they were severed therefrom and removed and attached to other land that there would no longer be a lien on the same. The county in such a case could secure an injunction restraining the removal of the buildings from the original premises.

COUNTY OFFICERS—CLERK: (See opinion.) Sec. 10837, Code of 1931.

August 9, 1932. *County Attorney, Brooklyn, Iowa*: We acknowledge receipt of your letter of July 22, 1932, requesting an opinion of this department on the following question:

My attention has been called to Section 10837, Code of 1931, particularly to Paragraph 29 of said section. The question has arisen as to whether or not, where, as provided in Paragraph 29 of said section, the fees provided therein are collected the clerk of the district court may also tax as a part of the costs in connection with the probating of an estate the various fees provided for in paragraphs 1, 13, 15, 21, 22 and 30 of said section (10837).

The fees provided for in Paragraph 29 of Section 10837, Code of Iowa 1931, are the fees for all services performed in connection with the probate and settlement of an estate. There could be no other fee taxed for filing the application or petition for the appointment of an administrator.

A fee of fifty cents (50c) should be taxed in addition to the fee provided for in Paragraph 29 of said section for certificate and seal of the clerk. This for the reason that the certification of any part of the probate proceeding is not a part of the settlement of the estate.

The clerk would also be entitled to collect the fees provided for in Paragraph 30 of said section. The clerk would also be entitled to collect the fees provided in Paragraph 21 of said section.

The fee provided for in Paragraph 1 of Section 10837, Code of 1931, would not, in our opinion, be taxed as a part of the costs of a probate proceedings as the fee for filing the application would be included in Paragraph 29 of said section.

POOR FUND—COUNTIES: (See opinion.) Sec. 5160, Code of 1931.

August 9, 1932. *County Attorney, Independence, Iowa*: We acknowledge receipt of your letter of August 5, 1932, requesting an opinion of this department on the following questions:

1. Our county poor fund is exhausted and the county auditor has issued warrants against the same and immediately turned the warrants over to the county treasurer who indorsed them as provided in Section 5160 "not paid for want of funds." These warrants were forwarded to the respective people by the auditor. Does this procedure by the auditor and treasurer invalidate said warrants?

2. Can the above mentioned warrants be presented to the county treasurer by the legitimate holders and be set off against any real estate or the ordinary county taxes which may be due from said holders of said warrants?

1.

We are of the opinion that the procedure adopted by the auditor and treasurer

does not in any way invalidate the warrants. The only question that might arise is as to the right of the holder thereof to collect the interest, he not having presented the same for payment, and the indorsement then being made as directed in Section 5160. We are, however, of the opinion that the court would not require the payee of the warrant to do a useless thing and that the county would be estopped to take advantage of the same, and that perhaps there is no real irregularity which could be taken advantage of.

2.

For answer to your second question we are enclosing herewith copy of opinion rendered by this department to John W. Gwynne, County Attorney, Waterloo, as of this date.

**BOARD OF EDUCATION—AUDIT:** Audit provided in Sec. 4027, Code of 1931, is still mandatory and may be made by the regularly employed auditor at the State University.

August 9, 1932. *State Board of Education:* We acknowledge receipt of a letter under date of August 4, 1932, from Mr. Eskil C. Carlson, member of the Iowa State Board of Education, requesting an opinion of this department on the following question:

Does the audit provided for in Section 397-d1, Code of Iowa 1931, supersede and include the audit provided for in Section 4027 of the same code, and if it does not and the audit therein provided for is still mandatory may said audit be made by the regular auditor employed at the State University, Mr. W. H. Cobb?

We are of the opinion that the annual audit provided for in Section 397-d1, Code of 1931, does not include and supersede the audit provided for in Section 4027 of the same code.

We are also of the opinion that the audit provided for in Section 4027 is still mandatory and that said audit may be made by the regular auditor, Mr. W. H. Cobb.

The information required by said section is matters which are easily ascertainable from the books and records of the University.

**FISH AND GAME—SNAGGING:** Where hook, line and bait are used there is no statute which would prohibit snagging.

August 9, 1932. *County Attorney, Cedar Rapids, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

May one take fish from the waters of the state by snagging where hook, line and bait are used? It is the practice of some fishermen to throw the hook in the water with bait and then to give the line a series of jerks in an effort to snag the fish. In some cases this is practiced with success.

The statutes authorize the use of hook, line and bait for the purpose of catching fish in State waters. We find no statute which would prevent snagging where hook, line and bait are used.

**COUNTIES—TOWNSHIP TRUSTEES:** Since the enactment of the secondary road law there is no necessity for including in the publication of the board of supervisors proceedings any expenditures of the township trustees as there are no road expenditures. (Sec. 5411, Code of 1931.)

August 11, 1932. *Auditor of State:* We acknowledge receipt of your letter

of July 15, 1932, requesting an opinion of this department on the following question:

Is it necessary that there be included in the publication of the proceedings of the board of supervisors the expenditures of township trustees?

You are advised that under Section 5411, Code of 1931, the statute requires only a synopsis of the expenditures of township trustees for road purposes.

Inasmuch as the road duties of township trustees in the handling of road funds have been taken away from the township trustees by the adoption of the secondary road law, there would be nothing now to publish with respect to this matter.

**COUNTY RECORDER:** A farm lease may be filed and indexed as a chattel mortgage without first being recorded as an instrument affecting title to real estate.

August 11, 1932. *County Attorney, Oskaloosa, Iowa:* We acknowledge receipt of your letter dated April 1, 1932. Our failure to answer the same has been an oversight and we herewith submit to you an opinion on the following question:

A farm lease which contains a chattel mortgage clause pledging the rents and profits is presented to the recorder with the request that it be filed as a chattel mortgage and indexed as such. The question has arisen as to whether or not, under the law, the recorder has authority to accept such an instrument and file it as a chattel mortgage without first demanding that the same be recorded as an instrument affecting the title to real estate.

You are correct when you say that the lease is an instrument which affects title to real estate. This has so been held by our Supreme Court in the case of *Weyroch vs. Johnson*, 201 Iowa, 1197. Our Supreme Court has also held that a lease which contains a chattel mortgage clause or a pledge of the rents and profits is a chattel mortgage and that the same may be recorded or filed as such.

We are of the opinion that it is not necessary that the lease be first recorded as an instrument affecting the title to real estate before it is filed and indexed as a chattel mortgage. This is up to the party who presents it for filing or recording, as the case may be.

We have held heretofore that a county recorder is a ministerial officer and that he has no discretion with respect to the legal sufficiency of an instrument, but that if it is presented to him for filing or recording it is his duty to do so whether the same is acknowledged or not, irrespective of the requirements of the statute.

**TAXATION—BUDGET:** Where notice of the estimate has been published as in Section 375, Code of 1931, provided, same cannot be increased in excess of that provided in Section 381, Code of 1931, without publication of new notice.

August 13, 1932. *Director of the Budget:* We herewith submit you an opinion on the following question:

Section 375, Code of Iowa 1931, requires the publication of the estimated expenditures for all purposes and notice of hearing on the same, fixing the time and place. The question has arisen as to whether or not, if at the hearing it is determined to reduce some of the items included in the estimate, it is necessary to again re-publish the estimate as reduced and fix

another date for hearing. The same question arises as to where at the hearing some of the items are increased.

The purpose of the publication of the estimate and the hearing thereon is to apprise the taxpayers of the proposed expenditures for the ensuing year and to give them an opportunity to be heard in connection therewith.

We are of the opinion that where, at the hearing upon the estimate, it is determined to reduce one or more of the items included in the estimate that it is not necessary to re-publish and have a new hearing thereon, the reason for this being that where a reduction is made the taxpayer will not be injured and could not complain.

We are, however, of the opinion that where one or more of the items in the estimate at said hearing increased in excess of that provided in Section 381 that it would be necessary to proceed in the same manner as provided for in connection with the original estimate, that is, publication of the amended estimate and notice of hearing. It should be noted that this opinion applies only to items included within the published estimate and does not apply to supplemental estimates where new levies are proposed. The procedure there is as provided for in Section 373-a1, Code of 1931.

CORONER: Discussion of law relative to duties of coroner.

August 26, 1932. *County Attorney, Vinton, Iowa*: We are in receipt of your letter of July 14 in which you request the opinion of this Department upon a question involving the duties of the county coroner and the fees to be paid him for services.

We were also favored with an interview with you, your coroner, and Dr. Carpenter, the coroner of Polk county, relative to the various questions which have been raised and which we will discuss.

The questions raised by you pertain to the duties of the coroner in holding inquests and in viewing dead bodies and making reports thereon. Section 5200 of the Code provides that the coroner shall hold an inquest upon the dead bodies of such persons as are supposed to have died by unlawful means and in such other cases as are required by law. The question immediately arises as to when the coroner shall view a body and when he shall hold an inquest. Also, the question arises as to who shall determine the necessity for an inquest or the preserving of evidence relative to determining the cause of death.

It is made the duty of the coroner, by the provisions of Section 2321, to furnish the death certificate if there be no attending physician or person required to make return to the registrar. Section 2322 requires that where there is no medical attendant, the undertaker or person acting as such shall promptly report the death to the coroner, in which case the coroner shall furnish the State Registrar such information as may be required.

Section 5237 contains the provisions relative to the fees to which the coroner is entitled. It is there provided that the coroner shall receive for examining each dead body upon which no inquest is held where there is no medical attendant at death and where such examination is necessary to comply with Chapter 110 of the Code, the sum of \$5.00. That provision refers to the services performed or required to be performed by the coroner by the provisions of Sections 2321 and 2322 of the Code.

Also, said section provides that the coroner shall be entitled to charge for

examining each dead body upon which an inquest is held, or, where the death occurred under such suspicious circumstances as to make advisable prompt investigation of the facts and the preservation of weapons and finger prints, and evidence of crime or tragic death, etc., the sum of \$10.00.

The question as to whether these services and duties are necessary is one resting largely within the sound discretion of the coroner. His duties call for immediate action. There can be no equivocating or drawing of fine points to determine just where the coroner's duties begin and end. An emergency practically always exists whenever a death occurs under such circumstances as might involve a criminal act or involve suspicious circumstances. In order to determine the cause of death and to fix responsibilities, the coroner must necessarily make some investigation of every case of this character. The investigation may show that the death was not such a one as to require the services of the coroner, but at the inception of the investigation such a situation may not be apparent. Therefore, the whole field calls for the utmost good faith on the part of the coroner. It also requires tolerance on the part of the Board of Supervisors in passing upon and allowing claims for services rendered, and reasonableness must be the rule. It is not for the Board of Supervisors to quibble over or to determine whether or not this or that case is such a one as the coroner should have attended. If the coroner has acted in good faith and there are some reasonable circumstances to indicate to the coroner at the time that he is called that it is a case which he should investigate, then the Board, as reasonable men, should have no hesitancy in allowing the fee therefor.

There has been some question raised as to what investigations shall be made in order to make the reports to the State Bureau of Investigation required by the provisions of Section 5214-c1 of the Code. It will be observed that Section 5214 provides that the coroner shall report to the Clerk of the District Court all cases of death which *may call for the exercise of his jurisdiction*; with the cause or mode of death, in accordance with forms furnished by the state department of health. There can be no question but that these provisions require the coroner to report those matters which regularly come within his jurisdiction under the other provisions of law hereinbefore referred to so that a complete record may be kept in the office of the Clerk of the District Court of all death cases which he has attended.

Section 5214-c1 follows and provides that the coroner shall also immediately report to the state bureau of investigation, all deaths coming within his jurisdiction due to accidental or violent means, and said report shall be upon such forms as shall be prescribed and furnished by the state bureau of investigation.

These latter provisions do not enlarge the scope of the coroner's investigating duties. All they require is that the coroner shall report to the State Bureau of Investigation all deaths which he has investigated under and pursuant to his duties as required by the other provisions of law, which deaths are due to accidental or violent means only. In other words, the State Bureau of Investigation is not interested in any death investigated by the coroner where no inquest is held and where he merely makes a report to the registrar in order to supply the information required by the provisions of Chapter 110 of the Code. The purpose of Section 5214-c1 is to advise the State Bureau of Investigation of the details of accidental and violent deaths so that the Bureau

may have that information to use in connection with any criminal investigations they may be making in connection therewith, or in checking up because of such deaths for law enforcement purposes.

Therefore, this section does nothing more than require an additional report of a part of the investigating activities of the coroner as prescribed by other provisions of law, and do not enlarge the scope of investigation by him.

We trust the foregoing will indicate to you our views in the matter and the relationship which should exist between these offices.

**TAXATION:** The holder of a special assessment certificate against property which has been sold at tax sale for the general taxes may require the assignment of the tax sale certificate. Where the holder of a special assessment certificate does not demand an assignment before deed is taken his rights are cut off. (Sec. 6008, 6041, Code of 1931.)

August 30, 1932. *County Attorney, Nevada, Iowa:* We acknowledge receipt of your letter of August 27, 1932, requesting an opinion of this department on the following questions:

1. Whether or not a holder of special assessment certificates assessed against property which has been sold at tax sale has the authority, under the statutes of this state, to require the assignment of the tax sale certificate prior to the taking of a deed by the holder thereof?

2. If the holder of a special assessment certificate has mandatory power to require an assignment of the tax sale certificate prior to the taking of a deed are his rights cut off after the deed is taken by the certificate holder?

1 and 2.

As you suggest in your letter the Supreme Court of this State has passed upon both of the above questions. In the case of Iowa Securities Company, Appellee v. Florence L. Barrett, et al., 210 Iowa, 53, the court in that case holds, and the statute provides as suggested by the court (Section 6041, Code of 1931), that the holder of a special assessment certificate or of a bond, payable in whole or in part out of special assessment against any lot or parcel of ground which has been sold for taxes either general or special, has the right to demand and require an assignment of any such tax sale certificate upon the tender to the holder thereof or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption (meaning redemption by the owner).

The court further holds that the holder of a special assessment certificate or bond payable out of special assessment in whole or in part loses any rights he may have when he permits the holder of the tax sale certificate to take a tax deed. In other words, the lien of ordinary taxes is senior and superior to that of a special assessment, this because of the statute itself pertaining to the same. See Section 6008, Code of 1931.

**SCHOOLS AND SCHOOL DISTRICTS:** Board may issue warrants and treasurer endorse them, "not paid for want of funds" where lack of funds is due to delinquencies in taxes or moneys tied up in closed bank. Sec. 4318, Code 1931.

September 1, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the question whether the board of directors of a school district may issue warrants and have the treasurer endorse them "not paid for want

of funds" where the lack of funds is due to delinquencies in taxes or moneys tied up in a closed bank.

This section is broad enough to cover either of the above emergencies. This Department held in the early administration of the law that warrants could be issued where the funds were temporarily withheld in a closed bank. The statute provides that the treasurer may stamp the warrants "not paid for want of funds" \* \* \* \* "Whenever an order cannot be paid in full out of the funds upon which it is drawn."

Therefore, the warrants may be so stamped when for any reason funds are not available to pay the warrants.

**ENGINEERING EXAMINERS:** Written charges must be filed with the Board of Examiners so accused may be fully advised of charges laid against him.

September 14, 1932. *Board of Engineering Examiners:* In reply to your request of September 14th, which is as follows:

"Is it necessary that written charges be filed with the Board of Engineering Examiners, before the Board can consider such charges or complaints against an engineer licensed to practice in the State of Iowa?"

would say that it is our opinion that Section 1872 specifically provides that the board may revoke the certificate of any professional engineer or land surveyor registered in this state by a four-fifths vote of the entire board where such engineer is guilty of any fraud or deceit in practice, or fraud or deceit in obtaining his certificate, or in the event he is found to be incompetent.

The following section, 1873, provides that the revocation shall be begun by first filing with the secretary of the board written charges against the accused, and that thereafter the board shall designate the time and place of hearing and shall notify the accused of such action having been instituted, and they shall furnish him a copy of all charges at least thirty days prior to the date of said hearing. Therefore, there can be no question but that the first step to be taken in revoking the license of one licensed under this practice would be to file written charges with the secretary of the board in order that the accused may be properly informed of the charges made against him.

**TAXATION—FEDERAL TAX—ADMISSIONS:** Agencies in State government not required to collect and pay to Federal Government, especially in State colleges and universities.

September 14, 1932. *Board of Education:* We have your letter of September 10th in which you request the opinion of this department upon the question of whether or not the State University at Iowa City, the State College at Ames, and the State Teachers College at Cedar Falls, are required to collect and pay to the Federal Government the so-called 10% Federal tax upon admissions to athletic contests and events conducted by and for the benefit of said State schools.

Section 711 (a) of the Federal Revenue Act of 1932 amends Section 500 (a) of the Act of 1926 so as to impose "a tax of one cent for each ten cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission; except that in case the amount paid for admission is less than forty-one cents, no tax shall be imposed."

Subdivision (b) (1), Section 500 of the Act of 1926 provides an exemption from

the payment of taxes levied against any admission, the proceeds of which inure exclusively to the benefit of educational institutions. But Section 711 (c) of the Revenue Act of 1932, which is amendatory to the provision of the Federal Law last above referred to, is as follows:

"The exemption from tax provided by subdivision (b) (1) shall not be allowed in the case of admissions to any athletic game or exhibition, the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the military or naval forces of the United States)."

Thus, it will be observed from the language of the provision set out just above, that the law, as written, does not make any exceptions in favor of any State college or university.

However, the question arises at once as to whether or not the Federal Government has the power to thus burden an agency or instrumentality of the State Government such as the State colleges and universities which are absolutely State supported and which are controlled by the Legislature of the State and the State Board of Education, which is a creature of the State law and draws its very life, sustenance and authority from the provisions of State law.

We shall not undertake to set out or to review herein the various decisions of higher courts relative to the principles involved in this matter. It is sufficient to say that it is the general holding of the courts that a State college or university is an instrumentality of the State engaged in performing a strictly governmental function.

It is suggested that the Federal tax on admissions involved herein is expressly levied on "the person paying such admission" so that no burden is imposed upon the State institution, it being made merely a collector of the tax. This, however, does not avoid the difficulty nor answer the question. The courts have held that the Federal government cannot burden, even to a slight degree, a strictly governmental function of the State government, and that if such a thing would be permitted, there would be a tendency toward impairment of governmental agencies under State control. Also, the charging of admissions to athletic contests is a means employed by the college and university regents and boards, and in the case of State institutions, by the State, for raising revenue for the purpose of defraying at least a part of the expense of conducting the physical education program, and, therefore, any Federal tax imposed upon that means necessarily burdens the State in its conduct of such a governmental enterprise.

Hence, it seems clear to us that the Federal tax herein referred to is an interference with and a burden upon a governmental function of the State.

It is, therefore, the opinion of this department that such a provision of law is unconstitutional as applied to admissions to any athletic game or exhibition, the proceeds of which inure wholly or partly to a State School, College or University, and that, therefore, the officary of any such an institution will not be required to collect any such a tax upon such admissions nor to account therefor to the Federal Government.

**TAXATION—TAX SALE—SPECIAL ASSESSMENTS:** The purchaser at tax sale who subsequently takes a treasurer's deed would take the property free and clear from all unpaid installments of special assessments which were a lien upon said property at the time of the tax sale. (Sec. 6008, 6041, Code of 1931.)



September 19, 1932. *County Attorney, Nevada, Iowa:* We acknowledge receipt of your letter of August 30, 1932, requesting an opinion of this department on the following question:

Where property is sold at tax sale for the general taxes and delinquent installments of special assessments and the tax deed is taken, does the holder of the tax deed take the property free from the lien of the special assessment installments which were not delinquent at the time of the tax sale?

Under Section 7244, Code of 1931, it is made the mandatory duty of the treasurer to annually on the first Monday in December hold a tax sale of all lands, town lots, or other real property on which taxes of any description for the preceding year or years are delinquent, and to sell the same for the total amount of the taxes, interest, and costs due and unpaid thereon.

Under this section the treasurer must, therefore, sell the property at public sale for all of the taxes due and unpaid. This would apply not only to the general taxes but to special assessment installments which were due and unpaid and delinquent. There is no authority for the treasurer selling the property for just the amount of the general taxes, interest, and costs. He must sell it for not only the general taxes but for all special assessment installments which are due, unpaid, and delinquent, together with interest and costs.

Under Section 6008, Code of 1931 (Chapter 308) special assessments are a lien on the benefited property from the date of the filing of said papers with the county auditor until paid, said lien to have precedence over all other liens *except ordinary taxes*. It will be seen from reading this section that while special assessments are made a lien upon the benefited property from the date of the filing of the papers with the county auditor such lien is junior to that of the ordinary taxes.

Under Section 6041, Code of 1931 (Chapter 308), the holder of a special assessment certificate, among others, against property which has been sold for taxes, either general or special, is given the right to require and demand an assignment of any certificate of tax sale of said property for any general or special taxes thereon upon tender to the holder or to the county auditor of the total amount to which the holder of the tax sale certificate would be entitled in case of redemption. This would give the holder of special assessment certificates a remedy whereby he might protect himself against a tax sale of the property against which his certificates were issued.

We are of the opinion that where property is sold at tax sale for the general taxes and for all unpaid and delinquent installments of special assessments and deed is taken from the treasurer as by law provided, that the rights of the holder of special assessment certificates which were a lien on said property prior to the tax sale but which installments were not delinquent at the time of said tax sale would be cut off, and that the tax sale purchaser who took the deed from the treasurer would take the property free from the lien of said special assessment.

We are also of the opinion that under Section 6041, as above stated, the holder of special assessment certificates, which special assessment was a lien on the property prior to the tax sale, would have a right to protect himself from having his rights cut off by requiring an assignment of the tax sale certificate as provided for in said Section 6041.

The tax sale purchaser would, of course, have to pay all subsequent general

taxes assessed against the property and also all subsequent special assessments which may have been assessed and become a lien on said property subsequent to the date of the tax sale. See *Iowa Securities Company v. Barrett*, 210 Iowa, 53, and the cases therein cited. Also see the case of *Western Securities Company v. Black Hawk National Bank*, 211 Iowa, 1304.

**COUNTIES—BONDS:** Where bonds are issued pursuant to the provisions of Sec. 266, Code of 1931, and sold, said bonds must be sold in accordance with the provisions of Chap. 63, and thus advertised as provided in Sec. 1172. Said bonds do not come within the exception contained in Sec. 1179 unless the same are exchanged with the holder of already outstanding bonds, warrants or judgments.

September 20, 1932. *Budget Director:* We acknowledge receipt of your request for an opinion of this department on the following question:

Where bonds are issued pursuant to the provisions of Chapter 266, Code of 1931, must they be sold in accordance with the provisions of Chapter 63, Code of 1931? If they must be sold in accordance with the provisions of Chapter 63 must they be advertised and sold as in Sections 1172, 1173, and 1174, Code of 1931, provided?

Your attention is called to Section 5278, Chapter 266, Code of 1931, which reads as follows:

"In making sale of such county bonds the county treasurer shall comply with and be governed by all the provisions of Chapter 63."

Clearly this would make the sale of said bonds subject to the provisions of Chapter 63 as contained in Sections 1172, 1173 and 1174, Code of 1931, and it would be necessary that the notice of sale be published and bids taken unless the bonds issued in accordance with the provisions of Chapter 266 were to be exchanged for legal indebtedness already outstanding as evidenced by bonds, warrants, or judgments.

"Exchange" as used in Section 1179, Code of 1931, would mean a case where funding or refunding bonds, as authorized in Chapter 266, were to be issued and exchanged with the holder of outstanding bonds or warrants or of a judgment.

Section 1179, Code of 1931, would not be applicable to a case where funding or refunding bonds were to be offered for sale and the money received therefrom was to be used to take up outstanding bonds or warrants or judgments.

**COUNTY OFFICERS—CLERK:** County clerk of district court is not liable for loss of county funds by reason of a bank failure unless he is guilty of negligence in connection with the same.

September 21, 1932. *Auditor of State:* We acknowledge receipt of your letter of September 17, 1932, requesting an opinion of this department on the following question:

You state that in a certain county in this state the duly elected, qualified and acting clerk of the court, whose term of office expired as of December 31, 1930, had on deposit in his name as clerk certain trust funds, and that on the morning of the second day of January, 1931, the bank in which he had said deposit failed to open for business, and that the question has arisen as to what liability said clerk has and his surety with respect to the said deposit.

You are advised that such a deposit would not be protected by the Brookhart-Lovrien Law (State Sinking Fund for Public Deposits). You are also advised that the question of whether or not said clerk was liable would be a question of whether or not he was guilty of any negligence in connection with said

deposit. If he was not then there would be no liability on the clerk or his surety.

**COUNTY OFFICERS:** Sheriff cannot require bond of landlord to retain property seized under landlord's attachment on claim of third person.

September 27, 1932. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this Department on the following proposition:

"In the event that property is seized under landlord's attachment without bond and notice of ownership is served upon the sheriff by a third party either claiming ownership, mechanic's lien or chattel mortgage lien under the provisions of Section 12117 and 11698 of the 1931 Code, may the sheriff demand an indemnifying bond under Section 11702 of the Code and release under Section 11703 in the event such bond is not given?"

The enforcement of the landlord's lien by means of attachment is provided for in Section 10264 of the Code which provides in part that the procedure under such attachment shall be the same as nearly as may be as in other cases of attachment except that no bond shall be required.

We are of the opinion that this applies to the landlord's attachment as against the tenant as well as against third parties. We have been unable to find any case directly in point. We refer you however, to *Brody v. Cohen*, 106 Iowa, 309, which holds that a mortgagee, having taken possession of mortgaged property before any rent was due, cannot recover the property from the officer who later seizes it from him for rent later to become due where the lien for said rent had attached and was a prior claim over the claim of the mortgagee.

The court lays down the rule that the landlord is entitled to possession and that the mortgagee cannot by replevin take the goods from the officer holding them by virtue of the landlord's writ. Of course, the person filing notice of ownership on the sheriff is not barred from litigating his claim or protecting his rights if he has any, by delivery bond, but he cannot, in our opinion, compel the claimant of a landlord's lien to put up a bond to enforce the writ as against his claim.

**IOWA NATIONAL GUARD—TAXATION:** Checks drawn by unit commanders of National Guard not subject to Federal bank check tax.

September 29, 1932. *Adjutant General:* This will acknowledge receipt of your letter of recent date inquiring whether checks drawn by the unit commanders of the National Guard require the Federal bank check tax.

This tax cannot apply to any state governmental agency. The National Guard is unquestionably such. Therefore, it is our opinion that the stamp tax cannot be required on checks issued by a National Guard unit commander.

**SCHOOLS AND SCHOOL DISTRICTS:** Mere distance does not constitute obstacle under Section 4131, Code 1931.

October 3, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department upon the following propositions:

"1. Does distance to school constitute a natural obstacle such as would authorize a county superintendent to transfer territory from one district to another under the provisions of Section 4131?

"2. Is the consent of the board of the district that is to receive the terri-

tory necessary before the order becomes effective; in other words, may the board refuse to accept the territory proposed to be attached?"

1. We are of the opinion that distance does not constitute a natural obstacle. An obstacle is defined by Webster's dictionary as "that which stands in the way; that which hinders progress; a hindrance; an impediment; an obstruction."

The supreme court of this state in the case of School Township of Newton vs. Independent School District of Newton, 110 Iowa 30, held that the county superintendent had no jurisdiction to act if the way to school is not impeded. Obstacle as used in this section refers to some natural obstruction on the highway such as an unbridged stream and does not refer to mere distance along the way.

Moreover, even if such natural obstacle existed, the county superintendent has no authority or jurisdiction to order the transfer of the territory from one district to another in the absence of consent of the district to which the territory is transferred.

The statute specifically provides that this may be done by the county superintendent only if the board of the same (the adjoining corporation) consents thereto.

**BOARDS OF SUPERVISORS—ELECTIONS:** Total number of votes cast for head of ticket at last preceding general election basis for determining whether fourth of qualified electors have signed petition. Notice prescribed by Section 5265, Code 1931.

October 3, 1932. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following questions:

"1. In construing Section 5107-8 of the Code, what basis shall be used to determine whether the petition is signed by a fourth of the qualified electors of the county?

"2. What notice is required if their petition be found to be sufficient?"

Attorney General Fletcher, has ruled in a similar case that the total number of votes cast for the head of the ticket at the last preceding general election, shall be the basis for determining whether a fourth of the qualified electors of the county have signed the petition.

This proposition can be submitted only at a regular or general election. The last valid and legal enumeration of the voters next preceding the election at which the question is to be submitted is the last preceding general election.

The submission of questions to the voters of a county is covered by Chapter 265. The notice is prescribed by Section 5265, and this section should be followed in the submission of the question. This is in view of the fact that no provision is made for notice in those sections of Chapter 253 which provide for the reductions in the number of members of the board of supervisors by vote of the electors.

**SCHOOLS AND SCHOOL DISTRICTS:** Consent under Section 4274 must be procured annually.

October 4, 1932. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"When a county superintendent consents to attendance in an adjoining school corporation as provided for in Section 4274, must the consent be

renewed annually or does it hold indefinitely unless otherwise specified in the consent?"

The school district of residence is of course, maintaining a school. The privilege granted to the patron is to attend school in another corporation where the right to attend does not exist save and except for the action of the county superintendent.

The statute specifically provides that the child may so attend on the consent of the county superintendent after notice has been given to the board where the child resides and objections heard if any are made. It is a judicially known fact that school boards change and the purpose of the notice is to apprise the board that an application for the consent of the county superintendent has been made. We are of the opinion, that this statute should be strictly construed. Our supreme court has placed a strict construction upon a similar statute in *Tow vs. School District*, 200 Iowa 1254.

We are therefore of the opinion that this statute should be strictly construed and that it is necessary for the patron who desires to avail himself of its privileges to secure the consent of the county superintendent each year that he desires his child to attend school in the adjoining corporation.

**SOLDIERS' EXEMPTION—TAXATION:** Widow is not entitled to exemption from more than one son.

October 4, 1932. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"May a widowed mother remaining unmarried claim tax exemption under Section 6946 of the 1931 Code of Iowa of \$500.00 for each of two sons where each of the sons comes within the provisions, and where the widowed mother claims that she is dependent upon both of said sons for her support?"

The sections of the statute cited by you provide for exemption to the widowed mother of a soldier, sailor, or marine, if she is dependent upon him.

We are of the opinion that she could not be dependent upon both of them and that in any event the dependency would be divided between them. She would therefore, be entitled to but one tax exemption on that ground.

**TAXATION:** Claim for forest reservation valuations must be made with assessor each time the land is assessed.

October 4, 1932. *County Attorney, Keosauqua, Iowa:* This will acknowledge receipt of your letter of recent date in regard to the following question:

An owner of real estate secured assessment in the year 1929 of a forest reservation under the provisions of Chapter 126 Code of Iowa 1927. Before 1931, this owner died and the assessor made no report of the reservation for that year and the widow paid taxes on the basis of a different valuation. She now asks a refund of the taxes paid over and above the valuations of \$1 per acre.

One of the canons of construction of statutes relating to taxation is that taxation is the rule and exemption the exception. The title to the real estate vesting under our statutes in the heirs at law or the beneficiaries under the will devising the same on the death of the owner. We are therefore of the opinion that it was the duty of the owners to claim the exemption at the time the real estate was assessed and that it was not the duty of the assessor to continue the valuations of 1 per acre unless the same was claimed at the time

the real estate was assessed. The owner has a remedy in that he may require the assessor to make the certificate if it is not made upon his application, or to appeal to the board of review. In the absence of such claim on the part of the tax payer, we are of the opinion that the taxes were not erroneously or illegally collected and paid and that therefore, the owner is not entitled to a refund of taxes paid upon this valuation.

**DRAINAGE DISTRICTS:** Under Secs. 7634-37, inclusive, Code 1931, where drainage district is located wholly within a city or town, upon compliance with these sections the board of supervisors must transfer supervision and control to the city or town.

October 4, 1932. *County Attorney, Belmond, Iowa:* We acknowledge receipt of your letter of August 15, 1932, requesting an opinion of this department on the following question:

A drainage district was established in Wright County, Iowa, which district was located entirely within the City of Clarion, Iowa, except the outlet. The district was established in 1922. The board of supervisors, acting as a drainage board, issued drainage bonds. There are still outstanding about \$80,000.00 in bonds. There is on hand in the bond fund about \$7,000.00. There is \$6,000.00 due and delinquent. The city council of the City of Clarion, acting under authority of Section 7635, Code of 1931, has requested that the board of supervisors surrender and permit the city or town of Clarion to take over and control the drains within its corporate limits.

It would also appear that under Section 7636, Code of 1931, that when such request has been made it is the mandatory duty of the board of supervisors to comply with the same.

The question has arisen as to whether or not, under the above statement of facts, the board of supervisors must surrender the control of this district to the City of Clarion, and if so what should be done in connection with the outstanding bonded indebtedness and the funds now on hand with the county treasurer belonging to said drainage district.

Clearly under Sections 7634 to 7637, inclusive, Code of 1931, it is the mandatory duty of the board of supervisors, acting as a drainage board, to relinquish all authority and control over said drainage district upon the city or town council's passing a resolution so requesting.

After the drainage district has been taken over by the city or town the city or town council has complete control thereof and may use the same for any purpose, the said city or town through its city or town council deems proper and necessary, and the city or town is made responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors.

The fact that the drainage district has still outstanding a bonded indebtedness would not prevent the transfer of the jurisdiction to the city or town council. The drainage assessments, after the relinquishment, would be collected in the same manner and by the same agencies as now collect them, and the bonds and the interest thereon would be paid in the same manner and by the same agencies.

It is suggested, however, that after the date of the relinquishment to the city or town the drainage district included within the limits of said city or town would cease to be a drainage district within the meaning of the provisions of Chapter 353, applicable to levy and drainage districts, for in Chapter 355 there is no provision for conferring upon the city or town council all of the powers

now conferred on the board or boards of supervisors for the control, management and supervision of drainage and levy districts.

The city or town council could not, therefore, after the date of relinquishment levy drainage assessments, etc. Said drains would have to be maintained and kept up by money derived from present authorized levies available for sewage or drainage purposes.

**ELECTIONS:** Chairman of county party central committee must be member of the committee and elected by its members.

October 6, 1932. *Auditor of State:* This will acknowledge receipt of your letter in regard to the following proposition:

"Kindly advise if the county central committee can select as its chairman, someone outside of the committee who is not a member and who was not elected in the primary election or appointed to fill a vacancy."

The statute merely provides that the county central committee elected in the primary election is organized on the day of convention immediately following the same.

This of course, leaves the necessary officers to be determined by the committee itself, but since no provision is made for the election of officers outside of the committee, we are of the opinion that the chairman must be a duly elected or appointed and qualified member of the committee.

**DRAINAGE AND DRAINAGE DISTRICTS:** Assessment for repairs to restore ditch to original efficiency or capacity may exceed 10 per cent of original cost without notice.

October 7, 1932. *County Attorney, Dubuque, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this Department on the following proposition:

"The board of supervisors contemplates cleaning out a drainage ditch, and the costs exceed ten per cent of the original cost of the improvement in the district. Is it necessary for said board to order a new apportionment of and assessment upon the lands and go through the same process as that of the original establishment of the assessment; or may the board proceed to clean out the ditch to its original capacity and make the assessment in the same proportion as the original cost thereof, without any notice or publication? This matter seems to be contemplated in Sections 7556 to 7561."

We are of the opinion that such work of cleaning out the ditch so as to restore it to its original efficiency or capacity, could be assessed in the same proportion as the original cost thereof without notice even though the cost exceeds 10 per cent of the original cost. This is for the reason that the work of cleaning out such a ditch is specifically exempted from the operation of Sections 7556 to 7560 inclusive. Those sections apply where the ditch is to be enlarged, reopened, deepened, widened, straightened, or lengthened or the location changed for better service. The latter section 7561 applies where the operation is merely to clean out the ditch so as to restore it to its original efficiency or capacity.

Our Supreme Court has held that an assessment without notice is illegal where the proceeding was "to clean and repair" but where the actual work was "widening and deepening." See *Lade vs. Board of Supervisors*, 183 Iowa 1026, and *Mayne vs. Board*, 208 Iowa 987.

If the work contemplated does not go beyond cleaning out the ditch to restore

it to its original efficiency, or capacity, the assessment may be made without notice and on the ratio of the benefits fixed in the original or initial assessment.

See *Kimball vs. Board*, 190 Iowa 783; *Meyerholz vs. Board*, 204 N. W. 452.

We are therefore of the opinion that if the work contemplated by your board does not go beyond the restoration of the drain to its original efficiency and capacity, the board could proceed under the provisions of Section 7561 without notice to the property owners and could assess the cost thereof in the same ratio as the original costs. It is definitely so held by the above cited cases.

**PUBLIC FUNDS—SCHOOLS AND SCHOOL DISTRICTS:** Treasurer of public body may stamp warrants "not paid for want of funds" when funds are in closed bank.

October 7, 1932. *County Attorney, Dubuque, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"An independent school district has sufficient money with which to pay their operating expenses, but the same is in closed banks. Can they legally issue warrants to the teacher and stamp them 'no funds' and if so, after being so stamped, draw interest?"

It is provided by statute that whenever an order cannot be paid in full out of the fund on which it is drawn, partial payment may be made. It is further provided that all school orders draw lawful interest after being presented to the treasurer and by him endorsed "not paid for want of funds." See Section 4318 of the Code.

If the funds are tied up in a closed bank, the warrant cannot be paid even though the books of the treasurer would show funds on hands. We are therefore of the opinion that he may stamp such warrants "not paid for want of funds" and that thereafter they would draw interest at the rate of 6 per cent.

**ELECTIONS:** An election placing the control and management of water or gas works or electric power plants may not be submitted at the general election at which state and county candidates are to be elected.

October 15, 1932. *County Attorney, Chariton, Iowa:* We have your oral request for an opinion in which you ask in substance as follows:

May an election to determine whether or not the management and control of a water works or plant, gas works, and electric power plant shall be placed in the hands of a board of trustees, be submitted at the general election at which state and local candidates are to be elected, which election is held in November of the various years?

Section 6144 of the 1931 Code of Iowa provides as follows:

"The council of any city or town, other than cities of the first class but including cities of the first class under the commission form of government having a population of less than fifty thousand which owns or may hereafter acquire waterworks, heating plant, gasworks, or electric light or electric power plant, may, and upon petition of ten per cent of the qualified electors of such city or town shall, at any general election, or at a special election called for that purpose, submit the question as to whether the management and control of such waterworks, heating plant, gasworks, or electric light or electric power plant shall be placed in the hands of a board of trustees."

The question to be determined at this election has to do primarily with matters pertaining to the city, whereas at the regular November election the questions determined and the candidates voted upon pertain generally to county, state and national government.



We are, therefore, of the opinion that the "general election" referred to in the above quoted section, refers to the general city election and not to the November general election, above referred to.

**ELECTIONS—PAUPERS—RESIDENCE:** An inmate of a private charitable institution, under the provisions of Section 5311, Code of 1931, cannot for any purpose acquire a residence in the county—including a residence for voting purposes. (Sec. 5311, Code.)

October 18, 1932. *County Attorney, Mason City, Iowa:* We acknowledge receipt of your letter of February 12, 1932, requesting an opinion of this department on the following question:

The 44th General Assembly amended Section 5311, Code of 1927, by adding thereto the following words:

"provided any person who is an inmate of a private charitable institution not supported by public funds in any county in this state shall not acquire a settlement or a residence in said county for any purpose."

Does this amendment have any application to the qualifications of a poor person for voting?

We are of the opinion that the amendment prohibits an inmate of a private charitable institution from acquiring a residence for any purpose in the county, that is to say, a person who was a resident of another county in the state and became an inmate of a private charitable institution not supported by public funds in a county other than his residence could not acquire a residence in the county where the institution was located for any purpose—including a residence for voting purpose.

It is the opinion of this department that the amendment added by the 44th General Assembly to Section 5311, Code of 1927, would not retroactively affect the inmate of such institutions who had in good faith, prior to its enactment, acquired a legal residence for any purpose in the county wherein said institution is located.

**TAXATION—PERSONAL PROPERTY:** Personal property taxes are not a lien on personal property except on that class provided for in Section 7205, Code of 1931, and, therefore, a chattel mortgage irrespective of its date would be superior to the claim of the county for such taxes.

October 18, 1932. *County Attorney, Osceola, Iowa:* We acknowledge receipt of your letters of September 15th and 23rd, respectively, 1932, requesting an opinion of this department on the following question:

Are taxes on personal property a lien on said property, and, if so, are they superior to the lien of a chattel mortgage?

You are advised that under date of January 25, 1932, this department rendered an opinion to E. C. Hardwig, County Attorney, Charles City, Iowa, bearing on this question. That opinion particularly involved personal property taxes on stocks of goods, merchandise, fixtures, furniture, etc., as provided in Section 7205, Code of 1931.

Personal property taxes on such goods are specifically by statute made a lien thereon as stated in that opinion. However, you are advised that personal property taxes, except as provided in Section 7205 and as stated in that opinion, are not a lien upon personal property and that, therefore, a chattel mortgage on personal property other than stated in Section 7205 would be superior to the claim for personal property taxes, there being no lien on the property for said taxes.

Personal property taxes after they have been entered upon the delinquent tax list become a lien upon real estate owned by the one against whom such taxes are assessed.

Personal property taxes may be collected by distress and sale. However, in such a case, if a chattel mortgage was prior in time to the distress for said personal property tax it would be superior to the claim for said taxes.

We are enclosing herewith copy of the opinion referred to heretofore.

**SUPERIOR COURT MARSHALS—MILEAGE:** Bailiffs of municipal court would be entitled to 10 cents for civil processes but would be confined to 7 cents for criminal processes.

October 19, 1932. *Auditor of State:* Replying to your letter of October 5th relative to the mileage to be collected by the bailiff of the municipal court, we can only say that after looking over the opinion written to Mr. R. R. Bateson, County Attorney at Eldora, under date of October 16, 1931, we are inclined to believe that what was said there relative to the marshal of the superior court applies to the bailiff of the municipal court, and this is borne out by the fact that the Supreme Court in the case of *Brookins vs. Polk County*, 213 N. W., at page 259 says:

"The municipal court in all criminal matters exercises jurisdiction conferred on justices' of the peace courts."

As we understand the intention of the 44th General Assembly, the only thought was to exempt the county sheriffs and no other officials. So that we are of the opinion that bailiffs of municipal courts would be entitled to ten cents a mile for civil process but would be confined to the compensation of seven cents for service of a criminal process.

**TAXATION—INHERITANCE TAX—REAL PROPERTY:** Under the laws of this state, the decisions of our Supreme Court and the Supreme Court of the United States, the situs of real property is the situs for inheritance tax purposes notwithstanding the fact that under the terms of the will there may be an equitable conversion.

October 24, 1932. *County Attorney, Cedar Rapids, Iowa:* We acknowledge receipt of your letter of October 20, 1932, enclosing letter from W. L. Dutton of your city.

There is no question but that Iowa does recognize the rule of equitable conversion and the question is pretty thoroughly discussed in the *Estate of Sanford*, 188 Iowa, 833. Examination of that case, however, discloses that a tax was collected by the State of Nebraska on the real estate and collected notwithstanding the fact that, under the terms of the will, it was necessary to sell and dispose of some of said property which worked an equitable conversion. Iowa also taxed that part which was converted.

Our court and the courts generally, including the Supreme Court of the United States, have held repeatedly that the situs of tangible personal property is the situs for inheritance tax purposes; that the domicile of the deceased is the situs for taxation of intangible personal property; that the situs of real estate is the situs for taxation purposes. It would, therefore, appear that whether we consider the real estate in this particular case as real estate or as personal property its situs for taxation, so far as the laws of Iowa are concerned, would be Iowa. It is not intangible personal property under any theory.

We are, therefore, of the opinion that the real estate located in Iowa is

subject to the imposition of an inheritance tax including that part which may pass to legatees under the theory of equitable conversion.

**ELECTIONS—NOMINATIONS:** Where a candidate has been nominated in the manner provided in Chapter 37-A2, and no objections are filed the county auditor has no authority to refuse to place the name of a candidate so nominated on the ballot. The proper method and only method is to file objections to the legal sufficiency of the certificate of nomination and the eligibility of the candidate as provided for in Section 655-a7, Code of 1931. (Chap. 37-A1, Section 655-a4, Code of 1931.)

October 24, 1932. *County Attorney, Waterloo, Iowa:* We acknowledge receipt of your letter of October 21, 1932, requesting an opinion of this department on the following question:

Where petitions are filed in accordance with the provisions of Chapter 37-a2, Code of 1931, nominating candidates on the independent ticket for various offices, including candidates for supervisorial districts, the question has arisen as to what procedure should be adopted in order to determine whether or not the candidate is entitled to have his name placed on the ballot or whether his petition is legally sufficient, etc.

Your attention is called to Section 655-a20, Chapter 37-A2, Code of 1931. It would seem from reading this section that the provisions of Chapter 37-A1 are made applicable to petitions filed under Chapter 37-A2. Your attention is called to Sections 655-a4—655-a7, inclusive, particularly to Section 655-a7. Under these sections, when a petition is filed nominating a person as an independent candidate whose filing must be with the county auditor and said petition appears to be regular on its face, the county auditor should place the name of the candidate so nominated on the ballot unless objections are filed as in the above sections provided.

If objections are filed to the legal sufficiency of the petition or questioning the eligibility of the candidate within the time specified in Section 655-a4, then the board provided for in Section 655-a7, composed of the county auditor, clerk of the district court and the county attorney hold a hearing on the objections filed and the majority decision of said board is made final.

The above procedure should be adopted in all cases where the eligibility of the candidate or the legal sufficiency of the petition is questioned.

Unless objections are filed the county auditor should place the name of the candidates nominated on the ballot.

**TAX SALES—CONTINUATION—COUNTY OFFICERS:** Under Section 7262, Code of 1931, if the county treasurer has good cause he may postpone the annual tax sale for one month and hold the same in January making his advertisement in December instead of November. (See 7244, Code of 1931.)

October 27, 1932. *County Attorney, Hampton, Iowa:* We acknowledge receipt of a letter from Mr. F. B. Henke, Chairman of the Board of Supervisors, and are rendering you herewith opinion on the following question:

The question has arisen as to whether or not the regular tax sale may be continued for one month, that is from the first Monday in December to the first Monday in January.

Section 7244, Code of Iowa 1931, provides as follows:

"Annual tax sale. Annually, on the first Monday in December, the treasurer shall offer at his office at public sale all lands, town lots, or other real property on which taxes of any description for the preceding year or years

are delinquent, which sale shall be made for the total amount of taxes, interest, and costs due and unpaid thereon."

Under this section the treasurer is required to annually on the first Monday in December hold a tax sale.

Section 7262, Code of Iowa 1931, provides as follows:

"Subsequent sale. If, from neglect of officers to make returns, or other good cause, real estate cannot be advertised and offered for sale on the first Monday of December, the treasurer shall make the sale on the first Monday of the next succeeding month in which the required notice can be given."

Under this section, if from neglect of the officers to make the returns or other good cause, real estate against which there are delinquent taxes cannot be advertised and offered for sale on the first Monday in December, the treasurer is required to make the sale on the first Monday of the next succeeding month in which the required notice can be given. There does not seem to be any ambiguity in Section 7262, Code of 1931.

If the treasurer, for good cause, cannot advertise and offer for sale the real estate against which there are delinquent taxes on the first Monday of December, certainly said section is sufficient authority for him to make the sale on the first Monday of the next succeeding month in which the required notice can be given.

**ELECTIONS:** Patients at county home who are competent under the law and have established the county home as their permanent residence may vote in the township in which such home is located the same as any other elector of that township.

October 31, 1932. *County Attorney, Burlington, Iowa:* You have requested an opinion from this Department upon the following proposition:

"Are the patients of the County Home, or Poor Farm, who are competent, permitted to vote in the township in which the Poor Farm is located, and has the superintendent the right to haul them to the polls, so that they may have an opportunity to vote? But has the County Auditor or his deputy the right to take the ballot of those inmates who are sick or crippled? This, of course, does not involve those persons who are in the insane wards. I would appreciate a prompt reply from you, to this inquiry."

You are advised that if an inmate or resident at the County Home has adopted that place as his permanent residence, then and in that event any competent person residing at the County Home is entitled to vote the same as any other citizen living in that township. However, if the resident at the County Home, otherwise qualified to vote, is unable to go to the voting place in the township because of physical conditions or illness, that person is entitled to vote the absent voters' ballot the same as any other citizen in like circumstances.

If the Superintendent of the Home so desires, there is no objection to his furnishing transportation to the polls for such residents in the County Home.

**TAX—FEDERAL AMUSEMENT:** State school organization among student body sponsoring entertainments in a proprietary sense are required to collect Federal tax.

November 1, 1932. *Board of Education:* You have requested the opinion of this Department upon a question involving the applicability of the Federal tax upon amusements such as are described in the following proposition submitted by you:

"There are certain organizations, known as Student Organizations, who con-

duct their entire financial business through the Treasurer of the Iowa State College and the office of the Auditor of Student Organizations. Many of these organizations hold social affairs, like dances, plays, etc., for which they sell tickets to the persons admitted. The question comes, are they obliged to pay the tax on the tickets which they sell? The money received on the tickets will be used for paying the orchestra, or talent in case of lectures, and the balance will be held for the benefit of the organization. We have already decided that they should collect the tax, if an organization has decided that their profits should go to the benefit of the Memorial Union, which is an outside corporation.

"Our question is whether they should collect tax when the money goes direct to the Student Organization Fund, and the profit goes to the benefit of the Student Organization. Just now we have the case of an Engineering Carnival Dance in the Memorial Union Building. The Engineering Council, a student organization, pays for the orchestra, printing of programs, rent of the building, and pays 10% of their door receipts to the Memorial Union and then takes the small balance for their own use."

As we read the proposition submitted, the organizations referred to therein are such organizations as fraternities, sororities, clubs, etc., organized among the student body, but not directly connected with or sponsored as a part of the State government. These organizations, we take it, when they sponsor a dance, entertainment or lecture, do so in a proprietary sense and for the purpose of securing revenue for the organization, as such. It is our opinion that such organizations are not a part of the State government.

Therefore, it is the opinion of this Department that any entertainment, lecture, dance or amusement, held or sponsored by any organization not a part of the State government or not authorized or provided for by State law, and to which an admission is charged, is subject to Federal tax upon admissions the same as any other such organization not connected with, or a part of the State government.

**INSURANCE—WATER REVENUE BONDS:** Water revenue bonds, where the law and the bond provide for the payment of the same out of revenues received from the operation of the plant and guarantees that a sufficient rate shall be charged and collected at all times to pay maturing principal and interest of said bonds, are legal investments for life insurance companies within the meaning of Sections 8737, 8829, Code of 1931.

November 9, 1932. *Commissioner of Insurance:* We acknowledge receipt of your letter of September 12, 1932, requesting an opinion of this department on the following question:

Are water revenue bonds issued by any city or town of this state or any other state, pursuant to a law authorizing the same, which law and which bonds provide for the payment of the same out of the revenues received from the operation of said plant, and further guarantees that a sufficient rate may be charged and collected sufficient at all times to pay maturing principal and interest of said bonds; said bonds are an obligation of said city or town payable as aforesaid; legal investments for life insurance companies within the meaning of Sections 8737 and 8829, Code of Iowa 1931.

Sub-section 3, paragraphs a, b, and c of Section 8737, Code of Iowa 1931, provides as follows:

"3. Municipal and district bonds.

"a. Bonds of any county, city, town, school, road, drainage, or other taxing district, within the state of Iowa or any other state.

"b. Bonds or other evidences of indebtedness which are a general obligation of any county, city, town, village, or school district, within the Dominion

of Canada, and having a population of not less than ten thousand according to the last dominion or provincial census taken prior to the date of such investment period.

"c. Anticipation certificates issued by waterworks trustees, as provided by the laws of this state, and improvement certificates or other evidences of indebtedness issued by any county, city, town, school, road, drainage, or other district in this state or any other state authorized by law to levy assessments for improvement purposes, and to issue bonds or certificates as evidence of indebtedness therefor; said certificates or other evidence of indebtedness being secured by a lien upon any real estate within the limits of said public corporation or district.

"All bonds and other evidences of indebtedness referred to above shall be issued by authority of and according to law, and bearing interest."

Sub-division 3, paragraphs a, b, and c of Section 8829, Code of 1931, are identical in language.

Section 8737 was repealed by Chapter 199, Acts of the 42nd General Assembly and a substitute enacted in lieu thereof, said substitute being as it is now contained in Section 8737, Code of Iowa 1931. That sub-division 3 of Section 8737, before its repeal and the enactment of a substitute, appeared in the Code of 1924 as follows:

"3. Municipal bonds. Bonds or other evidences of indebtedness of any county, city, town, or school district within this state or any other state, drainage district bonds of this state, improvement certificates issued by any municipal corporation of this state, such certificates being a first lien upon real estate within the corporate limits of the municipality issuing the same, where such bonds or other evidences of indebtedness are issued by authority of and according to law and bearing interest, and are approved by the commissioner of insurance."

Under the old sub-division 3, above quoted, it will be noted that bonds or other evidences of indebtedness of any county, city, town or school district within this state or any other state, etc. Under this section clearly only bonds which were evidences of indebtedness of a county could be accepted as a legal deposit. It should be noted that the new sub-division 3, as enacted by the 42nd General Assembly in paragraph a, only applies to bonds of any county, city, town, school, road, drainage or other taxing district within the State of Iowa or any other state and are not limited to bonds which are evidences of indebtedness.

The Legislature left out "other evidences of indebtedness" and it should be noted that in paragraph b of sub division 3, as above set out, the Legislature authorized as a legal investment "bonds or other evidences of indebtedness which are a general obligation of any county within the Dominion of Canada." This would indicate that the Legislature meant something different by "bonds" as used in paragraph a of sub-division 3 than that which they meant in paragraph b of said section.

In other words, with respect to bonds of the Dominion of Canada it provided that they should be evidences of indebtedness which were general obligations.

Examining the further provisions of Section 8737, Code of 1931, they indicate that it was the Legislature's intention to increase the legal investments for life insurance companies as they authorized investments in public utility bonds, railroad bonds, anticipation certificates issued by water-works trustees and improvement certificates.

It should be noted here that Section 8829, as it appeared in the Code of 1924, was also repealed by Chapter 201 of the Acts of the 42nd General Assembly,

and a substitute enacted in lieu thereof, which substitute, as heretofore stated, provided exactly the same in sub-division 3 as was provided in the same sub-division in Section 8737, Code of Iowa 1931.

An examination of water revenue bonds, with provisions as suggested in the question, discloses that said bonds are issued by the city or town under the authority of the law of the particular state and are an obligation of said city or town insofar as it is the duty of said city or town to levy and collect a rate which at all times is sufficient to pay the maturing principal and interest of said bonds.

The holder of such bonds could compel the city to levy and collect a rate sufficient to pay the maturing principal and interest.

We are, therefore, of the opinion that water revenue bonds, such as are here-in referred to, are bonds of a city or town within the meaning of the provisions of sub-division 3, paragraph a, Sections 8737 and 8829, Code of Iowa 1931, and are, therefore, legal investments for life and fraternal insurance companies of this state.

**COUNTY OFFICERS—DEPUTY—TREASURER:** The county treasurer and the sureties on his bond are liable for all shortages caused by the defalcation of any of his deputies. (Secs. 1066-a1, 1069, 1060, 5241, Code of 1931.)

November 17, 1932. *Auditor of State:* We acknowledge receipt of your letter of August 16, 1932, requesting an opinion of this department on the following question:

Where a deputy county treasurer has embezzled funds belonging to the county is the treasurer liable on his bond for such embezzled funds?

Section 1066-a1, Code of 1931, fixes the bond of the county treasurer at \$10,000.

Section 1069, Code of 1931, provides for the fixing of the amount of the bond of deputy officers, where the statute does not so fix, by the board of supervisors. Said section, among other things, provides as follows:

"\* \* \* The giving of such bond (meaning deputy county officer) shall not relieve the principal from liability for the official acts of the deputy."

Section 1060, Code of 1931, provides as follows:

"The sureties on such bond (meaning public officer) shall be liable for all money or public property that may come into the hands of such officer at any time during his possession of such office."

Section 5241, Code of 1931, requires that each deputy shall give a bond in amount to be fixed by the officer having the approval of the bond of his principal, with sureties to be approved by such officer.

We are of the opinion that under the above sections the county treasurer and the sureties on his bond are liable for all shortages caused by the defalcations of his deputies which are not recovered from the deputy and his sureties.

**ELECTIONS—POLLING PLACES:** The fact that a polling place is not located within the ward where the voters reside would not vitiate an election, the voters having had the opportunity to vote and generally knowing where the polling place for their particular ward or precinct was located.

November 18, 1932. *County Attorney, Humboldt, Iowa:* We acknowledge receipt of your letter dated November 16, 1932, requesting an opinion of this department on the following question:

The Town of Humboldt is divided into two wards. Each of the wards vote separately and have separate election boards. The polling places for both wards have always been in the City Hall at Humboldt, one ward of the town voting in one room and the other ward voting in another room. The City Hall is located in the west ward so that the people from the east ward actually go to the west ward to cast their votes. This has been the practice in Humboldt for many years.

One of the candidates for county supervisor is asking that the ballots of the whole east ward be thrown out on the grounds that it was not legal for them to vote outside of their ward.

Would the fact that the people living in the east ward of Humboldt voted at a separate polling place for east ward voters, which polling place was located in the west ward, invalidate the election?

We are of the opinion that inasmuch as an election was held and that the qualified electors living in the east ward of Humboldt generally knew where the polling place was, and all who desired to vote had an opportunity to so do, that the fact that the polling place for the east ward voters happened to be located across the street in the west ward would not in any way invalidate the election.

Our Supreme Court has generally held that the voice of the people is not to be rejected for a defect or even a want of notice if they have in truth been called upon and have spoken. Certainly the fact that the polling place was located across the street in the west ward would not prevent anyone from voting at the election.

For your information see *Dishon vs. Smith*, 10 Iowa, 212 at page 218.

**DOMESTIC ANIMALS:** Chapter 277 Code is broad enough to cover animals owned by non-resident, but being fed within the state.

November 22, 1932. *County Attorney, Orange City, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this Department on the following proposition:

"Does Chapter 277, Code of 1931, apply to sheep shipped into this county for feeding purposes, but owned by a foreign corporation and being fed under a written agreement under which the feeder is entitled to a certain compensation at the end of the feeding period, according to the increase in weight?"

Section 5452 of the Code provides as follows:

"Claims. *Any person damaged by the killing or injury of any domestic animal or fowl by wolves, or by dogs not owned by said person, may, within ten days from the time he or his agent has knowledge of such killing or injury, file with the county auditor of the county in which such killing or injury occurred a claim for such damage.*"

We are of the opinion that the feeder in your county has such an interest in the sheep on feed that he would be entitled to file a claim for such injury.

However, under the provisions of Section 5454, we are of the opinion that the board of supervisors would have the power and discretion to allow only such part of the claim as it may deem just and that there would be no appeal from such allowance.

**BANKS AND BANKING:** Examiner in charge may take acknowledgment on instrument running to receiver.

November 25, 1932. *Department of Banking:* Some time ago you requested an opinion orally as to whether or not an examiner in charge may take an acknowledgment on an instrument running to the receiver of the bank.



We are of the opinion that he can take such acknowledgment. In *Bardsley vs. German American Bank*, 113 Iowa, 216, our court held that the cashier of a bank could take an acknowledgment if he were not a stockholder and were merely an employee of the bank. An examiner in charge has no interest in the instrument acknowledged and only the receiver of the bank or the corporate existence has such interest. The examiner in charge would therefore not have such an interest in the transaction as would disqualify him from taking the acknowledgment.

**ENGINEERS:** Salesman offering engineering service in connection with sale of merchandise must have such work done by licensed engineer.

November 28, 1932. *Board of Engineering Examiners:* This will acknowledge receipt of your request for an opinion under date of September 21st on the following subjects:

"May a salesman when selling merchandise pertaining to engineering products offer in addition, and as an inducement, his personal analysis, survey, or engineering service conducted by himself, he being an unregistered engineer, and the said engineering service or analysis not having been originally made by a licensed engineer?"

We would say that it is our opinion that a salesman who offers an engineering service in connection with the sale of merchandise, this service to be performed by himself and he not being a licensed engineer in the State of Iowa, would be violating the present law.

**GASOLINE LICENSE FEE:** Contractor's remedy for refunds is by legislative act or legal action. (Sec. 5093-a8, Code, 1931.)

November 28, 1932. *Treasurer of State:* This will acknowledge receipt of your request received November 25th, which is as follows:

"Under the provisions of a decision of the Supreme Court, *Des Moines Asphalt Paving Company vs. R. E. Johnson*, Treasurer of State, 239 N.W. 575, it is held that paving contractors are entitled to reimbursement of gasoline tax on all equipment which may be used in road construction work, while such road is closed to public travel.

"Since 1925 the Treasurer of State has been rejecting claims for refund on all except stationary equipment used in construction work, acting under an opinion of the Attorney General, which held that all equipment moving under its own power should be classed as motor vehicles and therefore not subject to the provisions of Chapter 251-a1, Code 1927.

"Your opinion is requested on the following:

"Is the Treasurer of State authorized under the above decision, to now pay refund claims which were submitted to him and rejected, or claims which were not submitted for the reason that they would be rejected, if submitted?"

In reply we would say that we are of the opinion that the case of *Des Moines Asphalt Paving Company vs. R. E. Johnson*, found in 239 N. W. 575, of which you speak, does not in any way nor does it intend to grant refunds to contractors on road machinery used on closed roads, unless the application for refund is made within the ninety days as provided by Section 5093-a8, and that under the present statutes the Treasurer of State would not be authorized to pay refund claims which were submitted to him and rejected, or claims which were not submitted, for the reason that they would be rejected. We therefore must advise that your department should not pay any of these old claims, as the remedy for the contractors would either be by instituting a legal action as was done in the *Des Moines Asphalt Company* case, or by submitting their

claim to the legislature. This particularly is true in view of the fact that the conditions and facts in each case would undoubtedly be different and would not fall within the facts upon which the opinion was rendered in the Des Moines Asphalt case.

**INTOXICATING LIQUOR:** Podiatrists are entitled to issuance of alcohol permits. (Secs. 2136, 2510-d1, Code of 1931.)

November 28, 1932. *Board of Podiatry Examiners, Waterloo, Iowa:* This will acknowledge receipt of your request of October 19th in which you submit the following question:

"In view of the recent opinion of your office authorizing the issuance of alcohol permits to osteopaths would not podiatrists whose work is largely surgical work fall within the definition of licensed physicians as is provided in paragraph nine, Section 2136, of the Code?"

We would say that in view of the large surgical work done by podiatrists and the fact that they are considered doctors or physicians under Section 2510-d1, they would be entitled, under the laws of this state, to the issuance of alcohol permits.

**INSURANCE—MUTUAL ASSESSMENT COMPANIES:** A policyholder of a mutual assessment company is liable to an assessment to take care of losses occurring during the term of his membership, but not for any assessment for losses occurring before the date of his policy or after the lapsation thereof.

November 28, 1932. *Commissioner of Insurance:* We acknowledge receipt of your letter of November 14, 1932, requesting an opinion of this department on the following question:

A company operating under the provisions of Chapter 404, Code of 1931, on the mutual plan issues a policy which contains the following clause:

"The maximum contingent liability of the insured shall be an additional sum not greater than 100% of the premium paid."

(1) In the event the policy lapses or expires or is cancelled is the member liable for an additional assessment after such lapsation, expiration or cancellation, and, if so, for how long a period can he be so assessed?

(2) Is there any liability for an assessment for losses before or after the period of his membership?

You are advised that a policyholder of such a company with such a provision in the policy is liable to an assessment to take care of losses occurring during the term of his membership, and that said assessment could be spread and collected after the lapsation or expiration of his policy.

A policyholder in such a company is not liable for assessment for losses which occurred prior to his becoming a member of said company or after the expiration of his membership.

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