State of Iowa
1930

EIGHTEENTH BIENNIAL REPORT

of the

ATTORNEY GENERAL

for the

BIENNIAL PERIOD ENDING DECEMBER 31, 1930

JOHN FLETCHER
Attorney General

Published by
THE STATE OF IOWA
Des Moines

ATTORNEY GENERAL'S DEPARTMENT

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
GERALD O. BLAKE	Assistant Attorney General
ORAL S. SWIFT	Assistant Attorney General
HAZEL WEBSTER GROSS	Secretary to Attorney General
MARY WARD	Stenographer
LOIS GRIMM	Stenographer
EMMA CARLSON	Stenographer
ETHEL PICKARD	Stenographer
LOYAT BLAND	Stenographer

REPORT OF THE ATTORNEY GENERAL

January 30, 1931.

HONORABLE DAN W. TURNER,
Governor of Iowa,
Building.

Dear Governor Turner:

I am submitting herewith the Report of the Department of Justice for the years 1929-30. At this time I can only give you a general report which will be followed up in the near future by a detailed report of all the business transacted by the Department. The detailed report requires the working out of statistics of different kinds in the different divisions of the work in the Department and these will be furnished you as soon as possible.

The work of this Department increases from year to year. There has been much important litigation carried on by the Department as will be seen by the detailed report which will be furnished later. Many of our civil cases involve appeals by claimants from awards made by condemnation juries in right of way matters. Under the law enacted by the 43rd General Assembly, giving the Department a special Assistant Attorney General to take care of this class of cases, this litigation has been better systematized than ever before and better results we feel have been obtained.

CRIMINAL CASES

During the biennium approximately one hundred and eighty-seven cases have been handled by this Department in the Supreme Court. A tabulated list of these cases will be given in our detailed report.

CIVIL CASES IN THE SUPREME COURT

At the time of the last biennial report of this Department there was pending in the Supreme Court the case involving the constitutionality of the Road Bond Act.

This case was submitted to the Supreme Court after the report of the Department was mailed to your office, and a decision was handed down by the Supreme Court on the 5th day of March, 1929, holding the Road Bond Act invalid. Under the provisions of that Act the Attorney General was required to bring an action to test its validity. This was done and special counsel was employed

by the Executive Council to represent the Council in the litigation. Through the co-operation of counsel the matter was hastily tried and an opinion was obtained at a date much earlier than is usually possible in that class of cases.

BANK RECEIVERSHIPS

There have been a number of banks closed in the state during the biennium. This Department has nothing to do with banks as going institutions but, under the law, when a receiver is appointed, this Department becomes the legal adviser of the Superintendent of Banking, who is receiver, under the law, of all state and savings banks and loan and trust companies. There has been, however, little litigation during the past biennium with reference to these closed institutions. The law has been pretty well settled and the legal work in connection with the winding up of the affairs of the bank is more of a legal formality than it was at the beginning of the financial trouble. When it began we had practically no court precedents to follow, but practically every question of importance was litigated early in the beginning of our banking troubles so that now it is more a matter of following precedent in winding up affairs of the closed banks. I might say, however, in passing that the receivership law under which we operate in this state has saved an untold amount of money to the depositors and creditors of these closed institutions as liquidation costs have been kept to the minimum by reason of the systematization of the work.

RAILROAD MERGER CASE

In the last biennial report we reported our activities in connection with the application of the Great Northern and the Northern Pacific Railway Companies for the permission of the Interstate Commerce Commission to unify or merge their interests.

This Department was represented at the various hearings held throughout the United States by the Interstate Commerce Commission on this matter. This Department resisted the application along with the representatives of most of the other states affected, and filed printed briefs with the Interstate Commerce Commission, and took part in the oral arguments upon the final submission of said matter. The Interstate Commerce Commission in its decision authorized the merger, but attached certain conditions thereto among which were those urged principally by this Department, which conditions the applicants refused to accept. Subsequently

and within the last few weeks the applicants dismissed their application and abandoned the whole matter.

BUREAU OF INVESTIGATION

Connected with the Department of Justice is the Bureau of Investigation. The Bureau has been very active in the enforcement of the law. A detailed report will be furnished on the various matters handled by the Bureau.

During the biennium many bank robberies have been committed in the state. Through the activities of this Bureau, aided by the other peace officers of the state, we have, up to this time, apprehended, tried and convicted 42 persons, who participated in these robberies.

Hundreds of complaints by letter from different parts of the state have been received by the Department and have been handled by the Bureau of Investigation. Practically all of the sheriffs of the state, and many of the chiefs of police of the larger cities, have called upon the Bureau for assistance in connection with their work in their respective localities. We have answered every demand for assistance of this kind that has been made upon the Bureau where it was humanly possible to do so. As heretofore stated, I will furnish you with a detailed statement of the number of investigations made, and the number of persons arrested, the number of convictions had through the activities of this Bureau. I will also furnish you, insofar as possible, in detail, the work done with respect to the enforcement of the Prohibitory Law.

The Bureau of Identification, which is a part of the Bureau of Investigation, has done remarkable work during the biennium.

OTHER LAW ENFORCEMENT ACTIVITIES

Each year of the biennium we have held a School of Instruction for the sheriffs and peace officers of the state. Each School of Instruction has lasted for a period of three days. At the same time the County Attorneys have been called into conference and their work and the work of the sheriffs has been correlated as much as possible to bring about uniformity and better results in the enforcement of the law. The result of this general conference and School of Instruction has, in my judgment, been very beneficial to the people of the state. A better spirit of co-operation is engendered among all law enforcing officers and it works for uniformity of service in law enforcement work. We recommend that these annual

conferences be continued to the end that there may be complete working accord among all of the peace officers of the state.

In addition to our own peace officers and county attorneys who attend this conference we have, during the past two sessions, invited the chiefs of law enforcement work in the neighboring states. Many of them have responded and attended this conference. It brings about co-operation not only between the peace officers of our own state, but between them and the officers of our neighboring states.

CONCLUSION

I wish to express to you, as Governor of Iowa, and to all the public officials of the state, and to the people of the state themselves, the appreciation of this Department for the co-operation it has received during the biennium, and also to express in this public way my appreciation of the splendid and loyal co-operation of all persons employed both in the office of the Attorney General and in the Bureau of Investigation.

Respectfully submitted,

JOHN FLETCHER, *Attorney General.*

SCHEDULE "A," CRIMINAL CASES, SUPREME COURT OF IOWA
JANUARY TERM, 1929

Title of Case	County	Decision	Nature of Action
State vs. Anderson	Davis	Appeal abandoned	Larceny of domestic poultry.
State vs. Bamsey	Union	Affirmed	Illegal possession of intoxicating liquor.
State vs. Blake	Plymouth	Affirmed	Larceny.
State vs. Beumer	Sioux	Affirmed	Illegal possession of intoxicating liquor.
State vs. Bernard	Montgomery	Affirmed	Illegal possession of intoxicating liquor.
State vs. Bryant	Marshall	Affirmed	Illegal possession of intoxicating liquor.
State vs. Cook	Linn	Affirmed	Unlawfully using certain instrument or instruments to produce a miscarriage.
State vs. Davenport	Union	Affirmed	Rape.
State vs. Damerville	Polk	Affirmed	Operating a motor vehicle while intoxicated.
State vs. Hammett	Woodbury	Affirmed	Maintaining a liquor nuisance.
State vs. Halley	Black Hawk	Affirmed	Illegal trans. of intoxicating liquor.
State vs. Herring	Scott	Affirmed	Lewdness.
State vs. Hooper	Dallas	Affirmed	Subornation of perjury.
State vs. Larson	Wapello	Affirmed	Maintaining a liquor nuisance.
State vs. Leasman	Madison	Reversed	Larceny from a building.
State vs. Maharras	Black Hawk	Affirmed	Murder.
State vs. Plew	Lucas	Affirmed	Bootlegging.
State vs. Redlinger	Keokuk	Reversed	Failing to dispose of dead animals.
State vs. Smith	Davis	Reversed and remanded	Larceny of domestic poultry.
State vs. Sigman	Wright	Affirmed	Illegal possession of intoxicating liquor.
State vs. Terry	Woodbury	Affirmed	Conspiracy.
State vs. Trumbauer	Madison	Affirmed	Illegal possession of instruments capable of being used for Mann; intoxicating liquor.
State vs. Vucich	Lucas	Affirmed	Gambling.
State vs. Wilbois	Polk	Reversed and remanded	Liquor nuisance.
State vs. Woodruff	Polk	Reversed	Breaking and entering.

MAY TERM, 1929

Title of Case	County	Decision	Nature of Action
State vs. Anderson	Harrison	Reversed	Desertion.
State vs. Alberts	Mahaska	Affirmed	Maintaining liquor nuisance.
State vs. Aschtgen	Jones	Affirmed	Maintaining liquor nuisance.
State vs. A Certain Automobile	Marshall	Affirmed	Transportation of intoxicating liquor.
State vs. Bamsey	Union	Reversed	Bootlegging.
State vs. Bergman	Jasper	Reversed and remanded	Illegal possession of intoxicating liquor.
State vs. Bevins (Appeal to U. S. Supreme Court dismissed)	Fayette	Affirmed	Receiving funds when bank is insolvent.
State vs. Brown	Plymouth	Affirmed	Larceny of domestic fowls.
State vs. Burns	Clay	Affirmed	Illegal possession of intoxicating liquor.
State vs. Dietz	Polk	Affirmed	Maintaining liquor nuisance.
State vs. Dickerson	Polk	Dismissed	Violation of intoxicating liquor law.
State vs. Enzauro	Webster	Affirmed	Maintaining a liquor nuisance.
State vs. Gripp	Union	Affirmed	Larceny by embezzlement.
State vs. Helble	Scott	Dismissed	Hindering and refusing to allow an authorized veterinarian to treat breeding cattle.
State vs. Henderson	Fayette	Reversed	Accepting deposit when bank is insolvent.
State vs. Heinold	Des Moines	Affirmed	Conspiracy.
State vs. Hilton	Marshall	Affirmed	Illegal trans. of intoxicating liquor.
State vs. Hughey	Story	Affirmed	Practicing medicine without a license.
State vs. Kurtz	Story	Affirmed	Soliciting.
State vs. Landry	Polk	Affirmed	Violation of intoxicating liquor law.
State vs. Lockie	Calhoun	Affirmed	Bootlegging.
State vs. Morrison	Davis	Reversed	Perjury.
State vs. Porter	Polk	Affirmed	Violating intoxicating liquor law.
State vs. Reynolds (39571)	Dubuque	Reversed	Larceny by embezzlement.
State vs. Ruthford	Polk	Affirmed	Keeping gambling house.
State vs. Stevens	Wapello	Affirmed	Rape.
State vs. Stepheson	Plymouth	Affirmed	Erecting, establishing and using a building with intent to manufacture intoxicating liquor.

State vs. Sheffler	Black Hawk	Affirmed	Maintaining liquor nuisance.
State vs. Steffen	Pottawattamie	Reversed	Breaking and entering.
State vs. Stopulos	Scott	Affirmed	Illegal trans. of intoxicating liquor.
State vs. Schultz	Black Hawk	Affirmed	Buying, receiving and aiding in concealing stolen property.
State vs. Thomas	Johnson	Affirmed	Illegal trans. of intoxicating liquor.
State vs. Van Klavern	Wapello	Affirmed	Liquor nuisance.
State vs. Van Klavern	Wapello	Modified and affirmed	Illegal trans. of intoxicating liquor.
State vs. Van Doran	Pottawattamie	Affirmed	Murder, first degree.
State vs. Voelpel	Clinton	Reversed	Manslaughter.
State vs. Williams	Black Hawk	Affirmed	Maintaining liquor nuisance.
State vs. Wilson	Pottawattamie	Affirmed	Assault with intent to commit murder.

SEPTEMBER TERM, 1929

Title of Case	County	Decision	Nature of Action
State vs. Archibald	Appanoose	Affirmed	Breaking and entering.
State vs. Blackwood	Wapello	Affirmed	Maintaining liquor nuisance.
State vs. Bartlett	Jones	Affirmed	Nuisance.
State vs. Bein	Scott	Affirmed	Maintaining liquor nuisance.
State vs. Breitback	Jones	Affirmed	Nuisance.
State vs. Bittner	Webster	Affirmed	Murder, first degree.
State vs. Bobber	Wapello	Affirmed	Larceny by embezzlement.
State vs. Bowers	Cherokee	Affirmed	Perjury.
State vs. Campbell	Warren	Affirmed	Illegal transportation of liquor.
State vs. Chanen	Des Moines	Reversed	Receiving and aiding in concealing stolen property.
State vs. Davis (Walter)	Polk	Reversed	Murder, second degree.
State vs. Eden	Jones	Dismissed	Nuisance.
State vs. Faber	Jones	Affirmed	Nuisance and illegal possession of intoxicating liquor.
State vs. Friend (39961)	Hardin	Dismissed	Illegal trans. of intoxicating liquor.
State vs. Getchell	Poweshiek	Affirmed	Illegal trans. of intoxicating liquor.

SEPTEMBER TERM, 1929—Continued

Title of Case	County	Decision	Nature of Action
State vs. Heptonstall	Dallas	Affirmed	Libel.
State vs. Heeron	Union	Affirmed	Illegal possession of a narcotic drug.
State vs. Hixson	Jefferson	Affirmed	Cheating by false pretenses.
State vs. Holmes	Jefferson	Affirmed	Illegal possession of intoxicating liquor.
State vs. Huntley	Mahaska	Affirmed	Injunction case—bootlegging.
State vs. Koppess	Jones	Affirmed	Nuisance.
State vs. Lamb	Polk	Affirmed	Incest.
State vs. Little	Mahaska	Affirmed	Perjury.
State vs. Martin	Keokuk	Affirmed	Bootlegging.
State vs. Miller	Woodbury	Affirmed	Conspiracy.
State vs. Mundy	Polk	Affirmed	Robbery aggravation.
State vs. Nissen	Plymouth	Affirmed	Maintaining liquor nuisance.
State vs. Niehaus	Clayton	Affirmed	Fraudulent banking.
State vs. Parsons	Marshall	Affirmed	Bootlegging.
State vs. Perkins	Mahaska	Affirmed	Bootlegging.
State vs. Raney	Appanoose	Affirmed	Nuisance.
State vs. Reynolds (39730)	Dubuque	Affirmed	Larceny by embezzlement.
State vs. Reynolds (39731)	Dubuque	Reversed	Larceny by embezzlement.
State vs. Rime	Davis	Remanded with directions	Assault with intent to commit murder.
State vs. Rollinger	Plymouth	Affirmed	Bootlegging.
State vs. Salisbury	Lucas	Affirmed	Nuisance.
State vs. Steele	Guthrie	Affirmed	Rape.
State vs. Scovel	Polk	Affirmed	Breaking and entering.
State vs. Thomas	Monroe	Affirmed	Nuisance.
State vs. Thomlinson	Des Moines	Affirmed	Manslaughter.
State vs. Umphalbaugh	Harrison	Affirmed	Illegal possession of intoxicating liquor.
State vs. Vescio	Scott	Affirmed	Maintaining liquor nuisance.
State vs. Westercamp	Jasper	Affirmed	Bootlegging.
State vs. Winters	Marshall	Reversed	Larceny of poultry.

Title of Case	County	Decision	Nature of Action
State vs. Beckel	Polk	Dismissed	Larceny of a motor vehicle.
State vs. Bingaman	Mills	Affirmed	Assault with intent to commit murder.
State vs. Bourgeois	Lee	Affirmed	Maintaining liquor nuisance.
State vs. One Certain Buick Sedan	Buchanan	Affirmed	Forfeiture for transportation of intoxicating liquor.
State vs. Dennis	Scott	Affirmed	Operating motor vehicle while intoxicated.
State vs. Delanty	Pottawattamie	Reversed	Larceny of domestic animals.
State vs. Donovan	Woodbury	Affirmed	Sodomy.
State vs. Friend (39200)	Tama	Affirmed	Buying and receiving stolen property.
State vs. Gardner (40230)	Jefferson	Affirmed	Illegal sale of intoxicating liquor.
State vs. Gardner (40231)	Jefferson	Affirmed	Illegal possession of intoxicating liquor.
State vs. Herbert	Davis	Reversed	Maintaining liquor nuisance.
State vs. Harry Johnson	Bremer	Affirmed	Larceny of hogs.
State vs. Livingston	Lee	Affirmed	Maintaining a liquor nuisance.
State vs. Liechti	Keokuk	Reversed	Driving while intoxicated.
State vs. McCarty	Webster	Reversed and remanded	Larceny of property.
State vs. Matthes	Johnson	Reversed	Illegal possession of liquor.
State vs. Moore	Mahaska	Reversed	Bootlegging.
State vs. Neiswander	Scott	Affirmed	Intoxicating liquor nuisance.
State vs. Pauley	Shelby	Reversed	Larceny of poultry.
State vs. Renslow (40077)	Guthrie	Affirmed	Receiving and aiding in concealing stolen property.
State vs. Renslow (40078)	Guthrie	Reversed	Larceny.
State vs. Steffen (39540)	Pottawattamie	Reversed	Breaking and entering.

MAY TERM, 1930

Title of Case	County	Decision	Nature of Action
State vs. One Certain Automobile	Poweshiek	Affirmed	Forfeiture for transportation of intoxicating liquor.
State vs. Ashurst	Ringgold	Reversed	Rape.
State vs. Bonner	Woodbury	Affirmed	Murder—convicted of manslaughter.
State vs. Clark	Dickinson	Reversed	Illegal possession of intoxicating liquor.
State vs. DeMara	Woodbury	Affirmed	Assault with intent to commit rape.
State vs. Erle	Woodbury	Reversed	Violating child labor law.
State vs. Frazier	Pottawattamie	Affirmed	Illegal possession of intoxicating liquor.
State vs. Ferro	Appanoose	Affirmed	Maintaining intoxicating liquor nuisance.
State vs. Halley	Buchanan	Affirmed	Illegal trans. of intoxicating liquor.
State vs. Herbert	Davis	Reversed	Violation of the prohibitory liquor laws.
State vs. Horner	Cerro Gordo	Affirmed	Transportation of intoxicating liquor.
State vs. Hutchinson, Bill McWilliams.	Appanoose	Affirmed	Breaking, entering and larceny.
State vs. Hughes	Woodbury	Affirmed	Murder.
State vs. Hyduck	Monroe	Reversed	Maintaining liquor nuisance.
State vs. Love	Mahaska	Reversed	Desertion.
State vs. Moore	Johnson	Affirmed	Keeping gambling house.
State vs. Pittman	Polk	Affirmed	Larceny of motor vehicle.
State vs. Rowe	Page	Affirmed	Entering bank with intent to rob.
State vs. Shaulis	Black Hawk	Affirmed	Liquor nuisance.
State vs. Schultz	Polk	Affirmed	Keeping gambling house.
State vs. Taylor	Black Hawk	Affirmed	Liquor nuisance.
State vs. Western	Union	Reversed	Assault with intent to commit rape.
State vs. Woodmansee	Polk	Affirmed	Murder.

SEPTEMBER TERM, 1930

Title of Case	County	Decision	Nature of Action
State vs. Brant	Woodbury	Reversed	Larceny of poultry.
State vs. Blackledge	Polk	Affirmed	Obtaining property by false and fraudulent representations.
State vs. Bare	Mills	Affirmed	Maintaining liquor nuisance.
State vs. Bird	Pottawattamie	Affirmed	Assault with intent to commit murder.
State vs. Burke	Jefferson	Affirmed	
State vs. Burns	Plymouth	Affirmed	Maintaining liquor nuisance.
State vs. Blum	Carroll	Affirmed	Maintaining liquor nuisance.
State vs. Brunson	Carroll	Affirmed	Robbery.
State vs. Buelt	Carroll	Affirmed	Maintaining liquor nuisance.
State vs Connars	Dés Moines	Affirmed	Keeping house of ill fame.
State vs. Davis	Clarke	Dismissed	Concealing stolen property.
State vs. Denning	Linn	Affirmed	Maintaining liquor nuisance.
State vs. Gatrel	Wayne	Affirmed	Larceny.
State vs. Goldenberg	Webster	Affirmed	Making a malicious threat to extort.
State vs. Goetzinger	Carroll	Affirmed	Maintaining liquor nuisance.
State vs. Hartman	Dickinson	Affirmed	Conspiracy.
State vs. Huckins	Linn	Reversed	Obtaining money by false pretenses.
State vs. Russell Johnson	Dallas	Affirmed	Illegal trans. of intoxicating liquor.
State vs. Walter Johnson	Pottawattamie	Reversed	Murder, first degree.
State vs. Konzen	Franklin	Affirmed	Bootlegging.
State vs. Kohorst	Carroll	Affirmed	Maintaining liquor nuisance.
State vs. Kuhl	Carroll	Affirmed	Maintaining liquor nuisance.
State vs. Lane	Mills	Affirmed	Assault with intent to do great bodily injury.
State vs. Livermore	Linn	Affirmed	Bootlegging.
State vs. Manly	Black Hawk	Affirmed	Larceny of hogs.
State vs. Mathews	Story	Dismissed	Larceny of poultry.
State vs. Phillips	Louisa	Affirmed	Liquor nuisance.
State vs. Ridgell	Polk	Affirmed	Robbery with aggravation.
State vs. Rourick	Cass	Reversed	Assault and battery.
State vs. Smalley	Mahaska	Reversed	Bootlegging.

SEPTEMBER TERM, 1930—Continued

Title of Case	County	Decision	Nature of Action
State vs. Schwaller	Carroll	Affirmed	Liquor.
State vs. Slycord	Monroe	Affirmed	Maintaining a nuisance.
State vs. Twine	Polk	Affirmed	Murder, first degree.
State vs. Townsend	Adams	Affirmed	Unlawful possession of intox. liquor.
State vs. Wagner	Linn	Affirmed	Illegal trans. of intoxicating liquor.

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

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

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 sustained.
Home Savings Bank, Appellant, vs. J. M. Stewart, Member of Board of Supervisors	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained.
State of Iowa and Iowa State Highway Commission vs. Central States Electric Company, Appellant	Kossuth	Petition for rehearing denied. Right of Highway Commission to locate poles of transmission lines on the public highways sustained, however all of structure must be in the highway.
Central States Electric Company, Appellant, vs. Pocahontas County, Iowa, and Board of Supervisors	Pocahontas	Petition for rehearing denied. Right of Highway Commission to locate poles of transmission lines on the public highways sustained, however all of structure must be in the highway.
Iowa Railway & Light Corporation, Appellant, vs. Lindsey, Engineer of Greene County	Greene	Petition for rehearing denied. Right of Highway Commission to locate poles of transmission lines on the public highways sustained, however all of structure must be in the highway.
County of Scott et al., Appellants, vs. Johnson, Treasurer of State	Scott	Petition for rehearing denied. Constitutionality of state sinking fund for public deposits sustained.
New York Life Insurance Co., Appellant, vs. Burbank, Treasurer of State	Polk	Petition for rehearing denied; sustaining taxation of foreign life insurance companies.
Solberg vs. Davenport, Smith, Secretary of State, et al., Appellants	Woodbury	Reversed. Constitutionality of the law for the paying of additional tax for overloading of motor trucks sustained.

SCHEDULE "B"—Continued

Case	County	Notation
Wm. D. Jenkins vs. State Highway Commission, Appellant	Boone	Reversed. Appeal from verdict of jury in condemnation by Highway Commission.
Anton Paulson vs. State Highway Commission, Appellant	Boone	Reversed. Holding the lower court erred in admission of evidence and instructions to the jury.
Ray Welton, Appellant, vs. State Highway Commission	Mahaska	Affirmed. Lower court held it had no jurisdiction to enjoin the Highway Commission.
Ray Welton vs. State Highway Commission, Appellant	Mahaska	Reversed. Supreme Court holding the District Court erred in the admission of evidence and the instructions.
Hoover, Appellant, vs. State Highway Commission	Mahaska	Affirmed. Lower court refused to enjoin the Highway Commission.
Charles Butterworth vs. State Highway Commission, Appellant	Webster	Affirmed. Restraining the rounding of a corner in the construction of a primary road.
Dean vs. State Highway Commission, Appellant	Story	Reversed. Appeal from verdict and judgment of lower court by the Highway Commission.
Employment Bureau, Appellant, vs. Employment Agency Commission, et al	Polk	Mandamus action. Affirmed.
State vs. Bailey Dental Company, Appellant	Polk	Affirmed. Action to restrain from practicing dentistry without a license.
State, Appellant, vs. Northern Iowa Oil Company.	Howard	Affirmed. Action for recovery of gasoline tax denied.
State, Appellant, vs. Norman G. Baker	Muscatine	Reversed. Action to restrain from practicing medicine and surgery without a license.
Woodbine Savings Bank vs. Shriver, Appellant, Superintendent of Banking, Amicus Curiae	Iowa	Reversed; affirmed on rehearing. Constitutionality of statute for deficiency judgment after sale of stock for stock assessment sustained.

Andrew, Appellant, vs. Farmers Trust and Savings Bank of Rodman; School District Intervenor...	Palo Alto	Reversed. Involved right of public body to enforce claim against the sinking fund where there was embezzlement by treasurer-cashier. Rehearing granted. Appeal dismissed.
Field vs. Samuelson, Appellant.....	Polk	Reversed. Mandamus to compel the State Superintendent to review refusal of consent of county superintendent to attend school in another district under Section 4274, Code.
Loftus et al. vs. Department of Agriculture, et al., Appellants	Mitchell	Reversed. Bovine tuberculosis eradication statute declared constitutional. Appeal to Supreme Court U. S. dismissed.
Peverill et al., appellants vs. Department of Agriculture, et al.....	Black Hawk	Affirmed. Bovine tuberculosis eradication statute declared constitutional.
Runyan vs. Farmers Bank; School District vs. Johnson, Treasurer of State, Appellant.....	Warren	Affirmed. Claim of school district allowed where treasurer-cashier embezzled funds.
C. F. Kinney and R. E. Johnson, Treasurer of State, Appellants, vs. Bank of Plymouth, et al..	Cerro Gordo	Affirmed. Pending in the Supreme Court on the question of the individual liability of the owners of a private bank for deposits.
Randell vs. State Highway Commission, Appellant	Mahaska	Appeal from the decision of the lower court pending on appeal. Pending.
Oscar Shivvers vs. State Highway Commission, Appellant	Marion	Appeal of Highway Commission from judgment and verdict in lower court. Pending.
McClain vs. State Highway Commission, Appellant	Marion	Appeal of Highway Commission from judgment and verdict in lower court. Pending.
Missouri Gravel Co., Appellant, vs. Rock Island Cement Co., State Highway Commission, et al...	Lee	Appeal from ruling of the District Court that claims against contractor on primary road construction work were properly filed with the auditor of the State Highway Commission. Pending.

SCHEDULE "B"—Continued

Case	County	Notation
Frost et al., Appellants, vs. Thornburg et al.....	Black Hawk	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained. Pending.
McDowell et al., Appellants, vs. Department of Agriculture et al.....	Delaware	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained. Pending.
Panther et al. vs. Department of Agriculture et al., Appellants	O'Brien	Reversed. Involves constitutionality of bovine tuberculosis eradication statutes.
Schofield et al., Appellants, vs. Department of Agriculture, et al.....	Fayette	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained. Pending.
Independent School District of Rolfe, vs. R. E. Johnson, Treasurer of State, Appellant.....	Pocahontas	Involves deposit in the name of Secretary of the school board against state sinking fund. Pending.
State of Iowa ex rel. Iowa State Board of Assessment and Review vs. Board of Supervisors of Webster County, Iowa, Appellants.....	Webster	Affirmed. Involves the right of the State Board of Assessment and Review to alter the assessment of real estate in the off year.
Davidson Building Company, Appellant, vs. City of Des Moines.....	Polk	Involves workability and constitutionality of State Board of Assessment Review law. Sustained as constitutional.
Boyd vs. Johnson, Treasurer.....	Lee	Involves constitutionality of public fund sinking act as applied to school districts. Motion to dismiss sustained. Pending.
State of Iowa, ex rel. John Fletcher, vs. Webster-Wright-Humboldt Counties, John Voog, Insane..	Webster	Dismissed with opinion filed.

In the Matter of Vera Gage, Minor, Tacy, Claimant, Appellant	Harrison	Reversed. Involved right of legislature to limit use of trust fund created by state.
Paul Ogilvie et al., Appellants, vs. City of Des Moines, State of Iowa	Polk	Affirmed. Workmen's compensation. Police officer where pension provided.
H. H. Dee vs. Tama County et al	Tama	Affirmed. State in case as Amicus Curiae. Held no authority to issue secondary road bonds.

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

Case	County	Notation
Iowa Motor Vehicle Association, Appellant, vs. Board of Railroad Commissioners	Polk	Constitutionality of the law taxing motor vehicle carriers and motor busses sustained by Supreme Court of United States.
Loftus et al., Appellants, vs. Department of Agriculture et al	Mitchell	Appeal dismissed.
Iowa National Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.
Peoples Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.
Central State Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.

SCHEDULE "C"—Continued

Case	County	Notation
Central Trust Company, Appellant, vs. J. M. Stewart, Members of Board of Supervisors.....	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.
Valley National Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors.....	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.
Valley Savings Bank, Appellant, vs. J. M. Stewart, Members of Board of Supervisors.....	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.
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 sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.
Home Savings Bank, Appellant, vs. J. M. Stewart, Member of Board of Supervisors.....	Polk	Constitutionality of the law in reference to the taxation of state and national banks sustained by the Supreme Court of Iowa, pending in Supreme Court of United States.

SCHEDULE "D," CIVIL CASES—DISTRICT COURT OF THE UNITED STATES

Case	Court	Notation
Monolite Company of America vs. Metz Construction Co. and State Highway Commission.....	United States Dist. Court at Omaha..	Action brought for alleged infringement of patent in the construction of highways. Case dismissed by plaintiff.
Bailey vs. Smith, Secretary of State.....	Central Division So. Dist. of Iowa.	Injunction to restrain Secretary of State from collecting motor vehicle license fees on cars owned and privately used by soldiers at Fort Des Moines. Motion to dismiss sustained.
Board of Control vs. Salant et al.....	Central Division So. Dist. of Iowa.	Action on contract. Motion to remand sustained.
Salant et al. vs. Board of Control.....	Central Division So. Dist. of Iowa.	Injunction to restrain interference with removal of machinery at penitentiary.

SCHEDULE "E," INHERITANCE TAX CASES—SUPREME COURT OF IOWA

Title of Case	County	Decision	Notation
In re Estate of Archibald C. Smith (foreign)	Polk	Reversed	Treasurer of State, Appellee
W. F. Insel, Ex., Appellant, vs. Wright County, Iowa (W. C. Halsey Estate).	Wright	Affirmed	Treasurer of State, Appellee.

SCHEDULE "F," INHERITANCE TAX CASES—DISTRICT COURT

Title of Case	County	Decision	Notation
In re Estate of D. C. Bradley	Appanoose	Pending	Objection to appraisal.
In re Estate of John Barry	Benton	Pending	Action to set aside computation of tax.
In re Estate of Jesse Straight	Harrison	Pending	Acting to collect tax on transfer of property.
In re Estate of Elizabeth Emert	Black Hawk	Settled by payment of full amount due	Action to tax on property transferred in contemplation of death.
In re Estate of Johann Schlicht (foreign)	Pottawattamie	Settled by payment of full amount due	Application to set aside tax assessed upon beneficiary whose place of residence was unknown.
In re Estate of A. N. Palmer	Linn	Settled by payment of full amount due	Action to set aside computation of tax.
In re Estate of Robert O. Burghardt	Boone	Pending	Objection to appraisal.
In re Estate of Clara Raines	Mills	Pending	Objection to appraisal.
In re Estate of L. C. Goodsell	Chickasaw	Settled by payment of full amount due	Objection to appraisal.
In re Estate of Boyard T. Hough	Polk	Settled by payment of full amount due	Objection to appraisal.
In re Estate of Lucy A. Charter	Linn	Pending	Objection to appraisal.
In re Estate of Jane E. Bethards	Buena Vista	Settled by compromise	Objection to appraisal.
In re Estate of James Hickey	Linn	Settled by payment of full amount due	Objection to appraisal.
In re Estate of William Boedeker	Jasper	Settled by payment of full amount due	Objection to appraisal.
In re Estate of J. W. Skipton	Woodbury	Settled by payment of full amount due	Objection to appraisal.

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 49 compromise settlements made with the approval of the court, the Attorney General having investigated and advised settlement. Total value of compromises, $48,095.41.

SCHEDULE "G," OTHER CIVIL CASES IN DISTRICT COURT

Case	County	Notation
Jacobsen et al. vs. Department of Agriculture et al.	Grundy	Injunction to restrain enforcement of bovine tuberculosis eradication statutes. Pending.
Carlson et al. vs. Department of Agriculture, et al.	Clay	Involved constitutionality of bovine tuberculosis eradication statute. Motion to dismiss sustained.
Butterbrodt et al. vs. Department of Agriculture et al.	Cedar	Injunction to restrain enforcement of bovine tuberculosis eradication statutes. Temporary injunction denied. Dismissed.
Schedtler et al. vs. Department of Agriculture, et al.	Bremer	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.
Gallup et al. vs. Department of Agriculture, et al..	Buchanan	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.
Schrage et al. vs. Department of Agriculture, et al.	Butler	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.
Ashley et al. vs. Department of Agriculture et al..	Chickasaw	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.
Nelsen et al. vs. Department of Agriculture et al..	Emmett	Involves constitutionality of bovine tuberculosis eradication statutes. Petition dismissed.
Dreyer et al vs. Department of Agriculture et al...	Floyd	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.
Harmeyer et al. vs. Department of Agriculture, et al.	Lee	Involves constitutionality of bovine tuberculosis eradication statutes. Pending.
Cawiezell et al. vs. Department of Agriculture et al.	Muscatine	Involves constitutionality of bovine tuberculosis eradication statute. Pending.
Moeller et al. vs. Department of Agriculture et al.	Sioux	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.
Elsbernd et al vs. Department of Agriculture et al.	Winneshiek	Involves constitutionality of bovine tuberculosis eradication statutes. Motion to dismiss sustained.

SCHEDULE "G"—Continued

Case	County	Notation
Thies vs. Mark Thornburg et al	Sac	Involves constitutionality of rendering plant law. Dismissed.
In re Estate of Belle and Mary Masden	Henry	Construction of a will, State Board of Education, Beneficiary.
Andrew vs. New Sharon State Bank, Whalen, Intervenor	Mahaska	Involved question of parol proof of designation of depository by a school board. Held evidence admissible. (See Ch. 2, 44 G. A.)
Buser, County Treasurer, vs. Ransom Estate	Des Moines	Involves collection of tax on omitted property.
Iowa State Board of Education vs. Hoyt	Delaware	Foreclosure of mortgage.
Rovanne vs. Johnson, Treasurer	Lee	Involves constitutionality of public fund sinking act as applied to special charter cities.
Nissen et al. vs. Reed, Thornburg et al	Humboldt	Injunction to restrain prosecution for operating rendering plant without license. Petition dismissed.
State vs. C. A. Pastner	Page	Action to restrain from practicing medicine and surgery without a license. Dismissed.
State vs. O. A. Kinsel	Cedar	Action to restrain from practicing medicine and surgery without a license. Injunction issued.
State vs. Warren Kenison	Worth	Action to revoke license to practice barbering. Pending.
State vs. Eldryn Kenison	Worth	Action to revoke license to practice barbering. Pending.
State vs. Daniel and Mary Heckman	Wapello	Action to restrain from practicing chiropractic without a license. Pending.
State vs. Harry Walter Harmer	Des Moines	Action to restrain from practicing medicine and surgery without a license. Pending.
State vs. Banner Howard	Linn	Action to restrain from practicing medicine and surgery without a license. Motion to dismiss sustained.
State vs. W. A. Benadom	Scott	Action to restrain from practicing medicine and surgery without a license. Injunction granted.

State vs. G. E. Fray	Keokuk	Action to restrain from practicing medicine and surgery without a license. Injunction granted.
State vs. Henry Quigley	Decatur	Action to restrain from practicing medicine and surgery without a license. Injunction granted.
State vs. Jesse Lee Cook	Jones	Action to revoke license to practice medicine and surgery. Pending.
State vs. S. A. Casady	Page	Action to restrain from practicing medicine and surgery without a license. Injunction granted.
State ex rel. Robert D. Blue vs. C. H. Hanson	Wright	Action to restrain from practicing medicine and surgery without a license. Fine and jail sentence imposed for contempt.
State vs. L. S. Schroeberl	Calhoun	Action to restrain from practicing chiropractic without a license. Injunction issued.
State vs. K. M. Knutson	Linn	Action to restrain from practicing medicine and surgery without a license. Pending.
State vs. Bruce Miller	Muscatine	Action to restrain from practicing medicine and surgery without a license. Pending.
State vs. Charles Gearing, Harry M. Hoxsey, Mary Turner, Myrtle Gresham	Muscatine	Action to restrain from practicing medicine and surgery without a license. Injunctions issued.
State vs. Fillup My Car and I. J. Pollard	Woodbury	Writ of attachment issued. Cause dismissed and attachment dissolved.
State vs. Des Moines Independent Oil Company	Polk	Writ of attachment issued.
J. F. Lineberger vs. Ray E. Johnson	Polk	Injunction issued against State Treasurer to restrain him from collecting gasoline tax on naphtha. Petition dismissed.
State of Iowa ex rel., John Fletcher, Attorney General, vs. The International Life Insurance Company of St. Louis, Missouri	Polk	Decree in favor of plaintiff confirming and establishing title to securities deposited with Insurance Department.
John W. Abel et al vs. Sam C. Ragan et al	Keokuk	Action to enjoin auditor of State and County Auditor of Keokuk County from paying for support of plaintiff at Mount Pleasant. Dismissed at plaintiff's cost.

SCHEDULE "G"—Continued

Case	County	Notation
State of Iowa, Board of Conservation et al. vs. D. A. Grimm and Glenn McElroy	Muscatine	Action in mandamus to compel use of park road. Settled.
State of Iowa vs. Appanoose County, Polk County, Wayne County et al., Josephine Bills, Insane	Appanoose	Involves settlement of insane person. Pending.
Humphrey vs. State Highway Commission	Kossuth	Mandamus action. Dismissed by plaintiff.
Incorporated Town of Janesville vs. State Highway Commission	Bremer	Injunction to restrain change in the location of a primary road in the town.
Anderson vs. State Highway Commission	Monroe	Suit for damages.
State Highway Commission vs. Welch	Mahaska	Action to set aside fraudulent deed brought by the Highway Commission. Deed set aside.
Asher vs. State Highway Commission	Mahaska	Foreclosure of mortgage on land over which the Highway Commission had purchased right of way.
Asher Motors, Inc., vs. Stover and State Highway Commission, Garnishee	Clay	Garnishment against State Highway Commission. Dismissed by the District Court.
Brose vs. Grandokken and State Highway Commission, Garnishee	Worth	Dismissed on motion of the Highway Commission by the District Court.
Cherrie vs. Town of Ankeny and State Highway Commission	Polk	Action for damages. Held for defendant.
Gibson vs. Union County and State Highway Commission	Union	Damages for appropriation of land for highway purposes.
Kellogg-Mackey Co. vs. State Highway Commission, Garnishee	Wapello	Garnishment dismissed on motion of the Highway Commission by the District Court.
McComb Motor Co. et al. vs. State Highway Commission, Garnishee	Clay	Dismissed on motion of the Highway Commission by the District Court.

Sesto vs. Wachtler and State Highway Commission	Ida	Action brought on alleged forced account.
Iowa State Highway Commission vs. Port R. Spears	Page	Injunction proceedings by the Highway Commission to restrain defendant from obstructing highway drainage. Injunction granted by the District Court.
Thompson, Receiver, vs. Larson Construction Co., Iowa State Highway Commission, Garnishee	Jasper	District Court sustained motion of the commission to dismiss garnishment.
Wilson vs. Dallas County and State Highway Commission	Dallas	Damages for personal injuries on the road.
Wallace vs. Highway Commission	Mills	Injunction proceedings to restrain the diversion of water.
Stilen vs. State Highway Commission	Pottawattamie	Action to compel condemnation of real estate for highway purposes.
Sharr vs. Vandell and State Highway Commission et al	Wayne	Foreclosure of mortgage.
Hoffmeister vs. Carlson Construction Co., State Highway Commission	Cass	Injunction to compel defendants to remove certain dirt. Special appearance to jurisdiction of the court sustained.
Charles Butterworth vs. State Highway Commission	Webster	Injunction, restraining the rounding of a corner in the construction of a primary road.
Carroll Investment Company vs. State Highway Commission	Carroll	Injunction proceedings.
Benit & Armstrong vs. State Highway Commission	Dickinson	Injunction and damages.

In addition to the foregoing cases, the department has handled over one hundred appeals from condemnation awards on right of way for highway purposes during the biennium.

SCHEDULE "H," REPORT OF BUREAU OF INVESTIGATION

JAMES E. RISDEN, *Chief*

The following report is a consolidated report of the Coroners of the various counties of the State showing the number of accidental deaths, suicides, murders and justifiable homicides for the years 1929 and 1930 as per Chapter 143 of the 43rd General Assembly of the State of Iowa.

County	1929				1930			
	Accidents	Suicides	Murders	Justifiable homicides	Accidents	Suicides	Murders	Justifiable homicides
Adair								
Adams	5	3			3	1		
Allamakee		1			1			
Appanoose	1		1					
Audubon	2	2			3	3		
Benton	8	2			6	4		
Black Hawk	23	12	4		35	8	3	
Boone								
Bremer	3	2			4	2		
Buchanan	1	6			1			
Buena Vista	8	3			8	6	1	
Butler	4	1			3	1		
Calhoun	4	3			4	2	1	
Carroll	2	3			1	2		
Cass					1	1		
Cedar	1	4					1	
Cerro Gordo	1	1						
Cherokee								
Chickasaw								
Clarke	4	1			3	2		
Clay	2		1		4	1		
Clayton								
Clinton	22	11	1		26	14	1	
Crawford								
Dallas	1		1					
Davis	1	1						
Decatur	3				3	2		
Delaware								
Des Moines	15	12			12	9	1	
Dickinson								
Dubuque	31	8	1		34	8	2	
Emmet		1						
Fayette		1						
Floyd								
Franklin	7	4			2	1		
Fremont	2	2						
Greene	1	1						
Grundy		1						
Guthrie		1			5	2		
Hamilton	1				5	3		
Hancock		1						
Hardin	2	2						
Harrison	11	1			1			
Henry	2	1						
Howard	3	1			1	2		
Humboldt	2	1			2	1		
Ida					3		2	
Iowa	1	1	1					
Jackson		1			1			
Jasper					1			
Jefferson	1	1						
Johnson	3				1		1	
Jones								
Keokuk	1	1						
Kossuth								
Lee	1				5		1	
Linn	12	15						
Louisa								
Lucas	4	1						

SCHEDULE "H"—Continued

County	1929				1930			
	Accidents	Suicides	Murders	Justifiable homicides	Accidents	Suicides	Murders	Justifiable homicides
Lyon	7	1			4	2		
Madison	1				2	2	1	
Mahaska	7	5			2	1		
Marion		1						
Marshall								
Mills		1	2					
Mitchell	5	2			3	1		
Monona								
Monroe	5	3	1		14	1	1	
Montgomery	3							
Muscatine								
O'Brien	6	2			1	3	1	
Osceola								
Page	10	2			1	3		
Palo Alto	3				2	1		
Plymouth	2	1			1	2		
Pocahontas	1							
Polk	103	22	3	1	85	34	8	2
Pottawattamie	8	2						
Poweshiek	4	1						
Ringgold		1			1			
Sac								
Scott	41	27	6		46	33	5	
Shelby	3	1			4	1		
Sioux								
Story	1	3			5	7		
Tama	4	4	1		12	5		
Taylor								
Union	2	2			1	1	1	
Van Buren		1			1	1		
Wapello	7	6				1		
Warren	6	4	1		1	1		
Washington	2	1			5	4	2	
Wayne	1							
Webster	2							
Winnebago	1				1			
Winneshiek								
Woodbury	41	20	7	3	14	5	1	
Worth	4							
Wright		2	2					
Totals	476	230	34	4	385	184	34	2

LIST OF PERSONS COMMITTED TO FT. MADISON FOR MURDER DURING THE YEARS 1929-1930

	Degree	County	
Branch, James	1	Des Moines	October, '30
Butler, Charles	1	Linn	November, '30
Danijancech, George	1	Appanoose	April, '29
Davis, Walter	2	Polk	January, '29
Edwards, Homer	2	Osceola	December, '29
Gantz, B. N.	2	Jefferson	February, '29
Greenhalgh, William	2	Marion	May, '30
Haberman, Gerald	1	Dubuque	March, '30
Hill, Tolbert	2	Pottawattamie	November, '29
Loose, Edward J.	1	Des Moines	January, '29
Lopez, Manuel	2	Fayette	January, '29
Luder, John	2	Lee	November, '29
Mohr, Lester	2	Ida	July, '30
Morrison, C. W.	2	Sac	August, '29
McCormick, Raymond	1	Dubuque	March, '30
McKinney, George T.	1	Jasper	May, '30
Neely, Harry	1	Pottawattamie	December, '30
Newton, Floyd	1	Polk	November, '30
Ollinger, J. A. R.	1	Dubuque	November, '30
Posten, F. D.	2	Polk	September, '30
Roman, Tom	2	Monroe	March, '30
Roof, Harry V.	2	Montgomery	February, '29
Sexton, Tom	1	Johnson	October, '30
Twins, Anthony	1	Polk	December, '29
Valle, Luis	2	Fayette	January, '29
Vaughn, John	2	Des Moines	February, 1929
Woodmansee, Fred A.	1	Polk	January, '30

FOR MANSLAUGHTER

Bonner, E. C.	Woodbury	May, '30
Boyles, William	Woodbury	October, '30
Collins, Lewis	Woodbury	February, '29
Howard, Frank	Washington	September, 30
Hughes, Ray	Woodbury	October, '30
Ramos, Pedro	Fayette	October, '29
Reed, William	Fremont	April, '29
Thomlinson, J. H.	Des Moines	February, '29
Wilson, James	Washington	November, '29
Wiltrout, Clarence	Muscatine	December, '30

AT ANAMOSA FOR MURDER

Inmann, Ollie	Cedar	December, '29

FOR MANSLAUGHTER

Clair, Andy	Monroe	April, '30
Cook, Kenneth	Black Hawk	February, '29
Harper, John	Hamilton	January, '30
Lemon, Therold	Sac	March, '30
Twin, Porter	Woodbury	October, '30

AT ROCKWELL CITY FOR MURDER

Maharras, Marie	Black Hawk	May, '29
Minor, Tilda	Jones	March, '30
Ramez, Louise	Linn	June, '30
Rowley, Carrie	Polk	December, '30
Swanson, Lillian LaVina	Calhoun	August, '30

CONVICTIONS FOR COMMITMENTS FOR FELONY

The following is a summary of the convictions and commitments for felons to the Penitentiary and Reformatories of this state as a result of the work of the Sheriffs and Peace Officers of Iowa assisted by the Iowa Bureau of Investigation. This does not include a record of convictions involving jail sentences or fines:

ANAMOSA—1929

Adultery	1
Arson	1
Assault with intent to commit rape	5
Assault with intent to do great bodily injury	2
Assault with intent to rob	4
Assisting prisoner to escape	1
Attempt to break and enter	3
Bank robbery	1
Bootlegging	2
Breaking and entering	63
Breaking and entering car	1
Burglary	9
Carrying Concealed Weapons	5
Child desertion	2
Concealing and disposing of a conditional bill of sale	1
Conspiracy	3
Criminal insane	2
Desertion	10
Embezzlement	1
Embezzlement by bailee	1
Escape	12
Escape parole violation	2
False pretenses	2
Forgery	28
Forgery and selling mortgaged property	1
Great bodily injury	4
Improper license plates	1
Incest	2
Insane	2
Intoxication	1
Larceny	60
Larceny at night time	9
Larceny by embezzlement	1
Larceny of domestic animals	3
Larceny of motor vehicle	37
Larceny of poultry	28
Larceny of property	7
Lascivious acts	2
Lascivious acts with child	2
Manslaughter	2
Operating motor vehicle while intoxicated	9
Operating motor vehicle without owner's consent	10
Perjury	2
Possession of forged instruments	1
Possession of improper license plates	1
Rape	9
Receiving stolen property	2
Return from appeal bonds	1
Returned from parole suspended sentence	1
Robbery	10
Robbery with aggravation	2
Robbery with deadly weapon	1
Safe keeping	1
Seduction	2

Sodomy	1
Soliciting prostitution	2
Uttering forged instrument	40
Violating motor vehicle laws	1
Violation of parole	29
Total	449

FORT MADISON—1929

Aiding in concealing stolen property	2
Arson	3
Assault with intent to commit manslaughter	2
Assault with intent to commit murder	1
Assault with intent to commit rape	5
Assault with intent to do great bodily injury	7
Assault with intent to maim	1
Assault with intent to rob	4
Assisting to commit rape	1
Attempt of arson	1
Attempt to break and enter	1
Bigamy	2
Bootlegging	2
Breaking and entering	34
Breaking and entering in night time	1
Burglary	3
Carrying concealed weapons	4
Changing license plates on a motor vehicle	1
Cheating by false pretenses	6
Child desertion	2
Concealing mortgaged property	1
Conspiracy	3
Desertion	4
Dwyer Act	1
Embezzlement	3
Embezzlement by bailee	3
Embezzlement by bank officer	1
Entering bank with intent to rob	1
Escape	13
Escape from officer—larceny from building	2
Failure to give aid after auto accident	1
False drawing of check	2
Forgery	20
Fraudulent conveyances	1
Habitual criminal	1
Horse stealing	1
Illegal possession of liquor	1
Illegal possession of morphine	1
Incest	7
Incorrigibility	1
Larceny	41
Larceny at night time	4
Larceny by embezzlement	2
Larceny of domestic animals	2
Larceny of domestic fowls	20
Larceny of motor vehicle	16
Lascivious acts	2
Lascivious acts with child	2
Maintaining house of prostitution	1
Maintaining liquor nuisance	3
Manslaughter	4
Murder	12
Murder, second degree	1

Obtaining money by false pretenses	2
Obtaining money by uttering false instruments	2
Operating motor vehicle while intoxicated	26
Operating motor vehicle while intoxicated and breaking jail	1
Operating motor vehicle without owner's consent	2
Rape	8
Receiving stolen property	7
Returned by order of Court	1
Returned from escape	7
Robbery	7
Robbery with aggravation	7
Robbery with aggravation and assault with intent to murder	1
Seduction	1
Selling government property	1
Transferred from Anamosa	11
Uttering forged instruments	16
Violation of parole	12
Wife desertion	1
Total number	368

ROCKWELL CITY—1929

Abandoning human body	1
Aiding and concealing stolen property	2
Arson	1
Bootlegging	1
Breaking and entering	1
Contempt of court	1
Defrauding insurer	1
Desertion	1
Embezzlement	1
Escape	2
Exposing child with intent to abandon it	1
Extortion	1
Forgery	2
Grand larceny	1
Illegal transportation of liquor	1
Larceny at night time	1
Larceny of motor vehicle	1
Larceny of poultry	2
Lewdness	4
Maintaining house of ill fame	1
Maintaining liquor nuisance	10
Murder, second degree	1
Operating motor vehicle while intoxicated	1
Prostitution	5
Returned from parole	2
Soliciting prostitution	1
Transmitting disease	2
Uttering forged instruments	7
Vagrancy by being common prostitute	1
Vagrancy by being habitual drunkard	1
Violation of injunction	1
Violation of liquor laws	2
Total number	61
Anamosa	449
Fort Madison	368
Rockwell City	61
Grand Total	878

ANAMOSA—1930

Adultery	1
Arson	1
Assault with intent to commit felony	2
Assault with intent to commit murder	4
Assault with intent to commit rape	3
Assault with intent to rob	3
Assault with intent to rob, and assault with intent to commit murder	1
Assist to rob	3
Assisting prisoner to escape	1
Attempted breaking and entering	6
Bigamy	1
Bootlegging	1
Breaking and entering	61
Burglary	10
Carrying concealed weapons	6
Child desertion	3
Conspiracy	3
Criminal insane	1
Desertion	7
Disposing of motor vehicle to prevent identification	1
Embezzlement	5
Embezzlement by bailee	2
Embezzlement of mortgaged property	1
Entering bank with intent to rob	10
Escape	3
Failing to report auto accident	1
Forgery	37
Great bodily injury	7
Illegal transportation of liquor	1
Improper license plates	2
Incest	2
Insane	4
Jail breaking	6
Larceny	60
Larceny from person	1
Larceny of domestic animals	6
Larceny of motor vehicle	45
Larceny of poultry	26
Lascivious acts with child	1
Lewd acts	1
Maintaining liquor nuisance	1
Malicious threat to extort	1
Manslaughter	4
Murder, first degree	1
Murder, second degree	1
Obtaining money by false pretenses	13
Operating motor vehicle while intoxicated	14
Operating motor vehicle without owner's consent	15
Perjury	2
Rape	9
Receiving stolen property	4
Returned from escape	13
Returned violation of parole	30
Robbery	23
Robbery with aggravation	27
Safe keeping	2
Seduction	1
Selling mortgaged property	1
Sodomy	1
Uttering forged instrument	36
Total number	540

FORT MADISON—1930

Adultery	3
Altering a check	1
Arson	4
Assault with intent to commit manslaughter	1
Assault with intent to rob	2
Attempt to burn building	1
Bigamy	1
Breaking and entering	38
Breaking jail	2
Burglary	1
Carrying concealed weapons	5
Child desertion	13
Conspiracy	5
Conspiracy to commit a felony	1
Desertion	13
Displaying improper license plates	1
Embezzlement	7
Embezzlement by bailee	1
Entering bank with intent to rob	11
Escape	3
Escape from officer	2
Forgery	21
Great bodily injury	7
Habitual criminal	1
Incest	6
Larceny	51
Larceny from bank at night time	1
Larceny of domestic animals	4
Larceny of hogs	1
Larceny of motor vehicle	16
Larceny of poultry	13
Lascivious acts with child	5
Leaving accident without aiding	1
Maintaining house of ill fame	1
Manslaughter	6
Mayhem	1
Murder	12
Murder, second degree	3
Obtaining money under false pretenses	12
Operating motor vehicle while intoxicated	28
Operating motor vehicle without owner's consent	3
Passing forged check	1
Possession of forged check	1
Possession of intoxicating liquor	4
Possession of narcotics	3
Rape	22
Receiving stolen goods	3
Returned from escape	15
Robbery	11
Robbery with aggravation	25
Sodomy	3
Transportation of intoxicating liquor	1
Uttering forged instruments	17
Violation of parole	8
Total	425

WOMEN'S REFORMATORY, ROCKWELL CITY—1930

Adultery	2
Arson	1
Bigamy	1

Breaking and entering	1
Burglary	1
Carrying concealed weapons	1
Child desertion	4
Detention of female for purpose of prostitution	1
Forgery	3
Grand larceny	3
Illegal possession of intoxicating liquor	1
Larceny	3
Lewdness	2
Maintaining liquor nuisance	15
Murder	1
Murder, first degree	1
Murder, Second degree	2
Obtaining money by false pretenses	2
Perjury	1
Prostitution	7
Rape	1
Resisting an officer	1
Returned from escape on parole	2
Uttering forged instruments	6
Vagrancy by being an habitual drunkard	1
Total number	64
Total for year at Anamosa	540
Total for year at Fort Madison	425
Total for year at Rockwell City	64
Total prisoners received in 1930	1,029

CONVICTIONS AND PENALTIES FOR VIOLATION OF LIQUOR LAWS

The following is a summary of the convictions secured by the sheriffs and peace officers of the state assisted by the Iowa Bureau of Investigation for the years named for violations of the intoxicating liquor laws:

1929

Bootlegging	86
Contempt	21
Habitual drunkard	1
Illegal possession	14
Illegal sale	4
Injunctions	99
Intoxicated	5
Larceny	1
Liquor nuisance	353
Liquor violation	12
Mulct tax assessed	30
Operating motor vehicle intoxicated	158
Possession	31
Transportation	141
Violation of injunction	6
Total number	962
Amount of fines assessed	$235,640.00
Amount of fines suspended	1,900.00
Number of sentences suspended	72

1930

Bootlegging	282
Contempt	10
Giving intoxicating liquor to minor	1
Injunctions	298

Liquor nuisance	322
Liquor violation	21
Mulct tax assessed	44
Operating motor vehicle intoxicated	159
Sale	3
Transportation	117
Violation of injunction	3
Total number	1,260
Amount of fines assessed	$209,355.60
Amount of fines suspended	3,300.00
Number of sentences suspended	49
Injunctions waived	21

SUMMARY OF STOLEN AUTOMOBILES

Summary of automobiles reported to this Department as stolen and recovered, showing estimated value and total estimated loss:

1929

	Total Number	Average Estimated Value	Average Total Est. Value	Total No. Not Recov.
Number of cars stolen	1,396	$400.00	$558,400	
Number of cars recovered	1,085	400.00	434,000	
Number of cars stolen, not recovered				311

Estimated value of cars stolen and not recovered, during 1929 ... $124,400

1930

	Total Number	Average Estimated Value	Average Total Est. Value	Total No. Not Recov.
Number of cars stolen	1,843	$400.00	$737,200	
Number of cars recovered	1,635	400.00	654,000	
Number of cars stolen, not recovered				208

Estimated value of cars stolen and not recovered, during 1930 .... $83,200
Number of cars stolen not recovered for the years 1929 and 1930 519
Estimated value of cars stolen not recovered for the years 1929 and 1930 .... $207,600

PAROLES

The following is a summary of paroles granted from the different penal institutions of the state for the years 1929 and 1930:

ANAMOSA

Paroled—1929	163	
Paroled—1930	163	326

FORT MADISON

Paroled—1929	90	
Paroled—1930	72	162

ROCKWELL CITY

Paroled—1929	10	
Paroled—1930	17	27
Grand Total		515

ABSCONDERS FROM PAROLE

ANAMOSA

1929 and 1930

11865.....Faye Gilland
9679.....Ernest Hale
11444.....L. C. Clark
11830.....John Logan
11799.....Frank Felch
12101.....Chas. Jones
12413.....Everett Overton
11623.....Pete Hansen
11620.....Wayne Williams
10525.....Robert Lewis, true name C. R. Lopes
12535.....Harold Grimes
11182.....Ray Cassiday
12596.....Joe O'Mally
11529.....Frank Vandermoon

FORT MADISON

1929 and 1930

13327.....Frank Macha
12997.....Vine McCasky
13941.....R. S. White
13684.....Martin Jensen
14050.....Frank AuCoin
13675.....Claud Wilson
13395.....Henry Gilleck
13620.....William Edwards
13488.....Thomas Donaldson
13125.....E. C. Reamer
13995.....Nicholas Strite

State of Iowa
1930

EIGHTEENTH BIENNIAL REPORT

of the

ATTORNEY GENERAL

for the

BIENNIAL PERIOD ENDING DECEMBER 31, 1930

JOHN FLETCHER
Attorney General

Published by
THE STATE OF IOWA
Des Moines

ATTORNEY GENERAL'S DEPARTMENT

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
GERALD O. BLAKE	Assistant Attorney General
ORAL S. SWIFT	Assistant Attorney General
HAZEL WEBSTER GROSS	Secretary to Attorney General
MARY WARD	Stenographer
LOIS GRIMM	Stenographer
EMMA CARLSON	Stenographer
ETHEL PICKARD	Stenographer
LOYAT BLAND	Stenographer

SOME OF THE

IMPORTANT OPINIONS

OF THE

ATTORNEY GENERAL

FOR

Biennial Period
1929-1930

OPINIONS OF THE ATTORNEY GENERAL

COMMISSIONER OF INSURANCE—INSURANCE: Commissioner of Insurance would not be personally liable and the surety upon his official bond would not be liable for the loss of securities deposited with him under the provisions of the statute, in the absence of negligence.

January 2, 1929. *Commissioner of Insurance:* We wish to acknowledge receipt of your favor of the 28th ult. in which you request our opinion on the following proposition:

"It has come to my attention that certain administrative and executive officials of life insurance companies of Iowa are of the opinion and belief that in the event of loss by fire, burglary, theft or otherwise of securities deposited by insurance companies with the Insurance Department of Iowa under and by virtue of the Compulsory Deposit Law; therefore, I would request that you furnish this Department with your opinion as to the liability of the Commissioner of Insurance or the State of Iowa in the event of loss of such securities for the reason above set forth, or any other reasons."

We refer you to the provisions of the statutes of this state in regard to the bonds of public officials. Section 1063 of the Code, 1927, in substance, requires that state officials, including the commissioner of insurance, shall give bonds. Section 1059, Code, 1927, prescribes the form of the bond to be given by state officers, including the commissioner of insurance. The conditions therein enumerated are as follows:

"That as . . . . (naming the office), in . . . . (city, township, county, or state of Iowa), he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter requird of his office by law."

You will note that the conditions of the bond expressly provide that the officer "will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, * * *, securities, or other property appertaining to his office."

The statutes of this state, with which you are familiar, require insurance companies doing business in Iowa to deposit with your department certain securities. The state provides your department with a vault in which to keep these securities. Section 8741, Code of Iowa, 1927, provides:

"All such securities shall be deposited with the commissioner, subject to his approval and kept at such place or places and on such terms as he may designate, and shall remain on deposit until withdrawn in accordance with law, or the order of the commissioner."

It is thus apparent from the provisions of the statute that the commissioner has no title to the securities deposited with him, but acts merely as a bailee.

There are no decisions in this state in reference to the liability of the

commissioner of insurance for the loss, in any manner, of securities deposited with him. However, our supreme court has passed upon the liability of public officers in regard to funds deposited with them in a number of cases. The leading case upon this proposition, and one that is well reasoned and still the law, is that of *Ross, School Fund Com. v. Hatch, County Treasurer*, 5 Iowa, 149. In the cited case, action was brought against the school treasurer for moneys received by him in his official capacity, which were stolen from the treasurer of the county without any want of reasonable care and diligence on his part. The court in passing on the liability of the treasurer refers to and bases the decision, in fact, upon the provisions of the statute in reference to his official bond and to the terms of the bond itself. The bond contained this provision:

"He will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities and other property appertaining to his office."

It will be noted that this clause is identical with the one required to be contained in the bond given by the commissioner of insurance. The court said:

"The state, in prescribing the condition of the treasurers' bonds has determined the nature and extent of the obligation to be assumed by him. This condition should have been framed in different words, if it was designed by the legislature, to make him an insurer of the public funds coming into his hands."

The court cited decisions in this country and in England in regard to this proposition; and in affirming the judgment of the lower court relieving the defendant treasurer from liability because of the loss of funds. said:

"The state has not seen proper to require of him, more than reasonable diligence and care in the preservation and disposal of the public funds; and when he shows that he has exercised this diligence and care, and that the moneys have been stolen from him, notwithstanding, he is discharged from all liability."

In *Lowry v. Polk County*, 51 Iowa, 50, the court stressed the fact that the county treasurer did not request the defendant county to provide him a suitable place in which he could keep safely the county's funds, and reaffirmed the decision in the case of *Ross v. Hatch*, supra. The case of *Ross v. Hatch* is also reaffirmed in *School Township v. Stevens*, 158 Iowa, 119.

The State of Iowa does not act as custodian for the securities in question and has no interest in them whatsoever. There could be no possible legal liability on the part of the State of Iowa in the event the securities were lost from any cause. It is possible that in case of the loss of such securities the legislature might, under appropriate facts, see fit to reimburse the companies suffering in this respect, but such an obligation would be purely a moral one. The state repeatedly recognizes moral obligations through appropriations made at each session of the legislature.

We are of the opinion that under the provisions of the statutes hereinbefore cited, and the bond that you are required to give, that you would not be liable for the loss of these securities by fire, burglary, or theft, unless you were negligent in handling the same and did not exercise all reasonable diligence and care in their preservation.

FISH AND GAME: There is nothing in the statute prohibiting the taking of frogs for any purpose.

January 2, 1929. *State Fish and Game Warden:* We acknowledge receipt of your request for an opinion as follows:

"Will you please advise us if Section 1714, Code of 1927, prohibits the taking of frogs for any purpose except for bait?"

Section 1714, Code, 1927, reads as follows:

"It shall be the duty of the state game warden, his assistants and deputies, and police officers of the state, to seize with or without warrant and take possession of any fish, birds, or animals, or mussels, clams, and frogs, except for bait, which have been caught, taken or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, contrary to the provisions of this chapter."

It will be noted that the game warden can seize the birds and animals named in the above section only if they are taken or killed contrary to the provisions of Chapter 86, Code, 1927. An examination of the provisions contained in the chapter referred to discloses that there is nothing therein prohibiting a person from taking frogs for any purpose except bait. We are, therefore, of the opinion that Section 1714 does not prohibit the taking of frogs for any purpose except bait.

MOTOR VEHICLES: A car owned by the Boys' Welfare Association does not come within the exemptions authorized by Section 4867 and the license fee must be paid.

January 4, 1929. *Secretary of State:* We acknowledge receipt of your favor with enclosed letter from Brown, Lacy & Clewell, attorneys of Dubuque, concerning the exemption claimed for an automobile owned by the Dubuque Boys' Welfare Association, it being contended that under the provisions of Section 4867, Code, 1927, this car should be exempt from the payment of the motor vehicle license fee. The contention specifically is that exemption is allowed under said section by reason of the following language:

" * * *, and such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure or business, nor for the transportation of freight, * * *."

It is conceded that the car does not fall in the category of those owned by the government and used in official business by the representatives of foreign powers, or by officers, boards or departments of the government of the United States, or the State of Iowa, counties, municipalities and other sub-divisions thereof.

It is the well established rule that statutes authorizing exemption from taxation are to be strictly construed; in other words, that taxation is the rule and exemption the exception; and the exception must be specifically and clearly provided by the terms of the statute.

The clause above referred to in Section 4867 was included in the exemption statute for the purpose of exempting automobiles that are kept in dead storage. The automobile in question is certainly used in the business incident to the operation of the Dubuque Boys' Welfare Association. We are, therefore, of the opinion that the exemption statute above referred to does not include an automobile used in this manner and owned by such an association.

INTOXICATING LIQUOR—COUNTY ATTORNEY'S FEES; INJUNCTION CASES: County attorney is entitled to fees in liquor injunction

cases even though the injunction be a second one against the defendant. An injunction is statewide in its effect. The fees assessed go to the county attorney prosecuting the case and may be collected by him after he has left office.

January 4, 1929. *Auditor of State:* We acknowledge receipt of request for an opinion as follows:

"1st. If an injunction is obtained against a person in a liquor case, and he changes locations, must another injunction be obtained to stop him from again conducting such nuisance?

"2nd. If another injunction is obtained against the same person as in the above, is the county attorney entitled to another fee, as per Section 2023, Code 1927?

"3rd. Can county attorney collect fees in such cases, and can Board of Supervisors legally allow claim for same after county attorney's term expires, and his successor assumes office?"

Under the provisions of the statutes of this state, Section 2020, Code, 1927, an injunction issued in a liquor case is binding on the defendant throughout the state. Section 2023, Code, 1927, relates to attorney fees. This section reads in part as follows:

"In each and every action in equity for injunction against a person charged with keeping an intoxicating liquor nuisance, and to abate the same, and on each and every action to enjoin and restrain a bootlegger as provided in this title, * * *, shall, if the plaintiff be successful, allow the attorney prosecuting such cause an attorney's fee of twenty-five dollars, * * *."

Two things are to be noted particularly in the above quoted section: that in "each and every action" an attorney fee is to be assessed; and that this attorney fee shall be allowed "the attorney prosecuting such cause".

There is nothing in the provisions of the statute limiting the number of injunction actions that may be brought against any one individual. However, as long as the injunction is state-wide, the practice of enjoining the same individual in more than one action should be avoided and should not be followed knowingly. It is possible, however, to conceive of numerous instances wherein the same person might be enjoined in more than one action. There are any number of persons bearing the same name and in large communities it would be very difficult, if not impossible, for the county attorney to determine whether or not the John Doe made defendant in an action brought by him was the same person as the John Doe in an action brought by his predecessor. Ordinarily, in injunction proceedings, the action must be brought and prosecuted speedily.

While we are of the opinion that the statute does not prohibit an attorney fee in any injunction suit against a defendant that has previously been enjoined, such practice should be avoided and guarded against in every way possible.

The fees required to be assessed, as we have pointed out, are to the attorney prosecuting the cause, and the fact that the county attorney has left office or that his term has expired would not affect his right to these fees.

TAXATION—TAX SALES: The county treasurer must issue duplicate receipts under the provisions of Section 7266 to the holder of the tax sale certificates for payment of subsequent taxes; upon the surrender of receipt erroneously issued, issue new receipts as required by statute.

January 7, 1929. *County Attorney, Newton, Iowa:* We acknowledge receipt of your request for our opinion in substance upon the following statement of facts:

The Union Bond and Mortgage Company, holders of tax certificates, paid taxes subsequently accruing on the real estate for which they held certificates, but did not request or receive duplicate receipts from the county treasurer, under the provisions of Sections 7266 and 7267, Code, 1927. The receipts were issued to this company in the usual form and they now request duplicate receipts under the provisions of the sections above referred to.

You inquire whether or not the treasurer is required to give duplicate receipts in lieu of the ones issued to them, and whether interest should be figured upon them from the date of their filing or from the date the taxes were paid.

The treasurer, under the statute, is required to keep a record of purchasers at tax sale and under the provisions of the sections above cited he is required to deliver to the purchaser of any real estate sold for taxes duplicate receipts for taxes, interest and costs paid by him after the date of his purchase. There is nothing in the statute requiring the taxpayer to demand duplicate receipts, or to otherwise insist upon his rights under these sections. It is the treasurer's duty to deliver duplicate receipts, and we are of the opinion that he may correct his error in failing to do so by issuing the proper receipts as required by statute upon the return of the receipts which have been erroneously issued by him, and that the interest upon such taxes is to be computed from the date of the payment thereof and not from the date of filing such duplicate receipt with the auditor, as the taxpayer may do under the provisions of Section 7267.

SCHOOLS AND SCHOOL DISTRICTS:

1—Cannot expend money voted for building and equipping schoolhouse for purchase of site.

2—Proposition submitted to electors should conform to petition and notices.

January 5, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your request for the opinion of this department upon the following propositions:

1. Can a school board legally expend some of the money derived from the sale of bonds (voted for the erection and equipment of a new school house) in the purchase of a site when no mention was made of the site in the proposition submitted to the electors?

"2. How should the proposition to be submitted to the electors of the Linwood district be worded in order that it be legal and at the same time express and regard the wishes of all electors within the district?"

It is elementary that the proceeds of the bonds authorized by the electors of any municipality must be used for the purpose for which voted. The erection and equipment of buildings and the procurement of the site are two definite and distinct undertakings. We are therefore of the opinion that, if the proposition submitted to the electors was merely to erect and equip a building, that no portion of the money could be used for the purchase of a site for the building or securing additional land to the present existing site.

The proposition should be so worded that it distinctly states the question being submitted. If the proposition mentions a particular site the board

would be bound by the question submitted and could build the building only on the site for which the money was voted by the electors.

In response to your second question, we hesitate to frame the form of the ballot to be submitted to the voters. It should conform to the petition which was submitted by the electors and to the notices given of the election. The form of petition submitted by you provides for the use of the proceeds of the bonds for the procurement of a site as well as for the erection and equipment of a building. The form of the question submitted should conform substantially thereto.

DRAINAGE DISTRICT: The cost of repairing any lateral or tile line in a drainage district must be assessed to the particular land benefited and not to the whole district.

January 7, 1929. *County Attorney, Northwood, Iowa:* We acknowledge receipt of your request for an interpretation of Sections 7556 to 7561, inclusive, Code, 1927. You state that your board of supervisors desires to make repairs to certain sub-main lines, being tile lines or laterals in a drainage district, and you inquire whether the board of supervisors may use funds now on hand in the drainage district for this purpose, or whether the cost of this repair is to be apportioned to the lands benefited by each particular lateral or tile line, under the provisions of Section 7561.

Section 7561, to which you have referred, provides for a separate assessment for main ditch and laterals and reads as follows:

"Notwithstanding the provisions of the five preceding sections, so much of the cost of the work and materials as is required to clean out any specific open ditch or main so as to restore it to its original efficiency or capacity and to preserve its sides at a practical slope must be assessed to the lands in the whole district in the same proportion as the costs and expenses of the construction of such specific open ditch was originally assessed to said lands; and so much of the cost of the work and materials as is required to restore any tile line or lateral to its original efficiency, or to clean any tile line, or to replace broken or defective tile, or to rebuild any bulkhead, must be assessed to the lands benefited by such specific tile line or lateral in the same proportion as the original cost thereof."

We are of the opinion that under the provisions of the section above quoted the cost of repairing or restoring any lateral or tile line must be assessed to the particular land benefited, and cannot be paid for by an assessment against the whole district or from funds of the drainage district in the hands of the county treasurer derived by an assessment against the whole district. The procedure of levying this assessment would be the same as that of making an assessment for repair of the main ditch except that only the particular land benefited would be included.

TAXATION: An endowment fund administered by the trustees of a religious institution for the benefit of aged ministers is not exempt from taxation.

January 14, 1929. *Hon. Edgar A. Morling, Justice of the Supreme Court:* We acknowledge receipt of your favor of the 11th in which you inquire whether an endowment fund administered by the board of trustees of the Northwest Iowa M. E. Conference is exempt from taxation. You state that this fund is devoted entirely to investment for the purpose of pro-

viding relief for retired or disabled ministers and the widows and orphans of deceased ministers.

It is the rule that all property is subject to taxation unless specifically exempt, and that exemptions are not favored under the law. There is no statute of this state specifically authorizing the exemption from taxation of this fund. The only provision of the statute in regard to moneys and credits of religious organizations is Paragraph 10 of Section 6944, Code, 1927. The statute referred to exempts from taxation moneys and credits belonging to religious institutions "and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; * * *". The term "sustaining" as used in this section, means to support, uphold, or maintain. (Webster's International Dictionary.)

The fund to which you refer cannot be said to be "devoted solely to sustaining" any religious institution, and under the familiar rules of statutory construction it must be held that the fund in question is not exempt from taxation.

PUBLIC OFFICERS—TOWNSHIP OFFICERS: The duties of a road patrolman are primarily those enumerated in Section 4778. He may act as a peace officer only in enforcement of law relating to travel on the primary roads. He cannot hold the office of constable and road patrolman at the same time.

January 14, 1929. *County Attorney, Waterloo, Iowa:* We acknowledge receipt of your request for an opinion as follows:

"Some time ago the Board of Supervisors appointed a man as road patrolman, and fixed his salary. This was done under authority of Chapter 243 of the 1927 Code. This man is also a constable in one of the townships of this county. I submit to you the following questions:

"First: What are the duties of a road patrolman, particularly with reference to enforcing the law in cities and towns and on primary highways?"

"Second: Can a road patrolman be paid mileage as constable and be paid a salary as road patrolman?

"Third: Can a road patrolman also hold office as constable?"

Section 4778, Code, 1927, enumerates the duties of a road patrolman. The duties therein enumerated are their principal duties, and the performance of these duties is their primary responsibility. Section 4779, Code, 1927, specifies certain additional duties that a road patrolman may perform, but these duties are in addition to the primary duties stated in the previous section. The section last referred to provides in part as follows:

"The road patrolman appointed by the board of supervisors of any county may in addition to their other duties, enforce the provisions of the law relating to travel on the primary roads of the county outside of cities and towns. * * *. Each such patrolman shall take the same oath as any peace officer and shall have the authority of a peace officer."

Thus in cities and towns a road patrolman has no authority to enforce the provisions of the law relating to travel on the primary roads. He has no more authority in reference to law enforcement than any private citizen. On the primary roads he has authority to enforce only the law relating to travel, in addition to his authority as a private citizen.

Your second and third questions can be combined and will be con-

sidered together. You will note that Section 4778, supra, in enumerating the duties of a road patrolman provides that he shall "1. Devote his entire time to his duties." A road patrolman could not devote his entire time to his duties, as required by the statute, and at the same time hold office as constable. The latter office might repeatedly, and under ordinary conditions undoubtedly would, take at least a part of the time of the road patrolman that he is required to devote to his duties as a patrolman.

We are therefore of the opinion that under the provisions of the statute referred to a road patrolman cannot at the same time hold office as a constable, and if he is not a constable he would not be entitled to mileage as such while employed as a road patrolman.

REWARDS—BOARD OF PAROLE—PEACE OFFICERS: Peace officers who do not directly or indirectly have in their possession an order for the apprehension of a parole violator, for whose apprehension a reward is offered, are entitled to collect the said reward.

January 16, 1929. *Board of Parole:* We acknowledge receipt of your letter under date of December 15, 1928, requesting an opinion of this department on the following question:

Mr. Joe Loehr and Mr. Sol Goldenson, members of the city detective department of the city of Des Moines, were advised by Mr. Al Stader, parole agent, State of Iowa, that a one Earl Smith had violated his parole and that the warden of the state reformatory at Anamosa had offered a reward of fifty dollars ($50.00) for his apprehension and delivery to the board of parole. The two detectives, working jointly on their own time and not on city time, apprehended and arrested the said violator and delivered him to the parole board.

The question now arises as to whether or not, in view of the opinion written by the attorney general under date of March 3, 1922, to the auditor of state, the two officers who apprehended the violator are entitled to collect and receive the reward.

We call your attention to the opinion of this department under date of March 3, 1922, which is addressed to the auditor of state, especially to the first paragraph at the top of page 3 thereof. Under the statements of facts stated herein it would appear that the two peace officers, city detectives of the city of Des Moines, did not have in their possession, either directly or indirectly, the order for the apprehension of the parole violator and that they, therefore, would be entitled to receive the reward offered upon the delivery to the board of parole of the violator.

SOLDIERS' RELIEF COMMISSION—RESIDENCE: Domicile of the soldier, his widow or orphan, in the county is all that is necessary to qualify said parties for such relief.

January 17, 1929. *County Attorney, Fort Dodge, Iowa:* We beg to acknowledge receipt of your letter under date of January 16, 1929, requesting an opinion of this department on the following question:

What is the meaning of the word "residence" as used in Chapter 273, Code of Iowa, 1927, in connection with a Soldiers' Relief Commission, that is, what residence, if any, is necessary before relief may be awarded a soldier, his widow, or orphan?

We have examined the sections in Chapter 273 of the Code of Iowa, 1927, and find no place wherein the word "residence" is used. We do find, however, in Section 5395 a reference to the word "resident," and in Section 5390 we find that it provides in substance that the commission

shall at its annual meeting determine who are and who are not entitled to relief.

It would, therefore, appear that it is a matter within the discretion of the commission to determine just who and who is not entitled to relief.

We are of the opinion that the only residence required is that the one receiving relief have a domicile within the county. By domicile we mean that the soldier, his widow or orphan, have a residence in said county with the intention of making that his home. In other words the removal of the soldier and his family to a county with the good faith intention of making that his home is all that is necessary.

CITIES AND TOWNS—INCOMPATIBILITY: Offices of justice of the peace and mayor are incompatible. Offices of city treasurer and secretary of the board of education are not. Vacancy in the office of mayor is filled by the city council.

January 18, 1929. *Auditor of State:* We acknowledge receipt of request for an opinion upon an inquiry received by you from the city clerk at Eldon, Iowa.

Briefly and in substance this inquiry is whether the offices of justice of the peace and mayor in a town entirely within the township are incompatible; and if so, and the officer in question has qualified as justice of the peace subsequent to his election and qualification as mayor, whether this creates a vacancy in the office of mayor, and how such vacancy should be filled. The inquiry also is as to whether the offices of city marshal and constable are incompatible, and whether the offices of city treasurer and secretary of the board of education of the Eldon Independent School District are incompatible.

We are enclosing herewith an opinion from this department dated April 21, 1928, to C. W. Baldwin of Spencer, Iowa, in which we held that the offices of mayor and justice of the peace were incompatible, and that under the facts, identical with those related in this inquiry, the office of mayor would become ipso facto vacant.

As was said in the case of *Crawford v. Anderson*, 155 Iowa, 271, the test of incompatibility is whether there is an inconsistency in 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 hold both offices. Under this rule we do not believe that the office of city treasurer is incompatible with that of secretary of the board of education of the independent school district, comprising the city.

It is next necessary to determine in what manner the vacancy in the office of mayor should be filled. Section 1272, Code, 1897, provided that when a vacancy occurred in the office of mayor and "when there are sixty days of an unexpired term, by special election, to be called by the council as soon thereafter as practicable, and the council may appoint some qualified elector to act as mayor until the qualification of the officers elected at such special election; if such unexpired term is less than sixty days, except in case of councilmen, then such vacancy shall be filled by the council; * * *."

Chapter 41, Laws of the 30th General Assembly, repealed that portion

of Section 1272 just quoted and in lieu thereof provided that vacancies in the office of mayor be filled as follows:

"In the office of councilman or mayor of any city, and all other elective city offices, the council may appoint any qualified elector to fill such vacancy, who shall qualify in the same manner as persons regularly elected to fill such office, and shall hold such office until the qualification of the officer elected to fill such vacancy, and who shall be elected at the next regular municipal election; * * *."

You will note that the method of filling vacancies was changed by the 30th General Assembly, and the city council given authority to appoint a person to fill the vacancy in the office of mayor to serve until the next regular municipal election. This statute continued in the form above quoted in the Code Supplement of 1907, Supplements of 1913 and 1915, and the Compiled Code of 1919, in which it appeared as Section 671. There were no changes attempted in this section in regard to the office of mayor or councilman up until the time of the code revision. In this connection we also wish to call your attention to the provisions of Section 668, paragraphs 8 and 9, Code, 1897,—paragraph 9 of which provided:

"Filling vacancies. In selecting persons to fill vacancies in offices not filled by election by the council, it shall vote by ballot, and the person receiving a majority of the votes of the whole number of members shall be declared elected to fill such vacancy."

This paragraph was carried forward in the same form in Section 668, Supplement to the Code of 1907, and in the same section and paragraph of the Supplements 1913 and 1915. It appeared in the Compiled Code of 1919 as Section 3541, paragraph 9, and now appears as Section 5663, paragraph 8, Code, 1927. It will thus be seen that up to the time of the code revision as contained in the Code of 1924 the statutes above referred to apparently covered the same subject matter and provided in substantially the same manner for the filling of a vacancy in the office of mayor of a city or town. The code revision committee was of this opinion, as shown in the briefs of code revision bills, 1922, page 70. The code revision committee omitted from its recodification of Section 1272, Code, 1897, and Section 671 of the Compiled Code, that part pertaining to the filling of a vacancy in the office of mayor or councilman. The section as prepared by the code revision committee now appears as Section 1152, Code, 1927.

It is to be noted that the legislature did not repeal that part of Section 1272 hereinbefore quoted, but it was merely dropped by the code revision committee because it was a duplication of the provisions contained in Section 668, Code, 1897, and Section 3541 of the Compiled Code. The intention of both the legislature and the code revision committee was clearly to authorize the city council to fill a vacancy in the office of mayor, and we are therefore of the opinion that the city council of Eldon should proceed to fill the vacancy in the office of mayor under the provisions of Section 5663, paragraph 8 of the Code, 1927.

MOTOR VEHICLE: A person whose license has been suspended or revoked, who applies for registration at the end of the suspension period must pay the full license fee, together with all penalties.

January 23, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A license on a man's car was revoked by this department by reason of his conviction and the recommendation of the court. The suspension of the license carries until August, 1930. At the end of the suspension period should the car be registered for the balance of the year or should the full year's license fee together with penalty be collected?

We are of the opinion that, under the statutes of this state applying to the registration of motor vehicles, if the person whose license was suspended applies for his new license at the end of the suspension period that it would be necessary for him not only to pay the full year's license fee, but to pay all penalties accrued thereon.

TAXATION—SPECIAL ASSESSMENTS: Under Section 6033, Code of Iowa, 1927, the first installment of special assessments is due thirty days after date of levy; and the second installment becomes due and payable on an annual basis thereafter at the same time and in the same manner as ordinary taxes.

January 23, 1929. *Auditor of State:* We acknowledge receipt of your letter under date of January 18, 1929, requesting an opinion of this department on the following question:

"Where special assessments are to be paid in installments (Sec. 6033), does the second installment become due and payable with the March collection of regular taxes, succeeding the date of levy?"

Section 6033, Code of Iowa, 1927, so far as material to the question, provides as follows:

"The first installment, 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. * * *"

It will be noted from reading that part of Section 6033, Code of Iowa, 1927, above that the first installment is due and payable thirty days from the date of the levy and that the remaining installments, with interest, are to be paid annually thereafter at the same time and in the same manner as the March semi-annual payment of ordinary taxes.

If the levy for special improvement was made on the first day of September the first installment would be due and payable thirty days after such date, then each year thereafter another installment would be due and payable at the same time as the March payment of the ordinary taxes. The word "annually," as used in the statute, means each year after the first installment is due and payable.

If the levy was made on the first day of January the first installment would then be due thirty days thereafter and the second installment would not then be due until the March semi-annual tax-paying date in the following year.

LIEUTENANT GOVERNOR—GENERAL ASSEMBLY: Lieutenant Governor has right to vote as President of the Senate in any case of a tie except on the final passage of a bill and on the adoption of or concurrence in a constitutional amendment.

January 24, 1929. *Lieutenant Governor:* You have requested the opinion of this department in regard to the times or occasions on which you, as President of the Senate, are entitled to vote.

The Constitution of the State of Iowa, Article IV, Section 18, provides as follows:

"The Lieutenant Governor shall be President of the Senate, *but shall only vote when the Senate is equally divided;* and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President protempore."

The Constitution then further provides, Article III, Section 17, as follows:

"No bills shall be passed *unless by the assent of a majority of all the members elected to each branch of the General Assembly,* and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal."

The Constitution further provides in Article X, Section 1, as follows:

"Any amendment or amendments to this Constitution may be proposed in either House of the General Assembly; *and if the same shall be agreed to by a majority of the members elected to each of the two Houses,* such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly so next chosen as aforesaid, *such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each House,* then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the Constitution of this State."

It then further provides, Article III, Section 34, as amended by Amendment 2, 1904, as follows:

"The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the General Assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census."

From the cited Section 17, Article III, and Section 1 of Article X, it will be observed that on the final passage of bills, and on the adoption of or concurrence in constitutional amendments, a constitutional majority of each house is required. From Article III, Section 34, as amended, it will be observed that the Senate consists of fifty members and a constitutional majority thereof would be twenty-six. Therefore, no tie could exist in instances where these two propositions were before the Senate.

No other propositions are found in the Constitution which require the constitutional majority. Therefore, it is our opinion that in case a tie should result in the vote upon any other proposition before the Senate, you, as President of the Senate, would be entitled to vote.

TAXATION—REFUND: Person entitled to refund under the provisions of Section 7235 is not entitled to interest accruing subsequent to the payment of illegal taxes or to costs incurred subsequent to such payment.

January 25, 1929. *County Attorney, Manchester, Iowa:* We acknowledge receipt of your request for an opinion on a question which in substance is whether a taxpayer who is entitled to a refund, under the provisions of Section 7235, Code, 1927, is also entitled to receive from the

county, interest accrued on the payments and costs incurred by him in publishing a notice of expiration by reason of his purchase at a tax sale of the premises in question, and also his attorney fees.

Section 7235 reads as follows:

"The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon."

The interest and costs referred to in the section just quoted is interest and costs paid by the taxpayer to the treasurer as part of the taxes subsequently found to have been illegally or erroneously exacted or paid. We are of the opinion that it does not refer to interest on the money accruing subsequent to its payment to the treasurer or to costs incurred by the taxpayer subsequent to the payment of the erroneous or illegal tax or by reason thereof.

STATUTORY CONSTRUCTION—SENATE: Construction of expressions "with approval of two-thirds of the members of the Senate in executive session" and others.

January 29, 1929. *Honorable O. E. Gunderson:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the construction to be placed upon the following expressions found in the statutes:

"With the approval of two-thirds of the members of the Senate in executive sessions." Sections 311, 1511, 2182, 3276, 3914, 8605, 9131.
"Subject to the approval of the Senate." Section 1708.
"With the approval of two-thirds of the Senate." Section 4623.
"With approval of the Senate." Sections 1423, 1619 and 3783.

In the Constitution of the state of Iowa, Article III, Section 17, it is provided that no bill shall pass unless by the assent of "a majority of all the members elected to each branch of the General Assembly."

It is further provided by the Constitution, Article X, Section 1, that proposed amendments of the Constitution shall be "agreed to by a majority of the members elected to each of the two houses," and further, that such amendment shall be approved by the next chosen General Assembly "by a majority of all the members elected to each house."

It is further provided by the Constitution, Article III, Section 31, that no money shall be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, "be allowed by two-thirds of the members elected to each branch of the General Assembly."

In all of the expressions submitted by you it will be noted that the wording of the Constitution is not followed. We are, therefore, of the opinion that the expressions, "with the approval of two-thirds of the members of the Senate in executive sessions" and "with the approval of two-thirds of the Senate," should be construed to mean two-thirds of the members present in executive session, a quorum being present.

We are also of the opinion that "with the approval of the Senate" and "subject to the approval of the Senate," would mean the approval of a majority of the members present, a quorum being present.

ROADS AND HIGHWAYS: Cost on co-operative improvement program

of primary and secondary highways may be paid from proceeds of bonds voted; sections 4749 and 4641 of the Code have no application.

January 31, 1929. *Honorable Walter Wilson:* You have requested the opinion of this department upon the following proposition:

Tama County, Iowa, entered into a comprehensive road improvement program to improve its primary and secondary roads and to issue bonds therefor.

The proposition submitted to the voters was, in part, as follows:

"3. Shall the Board of Supervisors be authorized to issue from year to year serial bonds to be known as County Road Bonds, in the aggregate amount not exceeding Nine Hundred Thirty-three Thousand Dollars ($933,000.00) to provide funds for the following purposes:

a. Eight Hundred Fifteen Thousand Two Hundred Fifty Dollars ($815,250.00) for draining, grading, bridging *and completing construction* without surfacing, the county roads described as follows:"

Your inquiry is whether or not, under the statutes and under the proposition as submitted and above quoted, the engineering costs and costs of inspection by engineers can be paid from the proceeds of the bonds thus voted; or whether they must be paid from the county general fund.

From the ballot submitted by you and the proposition hereinbefore quoted, it is evident that your county has proceeded under the provisions of Chapter 242, Code of Iowa, 1924. This chapter provides for simultaneous improvement of county and primary roads. The proposition submitted by your county is identical with the terms of Section 4761 of the Code of Iowa, 1924. Since your county voted upon this proposition on June 17, 1926, the issuance of bonds would be governed by the law as it is found in the Code of Iowa, 1924. The inspection work on the improvement of primary and secondary road systems under Chapter 241 of the Code of Iowa, 1924, must be paid from the general fund of the county as provided in Section 4749 of said Code and Section 4641.

However, the provisions for the improvement of the primary road system under Chapter 241, contemplated the improvement of said roads by special assessment or issuance of bonds in anticipation of the county's share of primary road funds (Sections 4687, 4720, Code of 1924), and did not contemplate a comprehensive simultaneous program as is contemplated under Chapter 242. We are therefore of the opinion that the limitations of Section 4749 of Chapter 241, and Section 4641, do not apply to those improvement programs inaugurated under the provisions of Chapter 242.

We are further of the opinion that inasmuch as the provisions of Chapter 242 of the Code, under which your county proceeded, do not prohibit the use of a portion of the proceeds of the bonds authorized for engineering costs the final determination of the question must rest upon the provisions of the proposition as submitted to the voters.

The proposition, as submitted, is identical with the provisions of the statute, Chapter 242, Section 4761. The purposes for which the bonds are voted are draining, grading, bridging, and completing construction (Section 4761, paragraph 3). It is elementary that before such work can be done plans and specifications must be prepared and thereafter the construction supervised by competent engineers for the county. The construction could not be completed without this necessary essential service on behalf of the county.

We are therefore clearly of the opinion that since the payment of these costs are not otherwise provided in Chapter 242 and since the proposition as submitted to the voters is worded as it is, the costs of engineering, including the preparation of plans, specifications, inspection, and all engineering work in connection with the improvement of the county road system of Tama County, Iowa, under the measure adopted June 17, 1926, can be paid from the proceeds of the bonds authorized at such election and sold by the board of supervisors under that authorization.

The county board of supervisors should therefore correct its books by resolution duly adopted to transfer an amount equal to the amounts paid from the general fund for such engineering costs from the proceeds of the sale of these bonds to the general fund of the county.

SCHOOLS AND SCHOOL DISTRICTS:
1—Architect fees may be paid from the proceeds of bonds voted.
2—School district may anticipate its revenue to the extent of taxes levied.
3—Section 4241 applies to consolidated school districts.

February 4, 1929. *County Attorney, Mt. Pleasant, Iowa:* This will acknowledge receipt of your request for the opinion of this department upon the following questions:

1. In a consolidated school district from what funds are fees of an architect payable?
2. Does Section 4241 of the Code apply to consolidated school districts?
3. To what extent may a consolidated school district anticipate its revenue by the issuance of warrants?

If bonds are voted to construct a building it is our opinion that the architect's fees can be paid from the proceeds of the bonds, or if the building is being constructed under authorization of the electors from a schoolhouse tax levied under the provisions of Section 4217 of the Code for the purpose of construction of a schoolhouse, we are of the opinion that the architect's fees would be a part of the construction cost and be paid from the proceeds of such special tax voted by the electors. The proposition submitted to the people in any instance should be broad enough to warrant the expenditure of the fund voted for all such construction costs incidental to the construction.

We are of the opinion that Section 4241 of the Code of Iowa, 1927, is applicable to consolidated school districts.

A municipal corporation may anticipate the taxes levied under the rule that taxes levied are taxes in praesenti. The district may therefore issue warrants in any one year to the amount of the tax levied and to be collected for the ensuing year.

COUNTY ATTORNEY—INTOXICATING LIQUOR—FINE—FEES: Fine paid on an installment plan is unauthorized. Other fees are not chargeable upon a bond forfeiture, unless the bond expressly provides for such fee.

February 7, 1929. *County Attorney, Osage, Iowa:* This will acknowledge receipt of your letter inquiring whether you, or the present county attorney, are entitled to certain commissions. The facts related by you are as follows:

"The situation that arises, now that my term is expired and the new county attorney is in is as follows: A man was fined and was given until

the twenty-ninth of December to pay his fine and was advised that unless he did so he would have to be brought in. He would not pay his fine and consequently a mittimus was ordered out by me on the thirty-first of December. However, the sheriff did not execute the mittimus until a few days had expired in January, when he did bring in this man and the fellow paid his fine in full and when I submitted my bill for my December commissions on fines, I submitted one for the commission on this fine. The question arises as to whether or not I, or the new County Attorney, was entitled to that commission.

"The situation arises as to two other commissions on fines that are claimed by myself and undoubtedly will be claimed by the present county attorney. The situations are as follows: Both men were found guilty of maintaining a liquor nuisance and were represented by the preesnt county attorney in court. I, as the regular county attorney, then secured their conviction and they were each fined $300.00 and because of the fact that they were family men and needed at home they were given time in which to pay the fines by installments. Some of the installments are being paid during this year, after my term has expired. The question arises then as to who is entitled to the commission on those fines paid during this year but agreed to be paid during my term of office. My contention is that I am entitled to them more certainly than the attorney who acted in their defense and is now county attorney.

"A further matter for opinion arises as follows: During the May term of 1928, a man was indicted after having been bound over to the grand jury, and after being indicted he absconded, whereupon I had the court in the October term, forfeit the bond and in the November term I secured a judgment on this bond, which was for the amount of $500.00, and according to my way of thinking I am entitled to a regular attorney's fees for having secured this judgment, by virtue of the following statement in Section 5228 of the 1927 Code of Iowa: 'In addition to the salary above provided, he shall receive the fees as now allowed to attorneys for suits upon written instruments, where judgment is obtained.' In this particular instance a judgment was obtained on a written instrument, namely a bond, which would not have required the payment of the amount of the bond to the county, unless judgment had been obtained. Is my opinion in this matter in accordance with yours?"

In the first proposition submitted by you we are of the opinion that you would be entitled to the commission in that it was your effort that procured the payment of the fine.

In the second proposition, there is no provision of the statute authorizing the payment of a fine on installments. Payment made in this manner is irregular and without authority, so that we cannot say who would be entitled to the commission on the fine paid after your term of office expired. You would undoubtedly be entitled to commission on that part of the fine paid before your term of office expired. It is doubtful whether yourself or the present county attorney would be entitled to a commission on installments paid subsequent to January 1st.

We must disagree with your conclusion in regard to the attorney's fee upon the bond forfeited. The statute which allows attorney's fees upon written instruments only applies to written instruments wherein provision is made that attorney fees may be assessed. If the bond that you forfeited contains this provision, you would be entitled to the fee. If, however, the bond does not contain a provision for attorney fees we do not believe you would be entitled thereto. It is part of the duty of the county attorney to bring action for the forfeiture of bonds without additional compensation unless specifically provided.

HOUSING LAW: Discussion of "occupied spaces."

February 11, 1929. *Commissioner of Health:* We acknowledge receipt of your request for an opinion whether an enclosed rear porch which does not exceed twelve by twenty feet violates the provisions of the housing law. It appears that the porch in question comes within five feet of the lot line at the rear of the house.

Section 6339, Code, 1927, defines "rear yards" and provides in substance that behind every single and two family dwelling shall be a rear yard equal to the width of the dwelling and that shall be open and unobstructed from the ground to the sky, and that such space shall in no case be less than ten feet deep and two feet for each additional story of the dwelling above the first.

Section 6329, Code, 1927, contains definitions of the terms used in the housing law and in paragraph 16 thereof defining "occupied spaces," at the last of the paragraph appears this exception:

"This provision shall not apply to * * *, nor to any such porch which does not extend into the side yard a greater distance than twelve feet from the side wall of the building * * *, nor to an enclosed rear porch or attached garage with or without sleeping porch above, and not exceeding twelve by twenty feet, * * *."

The porch in question comes within the terms of the quoted part of the statute just referred to, and the exception contained in Section 6329 must be read in connection with the provisions of Section 6339. We are, therefore, of the opinion that the rear porch in question would not be prohibited by the state housing law.

CITIES AND TOWNS—ASSESSORS: A city assessor is not entitled to expenses incurred in viewing property unless it is an extra or special service which the board of supervisors have authorized, made to permit a fixed and additional compensation therefor.

February 11, 1929. *Auditor of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"Would an assessor in a city and on an annual salary as provided in Section 5669, Code, 1927, be entitled to expense incurred by him in going to view property for the purpose of determining its value for taxation?"

The section you have referred to fixes the compensation of assessor in certain cities on an annual salary basis. There is no provision in the statute expressly authorizing a payment to the assessor of expenses in viewing property except the last paragraph of the section you referred to, which reads:

"In cities where extra or special services are to be performed by the assessor, the board of supervisors may by special contract with the assessor determine the compensation to be paid."

Unless the expense in viewing the property was incurred under an agreement with the board of supervisors as authorized by the statute just quoted, he would not be entitled to this expense in addition to his regular salary.

SCHOOLS AND SCHOOL DISTRICTS: Right to use real estate for school purposes to revert upon non-use is a valid consideration for a quit-claim deed.

February 11, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in regard to a com-

munication from Mr. E. A. Slaninger, secretary of the Washington Township Consolidated School Board, Minburn, Iowa, upon the following statement of facts:

In 1869, one A. W. Gibbs Smith, for a consideration of two dollars, transferred a school site to a school district with the condition, however, that when it should cease to be used for school purposes it would revert to his grantor, his heirs and assigns. On August 17, 1921, the consolidated school district of Washington Township sold this land to Mrs. Clara Little who had taken the lands by inheritance from A. W. Gibbs Smith for a consideration of $285.00. She now claims a refund for that amount on the condition that the school district had nothing to convey.

We are of the opinion that the transaction was valid because the school district could use the site for school purposes even though the district had become a consolidated district as it could be used for plot purposes or any other purpose which the school district saw fit to use. There was a valid consideration for the transfer. The district could, of course, refund the money if it saw fit because, despite the fact that the money had been expended, the district had the benefit of it and, if erroneously paid, it could be refunded.

SCHOOLS AND SCHOOL DISTRICTS: A child placed under contract by the State Board of Control or paroled from the industrial school of Eldora or Mitchellville becomes a resident of the school district of the foster parent or parolee for school purposes.

February 11, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in which you request an opinion of this department upon the following propositions:

"1. Where a child from the Iowa Soldiers' Orphans' Home at Davenport or the juvenile home at Toledo is placed by the State Board of Control in a foster home in a particular school district, does such child become an actual resident of that district?

"2. Where a boy from the Industrial School at Eldora or a girl from the school at Mitchellville is paroled by the State Board of Control and placed in a home in a particular school district, does such boy or girl become an actual resident of that school district?"

The children who are placed in a foster home by the state board of control are placed under contract which gives to the foster parent complete control over the child subject to revocation for violation of its terms. We are therefore of the opinion that such child becomes a resident of the district in which the home of the foster parent is situated and entitled to school privileges as such.

Where a boy or girl is paroled by the State Board of Control to a person who assumes the duties of the parole agent or acts in loco parentis, the child paroled acquires such a residence in the district where the home of the paroled agent is situated as to entitle it to school privileges in such district. The child has no other person responsible for its care, keep and custody than the parole agent.

MINES: A rock quarry is not a mine and does not come within the jurisdiction of the state mine inspector, who is required to inspect strip coal mines.

February 12, 1929. *State Mine Inspector, Ottumwa, Iowa:* We acknowledge receipt of your request for an opinion on the following propositions:

"First. In certain sections of our state rock quarrying is carried on

under the ground or under cover. Are such quarries subject to the mining laws of the state, and to the inspection of the state mine inspector of the district where they are located?

"Second. Is it incumbent, according to law, upon the state mine inspector to inspect all open rock quarries and coal stripping pits within his district?"

State mine inspectors are appointed under the provisions of Chapter 68, Code, 1927, which deals with coal mines and mining. There is no provision in this chapter or elsewhere in the code in regard to stone quarries. Your duties are in reference to coal mines, with the single exception of gypsum mines, and in the case of gypsum mines Section 1349 of the Code, 1927, specifically makes it the duty of the state mine inspector to enforce the provisions of the gypsum mines statutes.

We are, therefore, of the opinion that rock quarries are not subject to mining laws of this state or to the supervision of the state mine inspector. In the case of coal mined by stripping, the state mine inspector should inspect such operations and enforce the provisions of the statute in regard to mining coal insofar as they are applicable to stripping operations.

BOARD OF DENTAL EXAMINERS: Present dentist's license complies with statutory requirements. Commissioner of Health is only one at present to sign certificates.

February 13, 1929. *State Department of Health:* In reply to your letter of February 1st, in which you ask for the following questions:

"1. Is there anything about the dentists' license, in its present form which does not comply with the statute?

"2. Is it permissible under Section 2442 of the Code, 1927, or any other section to prepare a license certificate making provision for having the certificate signed by the members of Boards of Examiners as well as by the State Commissioner of Health?"

we would say that the certificate you handed to this department complies in every way with the provisions of Section 2442. There is now no provision in the statute which provides for the signing of the certificate or a license of a dentist by the board of dental examiners.

We also desire to acknowledge your request of February 4th, which is as follows:

"Rule 14. The Board hereby permits students who have completed two full years of work in a dental college to take a partial examination in sophomore subjects, provided they agree to take the balance of the examination within a period of three years or forfeit the fee paid for the partial examination. If after the three year period the applicant wished to take the examination, he shall be required to make application and proceed as though no partial examination had been taken.

"I would like to ask if it is within the power of the Board of Dental Examiners or the State Department of Health to enforce the provisions of the proposed rule, that is, will the Board be able to prevent a person who has taken the partial examination as provided for in section 2479 and who does not take the balance of the examination within a period of three years, from applying for and taking the uncompleted portion of the examination, at any time the said person may desire to do so even though it is not within the three years from the time he took the partial examination."

We believe that under the provisions of Section 2479, the board of examiners could provide that partial examination taken by an applicant,

would only be available and of any force for a certain period of time but we would suggest the following rule:

"Rule 14. The Board hereby permits students who have completed two full years of work in a Dental College to take a partial examination in sophomore subjects, provided, however, that the grades received by the applicant at such partial examination, shall be null and void after three years from the date of such examination. And the applicant will be required after that date to proceed as though no partial examination had been taken."

BANKS AND BANKING: A check given upon a bank in which there are funds sufficient to cover the same, but which is held for several days before being cashed, at which time there are not sufficient funds in the bank, does not violate the provisions of Section 13047.

February 14, 1929. *County Attorney, Rolfe, Iowa:* We acknowledge receipt of your request for an opinion on Section 13047, Code, 1927.

Your inquiry is on the following proposition:

"Where the drawer and the payee and the drawee bank all are located in the same place, and at the time of the giving of the check there are ample funds to cover the same, and that there are ample funds remaining in the bank to cover that check for five days after giving of the check, is the drawer criminally liable when that check is presented later when insufficient funds are found in the bank to meet and pay the same?"

As stated in your letter, the check was not presented in the usual course of business, and you also state that there was no intention on the part of the drawer to remove the funds in the bank with an idea of reducing the deposit below the amount of the check. In view of these facts, we are of the opinion that the drawer of the check in question would not be guilty of a violation of the provisions of Section 13047.

SHERIFF—ORIGINAL NOTICE: The sheriff is required to serve notices sent to him from counties other than the one in which he is elected and from without the state.

February 15, 1929. *Deputy County Attorney, Keokuk, Iowa:* We acknowledge receipt of your favor in which you inquire whether a sheriff is required to serve notices from outside the county or from outside of the state.

Section 11062, Code, 1927, provides as follows:

"If the notice is placed in the hands of a sheriff, he must note thereon the date when received, and procede to serve the same without delay in his county and must file the same, with his return thereon, in the office of the clerk of the court where the action is pending or return the same by mail or otherwise to the party from whom he received it."

We are of the opinion that under the language of the above quoted statute it is mandatory upon the sheriff to serve a notice sent to him from within the state or without the state anywhere in his county.

EMINENT DOMAIN—TRIAL—CONDEMNATION CASES: Under Article 1, Sections 9 and 18, of present Constitution, the plaintiff in a condemnation case has the right to a trial by jury.

February 15, 1929. *Honorable L. B. Forsling:* We acknowledge receipt of your letter of February 11, 1929, requesting an opinion of this department upon the following question:

Whether an act of the legislature providing for the trial on appeal in condemnation cases by a court as in equity instead of by a jury as in law actions, would be violative of and contrary to any of the provisions of the

Constitution. In other words, is the right of trial by a jury in condemnation cases, guaranteed by our Constitution?

Article I, Section 9, of the present Constitution, provides as follows:

"The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury or a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law."

Article I, Section 18, of the present Constitution, provides as follows:

"Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken."

Under Section 9, above quoted, "no person shall be deprived of his property without due process of law." Due process of law, as it is used in connection with property rights, is generally defined and construed to mean that the right of a person to his property shall not be divested except by a judicial determination after a notice in pursuance of a general law.

In condemnation cases, a person is deprived of his property and under the due process clause in Section 9, Article I, heretofore set out, the property owner is therefore guaranteed the right to a hearing somewhere during the proceedings in a court. The property owner having the right to a hearing in a court in a condemnation proceeding, does he have the right to a trial by jury? It is well known that in a condemnation case, the only question to be determined is the question of damages. It is also well known, that at common law, all actions for damages were triable to a jury. Under that part of Section 9, which reads, "the right of trial by jury shall remain inviolate," the courts have construed that any action which was triable by a jury at common law, is now triable in like manner, unless the Constitution provides otherwise. No other method of trial is provided for by our Constitution when an appeal is taken. Therefore, when an appeal is taken from the action of the condemnation commissioners the action becomes a civil action for damages and is, therefore, under our Constitution, triable by a jury.

The question of whether or not the property owner is guaranteed the right of a trial by jury by our Constitution, has been passed upon by the Supreme Court of Iowa in the cases of *Ragatz vs. City of Dubuque*, 4 Iowa, 343; *The City of Des Moines vs. Leaman*, 21 Iowa, 153, and *Sigafoos vs. Talbot*, 25 Iowa, 214. The last two cited cases were cited with approval by the court in the case of *In re Bradley*, 108 Iowa, 472 at 479. All of these cases hold that under Sections 9 and 18 of Article I of the Constitution, the property owner in condemnation cases has the right to have his damages assessed and determined by a jury, and that the appraisers or commissioners appointed by the sheriff are not such a jury as the Constitution contemplates.

Justice McPherson, former attorney general of Iowa, in the case of *Kirby et al. vs. Chicago N. W. R. Co.*, decided December 31, 1900, 106 Federal, 551, said:

"The details of condemnation proceedings are regulated by statute. But the limitations of the power of eminent domain are to be found in the

constitution (Iowa), one provision of which is as follows: 'Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owners thereof, as soon as the damages shall be assessed by a jury.' This is followed by a rule for the damages. Another provision of the constitution is, 'The right of trial by jury shall remain inviolate.' The Iowa supreme court has held that the appraisers, or commissioners, by whatever name, who, in the first instance, fix the damages, are not jurors, and that statutes which do not provide for an appeal to a jury of 12 men are unconstitutional and void, because in conflict with the two constitutional provisions quoted."

Later, in the same opinion, the justice said:

"The tribunal, or whatever it was, of the sheriff, was statutory, and not recognized by the constitution as one to which the parties could go. The state court was the first tribunal in which effect could be given to the provision that 'the rights of trial by jury shall remain inviolate,' and that other provision that private property may be taken for public use 'as soon as the damages shall be assessed by a jury.'"

We are, therefore, of the opinion that under the provisions of Sections 9 and 18 of Article I of the Constitution, the property owner in condemnation cases is at some time during the proceeding, guaranteed the right of trial by a jury and that any act of the legislature which attempts to take this right away would be violative of and contrary to said sections.

CITIES AND TOWNS: City council cannot prohibit sale of soft drinks and candies in a pool hall.

February 15, 1929. *Auditor of State:* In reply to your request of February 9, 1929, relative to the following:

"Can a town council prevent a duly licensed pool hall operator from selling soft drinks, candies and cigars in the same room with the pool hall?"

we would say that general powers set out in Chapter 292, Paragraph 2 of Section 5745, include the power to limit the number of, regulate, license, or prohibit billiard and pool halls. We are of the opinion, however, that the power granted under that section is not sufficient to permit a town council to prohibit the sale of soft drinks, candies and cigars in the same room, as these articles may be sold at any time or place without restriction and are not subject to regulation by a town council.

CITIES AND TOWNS—JUSTICE OF THE PEACE—CITY ATTORNEY: The offices of Justice of the Peace and City Attorney are not incompatible.

February 18, 1929. *County Attorney, Osage, Iowa:* We acknowledge receipt of your request for an opinion as to whether the office of justice of the peace is incompatible with that of city attorney of a city of the second class situated in the township in which the attorney holds office as justice of the peace.

As was said in the case of *Crawford vs. Anderson*, 155 Iowa, 271:

"The test of incompatibility is whether there is an inconsistency in 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 or inherently inconsistent and repugnant, or where public policy renders it improper for an incumbent to retain both offices."

We do not believe, under the rule laid down in the above case, that the offices to which you refer are incompatible.

SOLDIERS' EXEMPTION—TAXATION EXEMPTION: Board of Supervisors cannot redeem from tax sale all property which would have been exempt under the soldier's exemption law, but upon which the exemption was not claimed.

February 20, 1929. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your request for an opinion on the following question:

"We have a soldier's widow who failed to claim her exemption from taxation in 1924 and her home was sold at a tax sale in the fall of 1925. The matter has drifted along until the purchaser is now ready for a deed. The widow filed an application asking the board of supervisors to redeem this property from the tax sale and states that the reason that she did not claim the exemption from the board of supervisors was because she thought the assessor had taken care of it.

"Under these conditions, can our board redeem from said sale for her?"

We regret to advise you that there is no provision of the statute authorizing the board of supervisors to redeem from tax sale for this purpose.

COUNTIES: A county is not liable for torts of its employees operating a truck in the performance of their duties.

February 20, 1929. *County Attorney, Cedar Rapids, Iowa:* We acknowledge receipt of your request for an opinion as follows:

"The board of supervisors of this county has asked me to get an opinion from you on the question of the liability of the county for damages caused by its trucks, motor vehicles, etc., used in connection with the business of this county."

We assume in your request you refer to the use of motor vehicles or trucks owned by the county while being used in the county's business. Under such circumstances the county would not be liable for any torts or negligence on the part of its employes operating the trucks in the performance of their duty. Perhaps the most recent decision on this subject is *Hilgers vs. Woodbury County*, 200 Iowa, 1318, wherein the court said:

"It is a well established rule in this state that counties are not liable for torts growing out of the negligent acts of their agents or employes."

The court cites a long line of Iowa decisions following this rule in a variety of circumstances. This was also the rule of the court in *Post vs. Davis County*, 196 Iowa, 183, wherein a large number of Iowa decisions are discussed and analyzed by the court.

SCHOOLS AND SCHOOL DISTRICTS: Courses in American history and civics and the Constitution of the State of Iowa and United States must be separate courses.

February 26, 1929. *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 the intention of the law that the courses in American history and civics required by these statutes be offered as separate courses? In other words, would a combined course in American history and the Constitution of the United States and Iowa violate the intent of the law as prescribed in these sections?"

The provision requiring the teaching of American history and civics are contained in Section 4257, Code of Iowa, 1927, and were enacted by the Thirty-eighth General Assembly, Chapter 406.

The provisions of Section 4256 of the Code of Iowa, 1927, were sub-

sequently provided in an act of the Thirty-ninth General Assembly, Chapter 91.

Chapter 91 of the Acts of the Thirty-ninth General Assembly is in no way an amendment to the law as it then existed. It is very evident that it was the intention of the legislature that an additional course of instruction shall be given in the Constitution of the United States and in the Constitution of the State of Iowa.

We are therefore of the opinion that such course must be separate and distinct from the course in American history or civics and that such course must be specifically directed to the study of the Constitution of the United States, its framing, its provisions, and its construction, and that a like study must be provided on the Constitution of the State of Iowa.

BOARD OF ACCOUNTANCY—EXAMINATIONS: Under Section 1891, Code 1927, a board of accountancy has authority to determine the time and place of holding examinations.

February 26, 1929. *Honorable George Wilson, Equitable Building, Des Moines, Iowa:* We acknowledge receipt of your request for an opinion of this department on the following question:

Under Section 1891, Code of Iowa, 1927, has the board of accountancy authority to fix the date and the time for holding examinations pursuant to the provisions of Chapter 91, of the Code of Iowa, 1927?

Section 1891, Code of Iowa, 1927, provides as follows:

"Examination—notice. The board shall at its regular meetings establish the time and place for holding examinations under the provisions of this chapter, and shall cause to be published a notice thereof, for not less than three consecutive days in two daily newspapers published in this state, not less than twenty days prior to the date of such examination, and notice of the same shall be mailed to all holders of certificates under this chapter, as well as applicants, not less than fifteen days prior to such examination."

It would appear from reading the above section that the board of accountancy may, at a regular meeting, fix the time and place for holding examinations under the provisions of said chapter. It would, therefore, follow that the board has the absolute power and authority to fix the times and place of holding all examinations.

TAXATION—BRANCH ELEVATORS—GRAIN IN WAREHOUSE—TAXATION: Grain purchased by branch elevators should be assessed in accordance with Section 6965 and branch elevators grain stored in warehouse should be reported by warehouseman in accordance with Section 6973.

February 28, 1929. *Auditor of State:* We acknowledge receipt of your letter of January 30, 1929, requesting an opinion of this department on the following question:

"On January 1, 1929, there were 50,000 bushels of grain in a warehouse in the city of Des Moines, belonging to 'A' who owns and conducts branch elevators in different towns in the county. The said 50,000 bushels of grain has passed through the branch elevators and is recorded on the books which are available to the assessor in determining the assessment for the current year. The said grain in warehouse is held subject to order for shipment to market. Is said grain taxable on January 1, 1929, and if so to whom?"

Section 6965, Code of Iowa, 1927, provides as follows:

"Each grain, ice, or coal dealer, shall be assessed upon the average amount of capital used by him in conducting his business. In estimating the amount of capital so used, there shall be taken into consideration the increase and decrease of the value of grain held in store, and upon the value of his warehouses, ice houses, granaries, or cribs situated upon lands leased from railway companies or other persons, and upon the value, if any, of such leasehold interest."

Section 6966, Code of Iowa, 1927, provides in substance that when the person, firm or corporation is doing business in more than one assessment district, property and credits existing in any one district or arising from business done in that district shall be listed and taxed in that district.

Section 6973, Code of Iowa, 1927, provides in substance that a warehouseman shall, upon request, file with the assessor of the township or municipality wherein the warehouse is situated a written statement of all the property in his possession belonging to others, giving the names and addresses of same.

Section 6974, Code of Iowa, provides that if a warehouseman fails to do this, all of the property in the warehouse shall be assessed against him as though he were the owner.

It would, therefore, follow from reading the sections referred to above that the grain which is purchased by the branch elevator should be assessed in accordance with the provisions of Section 6965, and that the grain which has been stored in the central warehouse should be reported by the warehouseman as required by Section 6973. The only duty upon the warehouseman is to list with the assessor all property which has not been listed by the branch elevator.

TAXATION: Stock and merchandise, upon which taxes were due, was sold without the taxes being paid—the vendee or purchaser of the stock is personally liable for the delinquent personal tax due.

March 1, 1929. *County Attorney, Sac City, Iowa:* This will acknowledge receipt of your request for an opinion on the following proposition:

"It is the case of where a firm purchased a stock of merchandise in Sac City and advertised the same and sold it out without having any of the property left. They then remodeled the building and put in an entirely new stock of goods and started in business. At the time they purchased the old stock of goods, the former owner made an affidavit that there were no claims against said property but in fact there was something like $100.00 of delinquent personal taxes due and at the time they took over the stock, which was in May, there was another assessment against such stock which had not been levied by the board of supervisors at that time."

You do not state your inquiry in regard to these facts, but we assume that you desire to know whether or not the vendee of the stock of merchandise is liable for the delinquent personal property taxes. Section 7205 of the Code, 1927, provides as follows:

"Taxes upon stocks of goods or merchandise, fixtures and furniture in hotels, restaurants, rooming houses, billiard halls, moving picture shows and theatres, shall be a lien thereon and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, and such owner, purchaser, or vendee of any such goods, merchandise, furniture or fixtures shall be personally liable for all taxes thereon."

This statute appeared as Section 1400, Supplement to the Code, 1913, and the Code of 1897, until it was amended by Chapter 337, Acts of the 37th General Assembly in 1917. The amendment referred to in part provided in substance that the owner, purchaser or vendee of the stock should be personally liable for all the taxes thereon. Prior to this amendment the statute did not provide any personal liability. This was the state of the statute when the supreme court of this state handed down the opinion in *Iowa Mercantile Company vs. Blair*, 123 Iowa, 290, to which you refer. This opinion was filed March 10, 1904, and held in substance that there was no personal liability on the vendee, for taxes on a stock of merchandise. Undoubtedly, the amendment of 1917 to which we have referred was for the purpose of remedying the situation brought about by the decision just cited. There have been no recent decisions of our supreme court construing this statute.

We are of the opinion that under the provisions of the statute as it now stands, the vendee or purchaser of a stock of merchandise is personally liable for the delinquent personal tax thereon.

COUNTY ATTORNEY—FINES—COMMISSIONS: A county attorney is not entitled to a commission upon a fine until paid.

March 1, 1929. *County Attorney, Northwood, Iowa:* We acknowledge receipt of your request for an opinion on the following propositions:

"1. Is the county attorney whose term has expired entitled to receive commission on fines imposed prior to the expiration of his term, but which are paid after his term has expired?

"2. Is the county attorney entitled to file a bill against the county for commission upon fines before the same are paid, and to collect the same?"

We are enclosing herewith copy of an opinion given by this department to Charles B. Hoeven, county attorney at Orange City, under date of July 14, 1925, answering your first inquiry.

A county attorney is not entitled to a commission upon fines imposed until the fine is paid. If the fine is not paid he would not be entitled to the commission from the county.

CITIES AND TOWNS: Under Section 5858, Code 1927, board of library trustees after their appointment has exclusive control of expenditures of all receipts for library purposes; also power to make and execute all contracts for library.

March 1, 1929. *Budget Director:* We acknowledge receipt of your request for an opinion on the following question:

"The city of Creston has received a donation to be used for the erection of a public library building. The amount donated is sufficient to finance the erection of the building only; therefore the council desires to purchase a site for the proposed building with public funds raised by taxation.

"In preparing the city budget for 1929 the council levied a library maintenance tax and a tax to provide for the purchase of real estate. They also provided by ordinance for the establishment of a library board which has been appointed by the council and has contracted for a site for the building to be paid for by anticipating the tax levied for the purchase of real estate.

"The question now arises as to who has authority in the matter—the council or the library board. Did the council proceed in lawful manner in levying the tax as stated above? Has the library board full power to

enter into contract for the purchase of a site and to expend the money donated for the erection of the building or is such authority vested in the city council?"

Section 5858, Chapter 299, of the Code of Iowa, 1927, sofar as is material to the question, provides as follows:

"Said board of library trustees shall have and exercise the following powers:

* * * * * *

8. To have exclusive control of the expenditures of all taxes levied for library purposes as provided by law, and of the expenditure of all moneys available by gift or otherwise for the erection of library buildings, and of all other moneys belonging to the library fund. * * *."

It would appear that under that part of Section 5858, Code of Iowa, 1927, set out above, that the board of library trustees after their appointment have exclusive control of the expenditures of all taxes levied for library purposes and of the expenditures of all moneys received by gift or otherwise for the erection of library buildings, and all other moneys belonging to the library fund.

We are of the opinion that under this section the board of library trustees has the power to make and execute all contracts for the erection, construction and maintenance of the library, and that included in this would be the power to purchase a site upon which to erect the building.

COUNTY OFFICERS—PHOTOGRAPHS: A sheriff is required to comply with the ruling of the Attorney General made under the provisions of Section 13416, Code of 1927, in regard to the photographing of prisoners.

March 6, 1929. *County Attorney, Fort Madison, Iowa:* I wish to acknowledge receipt of your favor of January 28th in which you inquire whether or not the sheriff is required to take photographs of persons accused with the commission of crime.

Section 13416 of the Code, 1927, in substance authorizes the attorney general to adopt rules and regulations for criminal identification and requires that "the sheriff of each county and the chief of police of each city and town shall furnish to the department of criminal identification records and other information as directed by the attorney general." Under the provisions of this statute, the department has issued a set of rules, a copy of which I am enclosing herewith. Rule No. 6 applies to photographs, and under the provisions of the statute referred to we are of the opinion that this rule is mandatory upon the sheriff.

TAXATION—TELEPHONE COMPANIES: The taxing of telephone companies, under the provisions of Chapter 336, Code 1927, must be based upon the miles of pole line or miles of wire conduit and aerial cable.

March 8, 1929. *Executive Council:* We acknowledge receipt of your request for an opinion on the following proposition:

"The Executive Council would like the opinion of your office with reference to the distribution of a city's proportionate share of a telephone company's taxable value, when the wires have been taken from the poles and the cables are carried in four, six or nine duct, multiple conduits, as the case may be.

"Of recent years we are feeling the need of giving more consideration to wire mileage as wires are multiplying at an enormous rate. Sometimes they are carried on the poles in aerial cables and frequently they are carried in conduits in underground construction.

* * * * * *

"In 1904 the legislature passed Section 7044 requiring telephone companies to file maps showing the length of *pole line* in each taxing district, and the Executive Council has distributed the value over the pole line mileage operated, whether owned or leased. The cities are complaining that they are not receiving their proportionate share of the taxable value under the present method. How may we make an equitable distribution of the taxable value over the multiple conduit and over aerial cables of from 25 to 250 pair?"

Your inquiry is not altogether clear, but we assume that you wish to know whether telephone companies may be taxed upon the wire mileage in lieu of pole line mileage. Chapter 336, Code, 1927, provides the manner and means for taxing telephone and telegraph companies. In every section thereof, referring to the number of miles of line owned by the company, it is stated as "miles of lines" or "per mile of line," except in Section 7044 that requires these companies to file maps in order to aid the taxing officials in dividing the taxes properly, wherein this language is used:

"A statement showing the length of pole line in each taxing district. * * * *."

There are no decisions of our supreme court construing the language of this chapter in reference to the question submitted. However, in a recent decision of our supreme court in *Central States Electric Company vs. Pocahontas County*, 223 Northwestern, 236, in construing Section 4838 of the Code, 1927, in reference to transmission lines, the court held that the term "new lines, or parts of lines," as used in the section referred to, meant the line of poles and not the line of wires. We believe the interpretation of the language in reference to transmission lines is applicable to your inquiry, and taking the provisions of Chapter 336, supra, as a whole together with the decision of our supreme court just referred to, we are of the opinion that the taxes must be based upon the miles of "pole line" and not wire line. Lines in multiple conduit and aerial cables should be taxed on the same basis as though the cables or conduit were strung on poles. Any change in this method of taxation should not be attempted until the statutes referred to are amended to provide otherwise. This, for the additional reason that the plan herein set out has been followed for years by the assessing authorities and the statutes referred to have been given this construction.

SCHOOLS AND SCHOOL DISTRICTS: Board may maintain junior college at public expense within the limits of taxation and general fund.

March 8, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your request for an opinion of this department upon the following proposition:

"Section 4267-b1 provides that with the approval of the superintendent of public instruction and a favorable vote of the electors of the district the board shall have power to 'establish and maintain' a junior college, a vote of the electors being authorized under paragraph 8 of Section 4217 wherein it states that the voters assembled at the annual meeting shall have power to authorize the 'establishment and maintenance' of one or more schools of a higher order.

"Would the provision set out in the last sentence of section 4273 require a board to charge a sufficient tuition to cover the cost of instruction received by a student enrolled in junior college?"

This involves the construction of the word "maintain." This word, as defined by Webster's Dictionary, is as follows:

"To support, sustain or uphold; to continue to preserve; to carry on."

We are therefore of the opinion that the term is broad enough to permit a school board to use its general fund in the maintenance of such so-called junior college courses unless the question is controlled by the following provision in Section 4273 of the Code:

"Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person."

The latter provision was last enacted by the General Assembly as Senate File 101, Fortieth Extra General Assembly. The provision providing for the maintenance of the junior college courses is contained in Chapter 86, Section 2, Forty-second General Assembly and is the later enactment. We are therefore of the opinion that the provision permitting a board to maintain the junior college courses would control the provision in Section 4273.

The matter is, however, limited by the amount which the board can levy for the general fund. This provision is found in Section 4386 of the Code, ranging from seventy dollars in corporations having a school enumeration of ten thousand or more, to one hundred dollars in consolidated school districts.

We are also of the opinion that the limitation as provided in this section would apply and that it would be necessary for the board to keep the expenses payable out of the general fund within that limitation.

INTOXICATING LIQUOR—COUNTY ATTORNEY—FEES: An order of the court assessing attorney fees in a nuisance case cannot be modified by the board of supervisors who have no authority to refuse to allow the fee ordered by the court.

March 11, 1929. *Auditor of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"I wish to submit Code Section No. 2023-a2 of the 1927 Code for construction and interpretation, which reads as follows:

" 'In no case shall an attorney fee be allowed in an intoxicating liquor nuisance injunction proceeding, as provided in the second preceding section, unless the property in which the nuisance is maintained, and the owner of such property shall be made party defendants and an order of abatement issued as a part of the judgment, unless the court or judge hearing the cause shall find from competent evidence that the nuisance has been abated in good faith prior to the hearing, and the costs of the action paid.'

"In certain cases tried in Polk County District Court, where it was found at the hearing that a nuisance was maintained, an attorney fee of $25.00 was taxed by the court, and subsequently paid by the county to the county attorney for prosecuting the case, where no showing was made in the decree that the nuisance had been abated in good faith prior to the hearing and where the abatement order in said decree does not provide for the closing of the building, and so keeping it for a period of one year, as provided in Section 2032 of the Code, and where the costs in said case are not paid.

"1st: Is it legal for the board of supervisors to allow a claim for an attorney's fee, where the same has been taxed by the court as a part of the costs in the case, in an intoxicating liquor nuisance injunction prosecution, where the court decree shows that the nuisance was maintained,

but where the decree does not find that the same had been abated in good faith prior to the hearing, and where the order of abatement in said decree does not provide for the closing of the building and keeping it so for a period of one year, and where the costs of the action are not paid?

"2nd: Is it legal for the board of supervisors to allow a claim for an attorney's fee for prosecution in any intoxicating liquor nuisance injunction proceeding, where the costs of the action are not paid?

"3rd: Does an 'order of abatement' referred to in Section 2023-a2 require a closing of the building, and so keeping it for a period of one year as provided in Section 2032 of the 1927 Code?"

Your inquiry, as far as the specific instance presented is concerned, presents a moot question, in that the board of supervisors cannot go back of a judgment entered in the district court from which no appeal has been taken. The judgment and decree in the district court awarded the costs, and if there was any question as to the legality of this award, a motion to retax the costs should have been filed, and if the court persisted in its refusal an appeal should have been taken. As no appeal has been taken the judgment has become a finality. The board of supervisors cannot sit as an appellate tribunal and review the legality of the court's action.

The court in awarding attorney's fees in liquor nuisance injunction cases should be governed by the provisions of the statutes you refer to, and an order for the abatement of the nuisance should be made. It is not necessary that this order of abatement be against the property owner, but may be against the other defendant, the tenant. The court could not, unless the facts would warrant order the property closed or padlocked, as provided by Section 2032 of the Code, 1927, but might abate the nuisance as to the tenant. In either event, an order of abatement complying with the provisions of Section 2023-a2, supra, would have been made.

The court may also find that the nuisance has been abated prior to the hearing. The clause in the section referred to "and the costs of the action paid" appears as an alternative under which the court may allow attorney's fees. That is the court may allow an attorney's fee if the property and the owner thereof are made parties defendant and an order of abatement issued as part of the judgment. The court may also assess attorney's fees where it finds that the nuisance has been abated in good faith prior to the hearing "and the costs of the action paid."

The latter provision is undoubtedly intended to apply to cases where the owner of the property voluntarily abates the nuisance and pays the costs. The first provision would authorize the assessment of attorney's fees in the event the action against the owner and the property was dismissed for want of proper evidence, but an order of abatement issued as part of the judgment against the other defendant, the tenant. No judgment could be entered against the owner of the property or the property where the evidence did not warrant and the action had not been dismissed against him.

BUDGET DIRECTOR—MUNICIPALITIES—CONTRACTS: Director of the Budget does not have authority to reject a proposition appealed to him concerning a paving project in a city, but may make modifications in the plans, specifications or contract.

March 11, 1929. *Director of the Budget:* You have requested our opinion concerning your authority under the provisions of Section 357 of the Code, 1927, in reference to appeals to the director of the budget on contracts for public improvements contemplated by municipalities of this state; in particular, whether or not the director of the budget may reject entirely the contemplated improvement, or whether he has authority only to recommend modifications therein. Section 357, to which you refer, is in part as follows:

"At such hearing, the appellants and any other interested person may appear and be heard. The director shall examine, with the aid of competent assistants, the entire record, and if the director shall find that the plans and specifications and form of contract are suitable for the improvement proposed and that it is for the best interests of the municipality and that such improvements can be made within the estimates therefor, the director shall approve the same. Otherwise the director shall recommend such modifications of the plans, specifications, or contract as in his judgment shall be for the public benefit, and if such modications are so made, the director shall approve the same."

A reading of this statute, in our opinion, discloses but one alternative for the director of the budget in case he does not approve the plans and specifications, or finds that it is for the best interests of the municipality, and that is to make such modification therein as shall in his judgment be necessary for the best interests of the municipality. He cannot reject the proposition entirely.

BOARD OF SUPERVISORS—CONTRACTS FOR ROAD MACHINERY: No statute which requires a county board to advertise and receive bids for the purchase of road machinery. However, best practice is to advertise and receive bids.

March 12, 1929. *County Attorney, Atlantic, Iowa:* We acknowledge receipt of your request for an opinion of this department on the following question:

The board of supervisors of Cass County, Iowa, are contemplating a purchase of eight or nine thousand dollars worth of road machinery. The supervisors want to know whether or not, under the statutes, it is necessary to advertise and let this contract at a public letting.

We beg to advise that we find no statute which would require the advertising for bids. The contracts, however, must be made in good faith and for a reasonable price. We might advise that it is also the usual practice, where contracts of this kind are made, for the board to secure bids from more than one party so as to insure a fair price.

COUNTY RECORDER—RECORDING LEASE: Lease containing chattel mortgage clause may be filed with recorder in accordance with Sections 10017 and 10018.

March 14, 1929. *County Attorney, Muscatine, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Can a lease containing a chattel mortgage clause be filed in accordance with the provisions of Section 10017 upon payment of a twenty-five cent fee?

Under Section 10015, Code of Iowa, 1927, no sale or mortgage of personal property where the vendor or mortgagor retains actual possession of said property is valid against existing creditors or subsequent pur-

chasers without notice, unless the same is acknowledged and recorded or filed.

Under Section 10016, Code of Iowa, 1927, no lease, etc., wherein the transfer of title of ownership depends upon a condition is valid against existing creditors or subsequent purchasers without notice, unless the same be duly acknowledged, recorded, or filed.

Under Section 10017, Code of Iowa, 1927, the instrument, or a true copy thereof, which amount to a conditional sale or a chattel mortgage may be filed with the county recorder.

It would appear from reading these sections that a farm lease which contains a chattel mortgage clause and which has been duly acknowledged in the same manner as instruments conveying real estate can be filed with the county recorder in accordance with the provisions of Section 10017, and the recorder shall upon receipt of such instrument issue a receipt in accordance with the provisions of Section 10018. And the recorder may collect a fee of twenty-five cents for each such instrument filed in accordance with the provisions of Section 10031, Paragraph 1, Code of Iowa, 1927.

CITIES AND TOWNS: Vacancies in nomination at a city election may be filled, under the provisions of Sections 655-a11, -12, Code of 1927, after the time for filing nomination papers has expired.

March 16, 1929. *City Attorney, Independence, Iowa:* I wish to acknowledge receipt of your inquiry as to whether nominations for an office at your coming city election on a ticket called the "Republican Ticket" may be received by the clerk as legal nominations for the offices represented on this ticket. It appears that the caucus of the party was not held until after the fifteen day period for filing nominations, under the provisions of Section 655-a14 of the Code, 1927. The caucus nominated a ticket and also authorized the chairman and secretary to make nominations to supply vacancies on the ticket. The city clerk refused to accept the nominations made at the caucus and the chairman and secretary then certified the same names as nominated to fill vacancies. This certificate was refused as being insufficient, but was immediately corrected and as far as the form of the certificate is concerned it is now sufficient.

Sections 655-a11 and 655-a12 of the Code, 1927, which were formerly Section 1102, Code 1897, provides for the filling of vacancies in nominations. The provisions of Section 655-a12 are as follows:

"If a candidate named under this chapter declines a nomination, or dies before election day, or should any certificate of nomination be held insufficient or inoperative by the officer with whom it is required to be filed, or in case any objection made to any certificate of nomination, or to the eligibility of any candidate therein named, is sustained by the board appointed to determine such questions, the vacancy or vacancies thus occasioned may be filled by the convention or caucus, or in such manner as such convention or caucus has previously provided."

The provisions of Sections 1102 and 1104, Code, 1897, which are now the sections hereinbefore referred to, Code of 1927, were construed by our supreme court in *Reese vs. Hogan*, 117 Iowa, 603, under the facts identical with those presented by you, except that in the cited case the nomination was for a county office. It was contended in the cited case that the

nominations could not be made after the time for filing, as provided in Section 1104. The court held in substance that the county auditor could determine that a certificate was not filed in time and that this determination created a vacancy which could be filled under the provisions of Section 1102, even after the time for filing nominations had expired.

Under the authority of the decision referred to and the statutes above quoted, we are of the opinion that the nominations you refer to should be accepted by the city clerk, and are legal.

FISH AND GAME—PROTECTION FUND—ALGAE: The Fish and Game Department may treat any of the state waters of the state and pay the cost thereof out of the state fish and game protection fund, if the treatment is for the purpose of protecting and preserving the fish in said waters.

March 18, 1929. *State Game Warden:* We acknowledge receipt of your letter of March 14, 1929, requesting an opinion of this department on the following question:

Has the State Fish and Game Department authority to expend any of its funds for the treatment of state waters for the removal of algae?

Section 1717, Code of 1927, so far as is material to the question, provides in substance as follows: Out of the state fish and game protection fund, among other authorized expenditures, are the expenses of the propagation of fish and game.

Under this section if it were necessary to destroy algae in order to protect and preserve the fish in state waters, the state fish and game protection fund could be properly used. However, these funds could not be used for the treatment of the water in order to destroy algae unless the destruction of the algae was necessary to protect and preserve the fish. The protection and preservation of the fish must be the primary reason and not the secondary reason for the treatment of the waters.

"LEGAL RESIDENCE" DEFINED—SOLDIERS: "Legal residence" as used in Chapter 273, Code 1927, means that the soldier shall have a domicile within the county, that is, a residence with the intention of making that his home.

March 19, 1929. *County Attorney, Eagle Grove, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

What construction should be given the words "legal residence" as used in Section 5385, Chapter 273, of the Code of Iowa 1927?

Does it have the same meaning as "legal settlement" as used in Section 5311 of the Code of 1927, or does it simply mean a domicile within the county?

Under date of January 17, 1929, we rendered an opinion to John E. Mulroney, county attorney, at Fort Dodge, Iowa, in which we held that the only residence required is that the one receiving relief have a domicile within the county, and that by domicile we meant that the soldier, his widow, or orphan have a residence in said county with the intention of making that his home. In other words, the removal of the soldier and his family to a county with the good faith intention of making that his home is all that is necessary to entitle the soldier to relief.

In that opinion we failed to mention the words "legal residence" as

used in Section 5385, Chapter 273, of the Code of Iowa, 1927. We are, however, of the opinion that "legal residence" as used in said section does not mean that the soldier shall have the legal settlement as defined in Section 5311 but shall have only the residence as was suggested in our opinion to the county attorney of Webster County under date of January 17, 1929.

FISH AND GAME—FEES—DEPUTY—MUNICIPAL COURT: Assistant and deputy game wardens are entitled to receive and collect for the service of process issued out of a municipal court the same fees as the bailiff of said court for the service of the same process. The clerk of said court should pay the same out of fees collected.

March 20, 1929. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Our deputies have brought a number of cases to trial in the municipal court of the City of Des Moines, and are unable to collect the fees for the reason that the municipal authorities claim that, under Section 10671, Code of 1927, they are not authorized to pay these fees to anyone except the city treasurer.

Is this the proper construction to be placed on Section 10671, and if so what procedure should be followed in order to collect the fees?

Section 1713, Code of 1927, provides in substance, that assistant and deputy game wardens may serve and execute any warrant or process issued by any court in enforcing the provisions of Chapter 86, and that they shall receive the same fee therefor.

It would, therefore, follow that where a matter is prosecuted in the municipal court and the process is served by a deputy game warden that such game warden is entitled to the same fee for the service of said process as would the bailiff of said court.

Under Section 10671, Code of 1927, the bailiff is authorized to retain, in addition to his salary, such fees as he is entitled to by law, that is, mileage and necessary actual expenses. The assistant or deputy game wardens would, in cases for violation of the game laws prosecuted in the municipal court, be entitled to receive such fees as the bailiff is entitled to collect for the service of such process and the clerk of the municipal court would, therefore, be authorized to pay such fees to such assistant or deputy game wardens.

DRAINAGE DISTRICTS—BONDS—INTEREST: Where drainage bonds have been issued in accordance with the provisions of Section 7512, Code 1927, interest must be paid to the maturity date of the bonds notwithstanding the time when the principal and interest is paid by the taxpayer.

March 20, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

"1. When bonds have been issued against a drainage district, does the taxpayer have the privilege of paying any or all of his assessment installments in advance without paying all the interest on said installments up to the date they would have become due?

"2. If the county treasurer permits the taxpayer to pay all remaining installments with interest to date of payment; in what manner can the interest accruing on outstanding bonds be taken care of?"

You are referred to Section 7512, Code of 1927. This section provides, so far as is material to the question, as follows:

"* * * No assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds."

Therefore, where bonds have been issued in accordance with the provisions of Section 7503, Code of 1927, the taxpayer cannot pay the installments in advance unless he pays all of the installments and the interest thereon, in accordance with the provisions of Section 7512. The county treasurer has no authority, where bonds have been issued, to accept advance payments of installments under any conditions. If the county treasurer should accept advance payments of the installments and interest only to the date the advance payment was made, the county treasurer would be liable on his bond for any deficiency in the interest.

SCHOOLS AND SCHOOL DISTRICTS: Rule automatically suspending pupil failing to pass in two subjects unreasonable.

March 20, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the validity of the following rule adopted by a school board:

"After a pupil has been in the Carroll, Iowa, high school two semesters and during the third or any subsequent semester fails to pass in at least two subjects, the pupil is to be automatically suspended from high school for the following semester. The pupil may re-enter high school after one semester has elapsed. If the failure of the pupil is due to absence over which the pupil has no control, the pupil is not to be dismissed in this case."

We do not believe that this rule is enforceable for the reason that it is unreasonable, makes no allowance for the conditions affecting the scholastic standing except that of absence beyond the pupil's control, and is automatic in its operation, making no differentiation for conditions except the above. We are thoroughly in sympathy with the evil sought to be reached by this rule but believe that the action should be taken in individual cases under the general discretion of the board rather than by a rule of this sort. The board has the power to suspend any pupil when his presence is detrimental to the best interests of the school. Under this power the board may reach the evil under consideration.

COUNTY FUNDS—EMERGENCY TAX—BRIDGES: County may anticipate revenues of bridge fund for emergency expenditures due to washout of bridges caused by floods, etc.

March 22, 1929. *County Attorney, Sidney, Iowa:* You have requested the opinion of this department upon the question of whether the county board of supervisors may issue warrants against the county bridge fund after said fund is depleted, said warrants to be anticipatory of the future revenues for said fund, because of the recent emergencies caused by the washing out of bridges in your county. You state that the estimated cost of re-building the bridges which have been washed out will exceed $90,000.00 and that the current funds are quite inadequate to pay the cost of such re-building.

The only law in this state which prohibits the anticipation of revenues by the issuance of warrants against a fund which is exhausted, is Section 5258 of the Code, 1927. It provides that it shall be unlawful for any county, or for any officer thereof, to issue any warrant which will result during said year in an expenditure from any county fund in excess of an

amount equal to the collectible revenues in said fund for said year, plus any unexpended balance in said fund for any previous year. However, Section 5259 contains exceptions to this general restriction, and the first sub-division thereof provides that the limitation shall not apply to "expenditures for bridges or buildings destroyed by fire or flood or other extraordinary casualty."

We are therefore of the opinion that your county could issue warrants against the bridge fund which will result in an expenditure from said fund in excess of the amount of collectible revenues for the year, plus any balances which may remain in said fund because of the emergency which you described in your letter.

You are further advised that the matter of the issuance of warrants anticipating the revenues for your bridge fund because of the emergency, need not be submitted to the budget director for his approval. You are also advised that we believe you have followed the proper procedure as outlined in your letter of March 21st to us, and that you have properly computed the debt limitation of your county.

INSANE—COMMITMENT—COSTS: An insane person or those responsible for his support are not liable for the costs in connection with the hearing before the insane commission.

March 22, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is an insane person or those responsible for his support liable for the costs in connection with the hearing before the insane commission and his commitment?

Section 3595, Code of 1927, provides as follows:

"Personal liability. Insane persons and persons legally liable for their support shall remain liable for the support of such insane. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation herein created as to all sums advanced by the county."

In order for an insane person or those legally responsible for his support to be liable for the costs in connection with the hearing before the insane commission and in connection with his commitment, we must find some statute which imposes such liability. We find no such statute.

It would appear from reading Section 3595, above quoted, that the insane person and persons legally liable for the insane's support are made liable for the support of said insane. This, in our opinion does not make the insane person and persons legally liable for their support liable for the costs in connection with the adjudication and commitment.

BOARD OF CONTROL—APPROPRIATIONS: Where there is a balance remaining at the end of the biennium, in the appropriation for the Board of Control, not certified to the auditor, the auditor may carry forward balance to the current appropriations account.

March 23, 1929. *Auditor of State:* We acknowledge receipt of your request for an opinion of this department on the following question:

"It is provided in Chapter 275-58-42 G. A., 'No obligation of any kind, whatsoever, shall be incurred or created subsequent to June 30, 1929, against any appropriation made by this act, *unless otherwise specifically provided by law*, and on June 30, 1929, it shall be the duty of the head of each department, board or commission, receiving appropriations under

the provisions of this act, to file with the Auditor of State a list of all expenditures for which warrants have not been drawn.'"

"In connection with the appropriations for the use of the Board of Control of State Institutions is there a reversion at the end of the biennium of any unexpended balance remaining in their appropriation?"

Section 294, Code of 1927, provides as follows:

"Exception. The four preceding sections shall not apply to any appropriation for any purpose connected with the operation of any state institution under the control of the State Board of Control of State Institutions, unless that board shall certify to the said council that an unexpended balance of such appropriation will not be needed."

Section 59 of Chapter 275, referred to above, provides so far as is material to the question as follows:

"Except where otherwise specifically provided by law, * * *."

We are of the opinion that under Section 294, Code of 1927, there is no reversion to the general fund of the state of any expended balance remaining in any appropriation made for the use of the Board of Control of State Institutions unless the board certifies that balance is not needed. This being true, we are of the opinion that the Auditor of State, in order to simplify bookkeeping, could carry forward the unexpended balance of an appropriation made for the Board of Control to the current appropriations account.

COUNTIES—BUILDING: A building used to store road machinery and equipment destroyed by fire can be rebuilt by the use of the county general fund, and not the road or bridge fund.

March 23, 1929. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"Our county owns and maintains a machine shed in which are kept certain road machinery and also certain materials and machinery for use on county bridge work. This building was damaged by fire and the county board of supervisors authorized the repair of the building. They have allowed a claim of some $600.00 as a repair bill and the question now arises whether the warrant in payment of such bill shall be drawn on the road fund, bridge fund or general fund. I might add that the building was not insured so that no proceeds were received by virtue of any insurance policy that might be applied toward paying such repair bill."

There is no provision in the statute in regard to the payment for repairs on a building such as the one described in your request, and in the absence of statutory authority the general county fund must be used.

CEMETERIES—TOWNSHIPS: A township may accept cemetery property as a gift and a cemetery devoted to "general public use" may receive benefit of tax money authorized under the provisions of Section 5562.

March 23, 1929. *Auditor of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"Section 5562 provides a one mill levy to improve and maintain any cemetery not owned by the township, provided the same is devoted to general public use.

"What would a cemetery association have to do to get the township to help maintain the cemetery or take it over and maintain it? Also, is a cemetery association that sells lots to the public considered a public cemetery?"

Section 5559, Code of Iowa, 1927, authorizes a civil township to receive

money or property by gift or otherwise for cemetery purposes. If it is desired that the cemetery in question become a township cemetery the property should be conveyed as a gift to the township for use as a cemetery, under the provisions of the statute referred to.

In order to obtain the tax money authorized under the provisions of Section 5562 it is necessary that the cemetery "is devoted to general public use." In other words, public burials must be permitted in the cemetery irrespective of any religious or fraternal affiliations, or other distinctions.

Lots may be sold to the public indiscriminately by such an association.

EXECUTIVE COUNCIL: License issued by the Executive Council for the construction of a dam may be cancelled upon tender of the permit by the holder thereof.

March 25, 1929. *Executive Council:* We acknowledge receipt of your request for an opinion on the following proposition:

It appears that the Iowa Railway and Light Corporation made application, under the provisions of Chapter 363, Code of 1927, for a permit to erect a dam in the Cedar River near Rochester, Iowa. Pursuant to this application a permit was issued to the corporation but no rights have ever been exercised, and an annual inspection and license fee of $2,375.00 has been entered against the project. The company now desires to surrender their permit and have the same cancelled and be relieved from the inspection and license fee heretofore referred to.

Under the provisions of the chapter referred to certain procedure is required by the Executive Council necessitating some expense before a permit is issued. Section 7792, Code of Iowa, 1927, provides for the revocation or a forfeiture of a permit, in the event the permit holder does not begin construction or the improvement within one year from the date the permit was granted. There is no other provision in the statute with reference to the cancellation or revocation of a permit.

We are of the opinion, however, that the Executive Council may cancel the permit upon application from the permit holder and a tender of the permit issued.

COUNTIES—MINORS—INDIGENT PERSONS: Under Section 4005, Code 1927, complaint may be filed in the county where the minor is found and not necessarily in the county of legal settlement.

March 29, 1929. *County Attorney, Newton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under Chapter 199 of the Code of 1927 what county is the proper county in which the complaint, provided for therein, should be filed, that is, should it be the county in which person has a legal settlement or the county in which said person is now residing?

In the first place, Chapter 199 of the Code of 1927 applies only to complaints filed by adult persons in the office of the clerk of the juvenile court for medical and surgical treatment of indigent minors and does not apply to adults.

The complaint, under Section 4005 of said Chapter, may be filed in the county where the indigent minor is residing. There is no requirement in the chapter that the complaint be filed in the county where the indigent minor has a legal settlement.

Medical services and surgical treatment for adult persons are taken care of in the same manner as is the support of poor persons.

COUNTY PRIMARY ROAD BOND REDEMPTION AND INTEREST FUND—BONDS—PREMIUMS—TRANSFER: After the effective date of the Shaff Law funds in the county primary road bond redemption and interest fund, which were derived from the special levy to take care of interest, may be transferred to the county general fund, but premium received from the sale of county primary road bonds cannot be transferred, same being a part of the principal.

March 29, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A county, under the old county allotment plan of improvement of the primary roads of the state, issued some $700,000.00 worth of county bonds. A tax levy was made to pay the interest on such bonds and the county was allotted from the primary road fund the sum of $50,000.00 with which to pay the principal of said bonds. Some of the bonds issued were at a later date re-funded by issuing funding bonds therefor. On the re-issue a premium of $3,725.00 was received. In July, 1927, the Shaff Law took effect and under it both the interest and principal on county primary road bonds was to be paid out of the primary road fund. The county had in its county primary road bond redemption and interest fund a balance on hand which included the $3,725.00 premium. The county then made a transfer of all of this fund, including this premium, to the county general fund on the theory that this fund was a dead fund.

The question is, was all or a part of this fund a dead fund and could the county board properly transfer all of it to the county general fund including the premium received from the balance of the funding bonds?

Section 5289, Chapter 266, Code of 1927, provides as follows:

"Balance to general fund. The board of supervisors may, by resolution, transfer to the general fund any excess remaining from the proceeds of a county bond issue voted by the people, after the full completion of the purposes thereof."

We are of the opinion that after Chapter 101, Acts of the Forty-second General Assembly, now Chapter 241-b1 Code of Iowa, 1927, Section 4755-b4 of said chapter took effect, to-wit, July 4, 1927, that any monies remaining in the county primary road bond and interest redemption fund, which were the proceeds of a tax levy made by a county for the purpose of paying interest on county primary road bonds would no longer be needed by the county for such purpose and could, under the provisions of Section 5289, Code of 1927, above set out, be transferred by the board of supervisors of such county to the county general fund.

We are of the opinion that any money received by the county from the sale of county primary road bonds could not, under the provisions of Section 5289 or any other provision, be transferred by the board of supervisors to the county general fund if at the time the Shaff Law took effect, now Chapter 241-b1 of the Code of Iowa, 1927, there were any bonds outstanding.

We are also of the opinion that the premium received from the sale of county primary road bonds or from the sale of funding bonds is a part of the receipts from the sale of such bonds and that such premium can only be used for the same purposes for which the proceeds of the bonds can be used, and that the board of supervisors, under Section 5289, Code of Iowa, 1927, has no power or authority to transfer such money from the county primary road bond redemption fund to the county general fund.

FISH AND GAME—AFFIDAVIT—CLOSED SEASON: Under Section 1676-a2, Code 1927, the person has the right to file an affidavit at any time within ten days after the receipt by him of wild game or animals, even though this exceeded the ten day limit directly following the close of the season and the filing of such affidavit would be a good defense.

March 29, 1929. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Section 1766-a2, subsection 2, provides that during the first ten days next following the commencement of the closed season or the receipt by him of said articles he filed an affidavit in the office of the county auditor of the county wherein he keeps such articles, giving a list or inventory of them, stating when and from whom he acquired them or when he himself trapped or took them and giving a description of the premises where he keeps them.

"Is it your opinion that an individual would have the right to file an affidavit at any time within ten days after the receipt by him of furs in possession, even though this exceeded the ten day limit directly following the close of the season?"

We are of the opinion that under the above section the person would have a right to file an affidavit at any time within ten days after the receipt by him of furs in possession, even though this exceeded the ten day limit directly following the close of the season, and that the filing of such affidavit would be a good defense within the meaning of Section 1766-A2; provided, however, that the furs were lawfully received in possession of such person. In other words, if the furs were not lawfully received in possession by such person the filing of an affidavit would be of no avail.

SCHOOLS AND SCHOOL DISTRICTS—ELECTIONS: Electors may vote by absent voter's ballot; all qualified electors may vote at school election.

April 1, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in which you request the opinion of this department upon the following propositions:

"1. Under what, if any, conditions may legally qualified electors who are too ill to go to the polls, vote at school elections:

(a) For school directors.

(b) On the question of bonding the school district to build a schoolhouse?

"2. Under what circumstances may legally qualified electors necessarily absent from the school district on election day make use of the absent voters law to cast their ballots on (a) and (b) of Question 1?

"3. Are teachers regularly employed in the school district for the school year and who have been residents of the state six months, of the county sixty days, and of the school district ten days prior to the school election, eligible to vote at school elections as indicated in (a) and (b) of Question 1?

"4. Are hired hands and hired girls employed in the school district, who have resided in the state six months, in the county sixty days, and in the school district ten days prior to the election, eligible to vote in school elections as indicated in (a) and (b) of Question 1?"

It is specifically provided by the Code that the absent voter's law shall apply to any election held in any independent town, city, or consolidated school district, and that any voter absent from the district because of

business or on account of illness or physical disability, unable to attend the polls, may vote by such ballot. Section 927, Code of Iowa, 1927.

The secretary of the school board is the officer charged with the duty of printing and distributing the ballots. Section 929 of the Code.

In reply to your questions 3 and 4, we shall say that this is purely a question of fact. Any person residing in the district who intends that that shall be his voting residence shall be entitled to vote. No one can judge what this intention is but it is to be drawn by the acts of the parties. The general rule is that a person who is present in the community and who has or expresses no intention to remove therefrom is entitled to a vote.

TAXATION—MINERAL RIGHTS—MINES: Mines in operation are taxable in real estate. There is no provision authorizing the taxation of mineral rights separate and distinct from the real estate to which the mineral belongs.

April 1, 1929. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your favor of the 27th ult. in which you request our opinion on the following proposition:

"Some of the county assessors have been to see me in regard to a demand which has been made upon them that they assess for purposes of taxation certain mineral rights, which rights are owned by the Litchfield heirs and assigns.

"I would like to receive an opinion from you in regard to whether or not the assessors should not assess these mineral rights for the purposes of taxation?"

You do not state in what manner the mineral rights referred to are held. The general rule is stated in 37 Cyc. 775, wherein it is said:

"Mines in operation are taxable as real estate."

There is no statute in this state authorizing the taxation of mineral rights separate and distinct from the real estate to which the mineral belongs; and while there are no opinions of our supreme court, we do not believe the mineral rights reserved and that are not being operated as mines can be taxed separately. We know of one case in the district court where an effort was made to tax mineral rights, but the court held against the assessment. It would seem to be almost an impossibility to fix any value on minerals reserved. These questions, however, are without precedent in this state, and if you believe the assessment can be sustained the case might be tried out on that theory and the law finally established.

BARBERS—DEPARTMENT OF HEALTH: No prohibition against bona fide apprentice from working in this state more than two years.

April 2, 1929. *Commissioner of Health:* Replying to your request of March 14, 1929, relative to bona fide apprentices in barbering, which is as follows:

"A question has arisen with reference to who may be a bona fide apprentice in barbering as referred to in paragraph 2 of Section 2585-b12, Code of Iowa 1927. It is contended that a person who has been engaged in barbering for a period of more than two years is not entitled to become a bona fide apprentice in the State of Iowa as provided for in paragraph 2, Section 2585-b12, Code of Iowa, 1927—with the idea of taking the examination before the Board of Barbering Examiners on the completion of the period of apprenticeship two years later.

"Personally I feel that we have no right to prohibit anyone from becoming an apprentice in barbering so long as that person becomes a bona fide apprentice under the meaning of the section referred to and who of course otherwise complies with the law pertaining to such. Shall be pleased to have an opinion."

we would say that we concur in the expression of opinion by you that there is no authority to prohibit a bona fide apprentice who complies with the law from working in this state for the reasons that Section 2585-b12, paragraph 2 specifically exempts apprentices who are in good faith pursuing the study of barbering under the direct supervision of a licensed barber. The fact that the apprentice had been engaged in barbering for more than two years would not prohibit his working as an apprentice, under the present statutes.

BOARD OF HEALTH—COUNTIES—TOWNSHIPS: Where investigation ordered by township board of health, county liable for payment.

April 2, 1929. *County Attorney, Charles City, Iowa:* In reply to your request of February 16, 1929, which is as follows:

"Section 2237 of the 1927 Code provides in part as follows: In case of sickness where no physician is in attendance, the health officer shall investigate the character of such sickness and report his findings to the local board.

"I would like the opinion of your department based upon the following facts. The township trustees acting as a local board of health were informed that a resident of the township refused to call a physician to investigate the character of the sickness of his child. The board believed from the information at hand that the sickness might be scarlet fever and therefore contagious. Relying upon such information they requested their health officer of the township, who is a physician, to call at this residence and investigate the sickness. Such investigation was made by him and the question now arises who is to pay the charge made by such physician for the call. The father of the boy who was ill is well able to pay the physician's charges but refuses to do so for the reason that he did not request the physician to call.

"Kindly advise me as to whether the township or the county is liable for this expense and in either event from which fund it shall be paid."

we would say that while the statute does not provide for a matter of the character such as you state in your request, it is our opinion that the cost of an investigation would have to be paid by the county the same as provided in Section 2274. However, if any treatment was given this child and the parents were financially able to pay for the same then the parents should be required to pay the charges but in view of the fact that this was merely an investigation, it would undoubtedly be a proper charge against the county.

EXEMPTION—TAXATION: Soldier's widow entitled to apply exemption on life estate.

April 2, 1929. *County Attorney, Osage, Iowa:* In reply to your request of March 19, 1929, which is as follows:

"Would be pleased to have an answer to the question below relating to soldier's widow's exemption from taxation. Code Section 6946 provides that property of such is exempt. I judge that a life estate is not property, as the term is there used, being less than a freehold; but would the fact of the general rule being that a life tenant is liable for the payment of taxes, justify the exemption?

"1. Is a soldier's widow, owning money and credits, and also a life

estate in certain real estate, entitled to tax exemption as provided by Section 6946 on the real estate?"

we would say that a soldier's widow, having a life estate on which she would be liable for taxes, would be entitled to exemption therefor.

LOCAL BOARD OF HEALTH—TOWNSHIP TRUSTEES: Local health physician entitled to be paid by the county for his services in connection with the inspection of schools or public buildings within the jurisdiction of the local board of health. He is not, however, entitled to be paid for the administration of antitoxin or the cost of the same to pupils or other persons.

April 4, 1929. *County Attorney, Carroll, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. A board of township trustees, acting as a local board of health, ordered the health physician in the township to fumigate a private school in the township, which private school was attended by a large number of the children living in said township. Should the bill of the health physician be allowed by the county or who is responsible for the same?

2. Another local board of health ordered the health physician and two others to inspect private schools for diphtheria. It also appears that they ordered the physician to give antitoxin for diphtheria to a number of pupils. The physicians have filed bills, duly approved by the local board of health, for their services in inspecting the schools and also for the expense of the antitoxin and materials used in its administration. Should these bills be paid by the county?

1.

Section 2237, Chapter 107, Code of 1927, makes it the duty of the health officer to at least twice a year, or oftener if necessary, inspect schools, public buildings and public utilities within the jurisdiction of the local board of health, and after such inspection it is the duty of such officer to recommend to the local board of health the necessary measures to be taken by it for the maintenance of such schools, public buildings and public utilities in a sanitary condition.

Under the above section the health officer would be entitled to be paid by the county for his services in connection with the inspection of any school or public buildings within the jurisdiction of the local board of health, and this would include his services in supervising the fumigation of such building or buildings. He would not, however, be entitled to collect for any materials furnished for the fumigation of said building or buildings. Such expense must be borne by the school board or property owner.

If upon the inspection the health officer reports and recommends to the local board of health that a school building or other public building should be fumigated then the local board may, under the statutes, order the school board or property owner to have the school building or other building fumigated and if the school board or property owner should fail to comply with the order, then if the conditions warranted the local board of health might close the school or other building until such time as its order was properly complied with.

2.

With respect to your second question we do not find any authority in

the statute which would authorize a local board of health to require the health physician to administer antitoxin for diphtheria or any other disease to any pupil who might be attending school within the limits and jurisdiction of the local board of health. There being no authority for the administration of antitoxin to any pupil, any order which the local board of health might make to the health physician with respect to the same would be of no avail, and any claim which the health physician might have for his services and any antitoxin administered to the pupils of the school, would not be such a claim as the county would be liable for. If the antitoxin was administered by the health physician at the request or upon the consent of the parent, the health physician would have to look to the pupil's parents for his pay for such services and could not collect from the county.

Of course, as stated in section one (1) hereof, the expenses of the health physician in connection with the inspection of a school would be one for which the county would be liable.

TAXATION—TELEGRAPH AND TELEPHONE COMPANIES: Capital stock in such companies is assessed as moneys and credits, but it is not assessable under the provisions of Chapter 336, Code, 1927.

April 4, 1929. *County Attorney, Clarinda, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"The question has arisen in this county of the right of an assessor to assess stock that is owned by telegraph and telephone companies. The assessor takes the stand that it should be assessed as other monies and credits and the stock is sold with the understanding that it is not taxable."

Answering this inquiry we wish to refer you to the provisions of Chapter 336 of the Code, 1927, in regard to the assessment and taxation of telegraph and telephone companies. Section 7034 thereof in regard to the assessment provides:

"* * *; and the property so included in said assessment shall not be taxed in any other manner than as provided in this chapter and Section 6944, subsection 20."

Section 7031 of said chapter requires a statement to be filed by the telegraph and telephone companies containing the following information:

"8. The total capital stock of said company.
"9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.
"10. The market value of such shares of stock on the first day of January next preceding, and if such shares have no market value, the actual value thereof."

Thus it appears that the assessment of the companies takes into consideration the capital stock of the company. Then, too, we wish to call your attention to the provisions of Section 6944, Code, 1927, specifying the classes of property that shall be exempt from taxation. Subsection 20 thereof provides:

"Capital stock of utility companies. The shares of capital stock of telegraph and telephone companies, freight line and equipment companies, transmission line companies as defined in Section 7089, express companies, corporations engaged in merchandising as defined in Section 6971, domestic corporations engaged in manufacturing as defined in Section 6975, and corporations not organized for pecuniary profit."

Under the provisions of the statute above referred to, we are of the opinion that the capital stock of this company should not be assessed as moneys and credits, but is assessable under the provisions of Chapter 336, supra.

TAXATION—COSTS OF APPEAL: A county that is not a party to an action on an appeal from the city council acting as a board of review could not legally pay any part of the costs incurred in such proceedings.

April 4, 1929. *County Attorney, Orange City, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"A taxpayer appeals from the action of a city board of review in raising his tax assessment on real property. Judgment in district court is rendered against the board of review including judgment for costs. The city council which acted as a board of review in the instant case now asks that the county pay half of the costs in that the board of review was acting for the county as well as the city. Kindly let me have your opinion as to this matter."

We are of the opinion that since the county or the board of supervisors were not a party to the action and as no costs were assessed against them, they could not legally pay any of the costs from county funds.

SHERIFF: Deputy sheriffs may execute a sheriff's deed under the provisions of Section 5242, Code, 1927, and a deed executed by a deputy would be presumed to have been executed under the provisions of said section.

April 4, 1929. *County Attorney, Red Oak, Iowa:* We acknowledge receipt of your request for an opinion in substance as to whether a deputy sheriff may execute a sheriff's deed. In this connection we call attention to the provisions of the following statute, Section 11743, Code, 1927, which authorizes the sheriff to execute a deed to the purchaser of property at an execution sale:

"If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but, if subject to redemption, a certificate, containing a description of the property and the amount of money paid by such purchaser, and stating that, unless redemption is made within one year thereafter, according to law, he or his heirs or assigns will be entitled to a deed for the same."

Section 5242, Code, 1927, in regard to the powers and duties of deputies in part reads as follows:

"Each deputy, assistant, and clerk shall perform such duties as may be assigned to him or her by the officer making the appointment, and during the absence or disability of his principal, the deputy or deputies shall perform the duties of such principal, * * *."

In *Carr vs. Hunt*, 14 Iowa, 206, an action was brought to set aside a sheriff's deed that was executed by the deputy. In the opinion the court said:

"That the sheriff's deed was executed by the deputy of the sheriff is no cause for setting it aside, at the expense of the defendant, in execution. And then, if the deed was set aside, the judgment or decree and sale would remain. If the sale was valid, to set aside the deed would accomplish no particular good."

This is the only case in Iowa that we are able to find bearing upon the question submitted. The supreme court of Michigan, however, passed

upon this question under statutes similar to our own, except that the deed in question was executed by a deputy auditor acting for the auditor, who was authorized to execute the same under the statutes of that state. The Michigan statutes also provided that a deputy might execute the duties of his principal's office during the sickness or absence of the auditor general. The court said that the presumption is that it was necessary for the deputy to act and sustained the validity of the deed.

Drennan v. Herzog, 23 N. W. (Mich.) 170;
Fells v. Barbour, 24 N. W. (Mich) 672.

There are cases in other jurisdictions holding that a sheriff may cause a deed to be executed by one of his legally qualified deputies, and when so made that it has the same validity as though made and attested by the sheriff.

Kellar v. Blanchard, 21 L. A. Ann., 38;
Mills v. Turkey, 83 Am. Dec., 74;
Haines v. Lindsey, 19 Am. Dec. 586.

It has also been held that a deputy treasurer has authority to execute a tax deed required by the statute to be executed by the treasurer.

Huber v. Brown, 107 Pac. (Wash.) 850.

Under the provisions of our statute and the decisions above referred to, we are of the opinion that the courts would presume that a deed executed by the deputy was executed lawfully, under the provisions of Section 5242, supra, and it would have the same force and effect as though executed by the sheriff.

TAXATION—EDUCATIONAL INSTITUTIONS: A college which is the legal owner of land on January 1st is entitled to have it exempted from taxation, and the county auditor can correct an error in the tax list any time until the tax is paid.

April 5, 1929. *County Attorney, Sidney, Iowa:* This will acknowledge receipt of your favor in which you inquire concerning the assessment and taxation of certain real estate in your county. It appears that this real estate was deeded to Tabor College so long as the institution continued as a college; that last spring action was started by certain property owners who had deeded their land to the college in this manner, who were successful in having the land deeded back to them. This occurred in September and December, 1928. The county auditor has now placed the land on the tax list and is attempting to recover the taxes for the year 1928 from the owners to whom the college was compelled to reconvey. You inquire whether this action is proper. You do not state the nature of the action or the form of the decree entered by the court requiring the reconveyance of this land. This might be of some importance in determining this question.

Under the provisions of Section 7149, Code, 1927, the county auditor would have authority to correct any error in the assessment or tax list. Thus, if under the decree of the court the college had ceased to function and the individuals in question were entitled to a reconveyance of their property as of January 1, 1928, the auditor could correct the tax list in this respect any time until the taxes were paid. (*First National Bank vs. Anderson*, 196 Iowa, 587.) If, however, the college was the legal owner of the land on January 1, 1928, and functioning as a college, so as to be

entitled to the exemption, then there was no error in the assessment of the property and it should not be assessed to the individuals who obtained the reconveyance thereof after January 1st, following. See also *Iowa Weslyan College vs. Knight*, 207 Iowa, 1238.

TAXATION—APPORTIONMENT: The basis of the apportionment of losses, as provided for in Sections 5169-a1 to 5169-a10, Code 1927, should be on the taxable value of all property.

April 5, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"In replacement of losses as provided in Sections 5169-a1 to 5169-a10, Code 1927, should the basis of apportionment be the taxable value of all property including monies and credits? (Section 5169-a3.) Or in computing rate of loss; should the amount of monies and credits assessed be excluded? (See Sections 7163-7164, Code 1927.)"

We are of the opinion that the basis of the apportionment should be on the taxable value of all property including monies and credits.

PRIMARY ROADS—SPECIAL ELECTIONS TO ISSUE BONDS. Held Section 4753-a10 of Code, 1927, gives board of supervisors discretionary power to fix election date.

April 5, 1929. *County Attorney, Creston, Iowa:* We have your letter requesting the opinion of this department upon the question whether the board of supervisors of the county, when petitioned under the provisions of Section 4753-a10 of the Code, 1927, has any discretion as to the fixing of the date upon which the election for said purposes shall be held.

You are advised that the section in question specifically provides that when a sufficient petition, as is required by the provisions of the section is filed with the board, then the board "must submit to the voters of the county at a general election, or at a special election called by the board for such purpose" the question of issuing bonds for the purpose of raising funds to meet the cost of improving the primary roads of the county.

Thus is will be observed that the matter is left entirely within the sound discretion of the board of supervisors as to whether or not it will wait until the next general election to submit the question, or whether or not it will call a special election for such purpose. It is a matter resting solely within the sound discretion of the board of supervisors of the county.

SCHOOLS AND SCHOOL DISTRICTS: May abandon pension or annuity system.

April 5, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the question whether a school board, having once adopted a pension system, may abandon the same, and, if so, what shall be done with the funds accumulated.

The statute, Sections 4345-7, make it optional with the board to establish such a pension or annuity or retirement system of the public school teachers of the public school system. There is nothing in the statute to prevent a subsequent board from abandoning such plan if it so chooses. In that event the funds assessed, or the monies which had been accumulated, would be used for the benefit of such persons who were al-

ready receiving the benefits or who might thereafter be adjudged by the board entitled thereto.

SCHOOLS—BANKS: School board may direct the treasurer where and in what amounts to deposit school funds.

April 8, 1929. *Auditor of State:* This will acknowledge receipt of your letter in regard to the right of a school board to direct the treasurer where the funds of the district shall be deposited and specify the amounts.

This question is governed by Section 4319 of the Code of Iowa, 1927, which provides as follows:

"It is hereby made the duty of the treasurer of each school corporation to deposit all funds in his hands as such treasurer in some bank or banks within the county or within five miles of its border within the state of Iowa, *as directed by the board of directors of such school corporation* at interest at the rate of at least two and one-half per cent per annum on ninety per cent of the daily balances payable at the end of each month, all of which shall accrue to the benefit of the general fund of such school corporation."

We are of the opinion that under the above statute, the board may give full and specific directions as to where and in what amounts the money shall be deposited. The board *must* designate the bank or banks and fix the maximum deposit in each to be made by the treasurer, but may go further and direct the funds or specify definite amounts to be deposited in a particular bank.

SCHOOLS AND SCHOOL DISTRICTS—ELECTIONS: Where officers fail to qualify, county superintendent may call election without testing by court procedure the status of the directors.

April 8, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter in regard to elections in school districts where the officers fail to qualify, particularly, with reference to whether the county superintendent would have authority to call the election under the statute, or whether it would be necessary to institute quo warranto proceedings to determine the status of the board.

We are of the opinion that the county superintendent may consider the offices vacant and call the election within the time prescribed by law without testing by quo warranto proceedings the status of the present director.

TAXATION—DRAINAGE ASSESSMENT: Levies entered in the drainage record but through carelessness not carried forward on the tax record or tax list since 1918 cannot be made a lien upon the real estate by subsequently placing them on the tax list, and do not become a lien even though they are now brought forward and placed on the tax list. Taxpayers who have paid such drainage assessments carried forward in the manner stated are entitled to refund under the provisions of Section 7235, Code, 1927. The county auditor and treasurer may correct the tax list to remove the apparent lien upon the property.

April 9, 1929. *County Attorney, Forest City, Iowa:* We acknowledge receipt of your favor with the additional information concerning the drainage assessment levy that it is now sought to enter on the tax list in your county.

In your two letters we understand the facts to be substantially that in 1918 and 1919 the board of supervisors, acting for various drainage

districts, levied drainage assessments and subsequently made relevies for deficiencies in the original assessment; that there are also outstanding bonds or drainage warrants for the districts in question. The levies were entered in the drainage record of the district, but through carelessness on the part of the county treasurer the assessments in question were not placed on the tax records or carried unto the tax lists of the county.

The treasurer now seeks to enter the drainage assessments referred to upon the tax lists and compel the present owners of the real estate in question to pay the assessment. The question submitted is whether or not assessments referred to can now be made a lien upon the real estate and collected from the present owners as other taxes.

Section 7193 of the Code, 1927, provides as follows:

"The treasurer shall each year, upon receiving the tax list, enter upon the same in separate columns opposite each parcel of real estate on which the tax remains unpaid for any previous year, the amount of such unpaid tax, and unless such delinquent real estate tax is so brought forward and entered it shall cease to be a lien upon the real estate upon which the same was levied, or upon any other real estate of the owner. But to preserve such lien it shall only be necessary to enter such tax, as aforesaid, opposite any tract upon which it was a lien. Any sale for the whole or any part of such delinquent tax not so entered shall be invalid."

The section above quoted was formerly Section 1389, Code, 1897, and has been construed a number of times by our supreme court. In *Fitzgerald vs. Sioux City*, 125 Iowa, 396, which was a quiet title action involving the legality of a tax sale and the lien of certain special assessments for paving that were not carried forward by the county treasurer on the tax list, the syllabus concisely sums up the finding of the court in this language:

"The special assessments by a city which have been certified to the county auditor, but are not brought forward on the treasurer's books as required by Code, Section 1389, cease to be a lien upon the property."

In *Holleran vs. Toenningsen*, 178 Iowa, 1365, the court again construed the provisions of Section 1389, supra, and the holding of the court is stated in the syllabus as follows:

"Failure of the county treasurer to bring forward on the tax books a delinquent tax against real estate automatically removes the lien and the right to sell the property for such tax, even though in subsequent years the tax is brought forward. So held as to municipal assessments for paving."

Under the decisions of the court in the cases referred to and the statute quoted, we are of the opinion that the drainage assessments to which you refer are not a lien upon the real estate, even though they are now brought forward and placed upon the tax list.

You also inquire in this connection whether taxpayers who have paid the drainage tax thus carried forward without protest can recover the assessment paid from the county. Section 7235, Code, 1927, provides for the refunding of erroneous or illegal taxes. This section has been construed by our supreme court in a case involving a question similar to the facts presented by you. I refer to *Parker vs. Cochran*, 64 Iowa, 757. At page 760 the court said:

"We have been unable to discover any reason why the legislature should have made a distinction between a case where taxes have been

erroneously paid by a tax sale purchaser, on a sale which should not have been made for such taxes, because not carried forward, and one where the taxes themselves were illegal from their inception. In either case, the payment made by the tax sale purchaser is an erroneous payment. In either case, the land owner is entitled to redeem before deed, by paying simply the taxes for which the land was properly sold, and penalty and interest thereon, and, in either case, the other taxes paid should be refundable to the purchaser from the county treasury. We hardly think, indeed, that it would be denied by any one that if the plaintiff had, before deed, redeemed from the taxes of 1876, the other taxes would, under the first part of the section above cited have been refundable as taxes erroneously paid. If this is not so, we are unable to see that a tax purchaser would have any remedy for such taxes, and we cannot think that the design was to leave him remediless.

"Having reached the conclusion that the words 'erroneously paid,' as used in the first part of the section, are applicable to a payment like the one in question, we have to say we think that it follows that the words 'such erroneous tax' used afterwards, must be held to mean any tax erroneously paid, as first provided. While the taxes in question were not of themselves erroneous, they became, we think, essentially such, so far as the attempt to make a sale thereon was concerned. * * *"

The statute referred to in the cited case was Section 870, Code, 1873, which is carried forward to Section 7235, supra. We are, therefore, of the opinion that taxpayers who have paid the drainage assessment under the circumstances stated in your request, are entitled to a refund as provided by statute.

You also inquire what should be done with the entry on the tax list of this drainage assessment, for the reason that it is embarrassing persons who have transferred their property free from liens, or who are now negotiating loans. While this matter could be corrected by quiet title action, we believe it unfair to require the taxpayers and purchasers of land upon which the assessment referred to now appears as a cloud upon the title to go to this expense, and suggest that the county auditor and the treasurer correct the tax lists to remove the apparent lien of these assessments.

SCHOOLS AND SCHOOL DISTRICTS: School district may enter into a contract for leasing necessary buildings for junior college; may use funds levied by taxation for the establishment or maintenance thereof; may assume and agree to pay salaries of teachers in a former institution if they can qualify as teachers with certificates to receive public funds; cannot bind subsequent boards in the matter of maintaining buildings for junior college.

April 10, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter enclosing copy of articles of agreement between Ellsworth College of Iowa Falls, Iowa, and Independent School District of Iowa Falls, Iowa, relative to a lease of the property of the former by the latter for junior college purposes.

You request the opinion of this department upon the following propositions:

1. May a school district enter into such an agreement?
2. May a school district use funds levied by taxation for the establishment or maintenance of a junior college?
3. May a school district assume the liability for paying teachers' salaries after April 1, 1929, now being paid by Ellsworth College?

4. May one school board bind subsequent boards in the manner undertaken in the enclosed contract?

We shall answer your inquiries in the order set out above.

1. We are of the opinion that under the statute, Section 4267-b1, Code of Iowa, 1927, the board, when authorized by the voters, shall have power to establish and maintain a junior college. Under this section we are of the opinion that the board may enter into a lease agreement for the necessary building and fixtures.

2. In accordance with an opinion recently rendered, we hold that the statute is broad enough to authorize the expenditure of money raised from taxation for the establishment and/or maintenance of a junior college, providing it can be done within the per pupil limitations on the taxing power contained in Sections 4386-88 of the Code.

3. A school district may assume the obligations to pay these teachers after April 1, 1929, providing that they have certificates, or can procure the same, authorizing them to receive public money as teachers.

4. It is fundamental that one board cannot bind subsequent boards in the matter of contract unless specifically authorized by statute. This contract, if entered into, since there is no statutory authority as aforesaid, can be rescinded by any subsequent board without any liability upon the district. Since no rental is being paid, the only question which can be of material importance here is whether the district should make improvements upon the property. Ellsworth College may, under the terms of this lease, cancel the same at any time up to and including 1934; therefore any improvements made on the property by the Iowa Falls School District would revert to Ellsworth College. However, this is a matter within the discretion of the boards elected by the people and does not affect the validity of the question.

LEGISLATURE—COMMITTEES—POWERS: The committee on insurance of the House of Representatives has power to consider such matters as are referred to it for action and such powers as naturally inhere in such committee in performing its duties with respect to legislation which comes within the class for which it was appointed.

April 10, 1929. *Committee on Insurance, House of Representatives:* Your committee has requested of this department, an opinion as to just what powers are possessed by the committee and particularly as to its power to make investigations.

We do not have any provision, either constitutional or statutory, defining the powers and duties of a committee of the legislature. In view of this situation, a committee therefore has power over such matters as is referred to it for action, and such powers as naturally inhere in a committee in performing its duties with respect to legislation which comes within the class for which it is appointed. That is, the committee on insurance could inquire into the condition and administration of the laws relating to insurance to investigate the conduct and look to the responsibility of officers and agencies dealing with the question of insurance for the purpose of suggesting any measures that would correct abuses and protect the public interest in their relations to insurance. Such investigation, however, as the committee would make without especial authority in these matters, would be only such as the committee

could seek out without incurring expense or compelling attendance of persons before the committee. Persons might voluntarily appear before your committee to give you any information which you might desire, and you could make such investigations as your desire to make of insurance matters, only for the purpose of reporting such matters to the House.

I call your attention to Section 28 of the Code of Iowa, 1927, which reads in part as follows:

"Whenever a committee of either house, or a joint committee of both, is charged with an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving an order upon him, etc."

In view of this section, it seems to have been the thought of the legislature that before any investigation involving the question of compelling the attendance of witnesses, or the payment of the expense of witnesses, is taken, that authority must come from the legislative body as a whole or from the action of the joint legislative bodies. This section taken together with the provisions of Sections 23 and 29 of the Code, in prescribing how such matters shall be done, has the effect, in my opinion, of excluding other methods of conducting investigations compelling attendance of witnesses incurring expense, etc.

I trust that this answers the inquiry you have made as to your powers. If not, I shall be glad to have more specific information from your committee.

PUBLIC OFFICERS—INCOMPATIBILITY OF OFFICERS: Held office of deputy sheriff without pay is not incompatible with office of city policeman.

April 10, 1929. *County Attorney, Mason City, Iowa:* We have your letter requesting the opinion of this department as to whether the offices of deputy sheriff, without pay, and city policeman, are incompatible.

You are advised that we are of the opinion that such offices are not incompatible and that it would be proper for the same person to hold both offices for the reason that where the policeman is acting as deputy sheriff without compensation, he is not depriving the county of a deputy sheriff which it might otherwise have.

PUBLIC OFFICERS—INCOMPATIBILITY: Held office of county attorney of Franklin County and city solicitor of Hampton, not incompatible.

April 12, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting the opinion of this department upon the question of whether or not the county attorney of Franklin county may also act as city solicitor of Hampton, a city located in said county.

You are advised that we know of no reason why the two offices should be considered incompatible. There is no conflict in the duties of the respective offices.

You are advised that it is the opinion of this department that if the city council desires to appoint the county attorney, city solicitor, it is a matter for their discretion and that there is no legal reason why the same person cannot both hold the office of county attorney of Franklin County and city solicitor of Hampton.

DEPARTMENT OF AGRICULTURE — BOVINE TUBERCULOSIS: Indemnity under Sections 2671-72, can be paid only after the application for registration has been made and notification of eligibility received.

April 12, 1929. *Dr. Peter Malcolm:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"The question of paying indemnity on animals that react to the tuberculin test, that are from pure bred dam and sire that are not registered but are eligible to registration but the owner has not applied for registration before the animals were tested and reacted to the tuberculin test.

"Would like to have an opinion as to what evidence the owner would have to produce before he would be entitled to indemnity on the basis of a pure bred animal as is set forth in Section 2672, Code of Iowa, 1927."

The conditions under which the state can pay indemnities upon animals reacting to the tuberculin test are contained in Sections 2671-2672 of the Code. Under these sections the pedigree is proven by a certificate of registration and the indemnity is paid upon the basis of a registered pure bred animal.

However, where an application for registration has been made prior to the test and slaughter of the animal and the animal is accepted for registration and the certificate afterwards issued, the owner should be indemnified for a pure bred animal. The same would be true where a certificate of eligibility for record is issued by the secretary of the pure bred association but where the certificate of registration itself cannot be issued on account of lack of time.

In other words, the registration dates, for the purposes of this chapter, from the date of the application if the registration is accepted by the pure bred association and not from the date of the actual registration. The owner has done everything within his power to secure the registration and the matters to be taken care of are not discretionary with the pure bred association but merely ministerial acts to complete the registration.

CITIES AND TOWNS: Cities under commission form of government required to have annual examination of books and accounts under Section 6582; must also be examined by the Auditor of State under Sections 113-114.

April 12, 1929. *Mr. F. T. Van Liew, Des Moines, Iowa:* This will acknowledge receipt of your letter in which you request the opinion of this department in regard to the applicability of Sections 113-114 of the Code of Iowa, 1927, which provide for the examination of cities by the Auditor of State, to a city organized under the commission plan to which Section 6582 of the Code, is applicable.

It is true that Section 6582 of the Code, provides for annual examination of the books and accounts of a city organized under the commission plan of government. It is also true that Section 6567 of the Code, provides that all laws governing cities of the first and second class and not inconsistent with the provisions of Chapter 326 and certain other sections shall apply to and govern cities organized under such form.

However, we are of the opinion that the language of this statute does not overrule the language of Section 113 of the Code, for the reason that

it is not inconsistent with the latter section. The examinations do not cover the same time and are not made at the same period or with like or equal regularity.

For the reasons set out, we are of the opinion that the provisions of Section 6582 of the Code, do not relieve the Auditor of State of the duty of making an examination of the accounts of "all offices of all cities and towns having a population of three thousand or more, including offices of cities acting under special charter."

CIGARETTES—PERMIT: Where a partnership has been dissolved, the surviving partner who continues the business at the same place as was the partnership business has the permit to sell cigarettes under the permit issued to the partnership. (Sec. 1558, Code of 1927.)

April 13, 1929. *Treasurer of State:* We acknowledge receipt of your request for an opinion of this department on the following question:

A partnership owned and operated a billiard hall and had a permit to sell cigarettes. The partnership was dissolved, one of the partners continuing the business. The question is—is the partner who continues the business entitled to the benefit of the license issued in the name of the partnership? The business is being continued in the same place as was the business of the partnership.

We are of the opinion that under the statute pertaining to such matter, Section 1558 of the Code of 1927, that the partner who continued the business at the same place as was the partnership business would have the right to sell cigarettes under the permit issued to the partnership.

TAXATION—RAILROAD PROPERTY: Dormitories or apartments not used exclusively in the operation of a railroad but which are rented by the company are taxable the same as property of individuals in the counties where situated.

April 15, 1929. *Executive Council:* You have requested our opinion on a question contained in a letter from the mayor of Valley Junction in regard to assessment of certain property belonging to the Rock Island Railroad. From his letter we understand the property in question consists of "dormitories or apartments, some thirty or forty, that they rent to employes and derive a revenue therefrom. It has no connection with the railroad. These houses are filled with Mexicans who have many children who are educated in our schools, do not pay any taxes, and the owner of the property in which they live pays no taxes except on a mile basis, which should not apply to property they derive such rental from."

Section 7065, Code, 1927, in regard to the assessment of railroad property, reads in part as follows:

"Lands, lots, and other real estate belonging to any railway company, not used exclusively in the operation of the several roads, * * *, shall be subject to assessment and taxation upon the same basis as property of individuals in the several counties where situated."

It appears that this property is "not used exclusively in the operation" of the railroad, and is therefore subject to taxation under the provisions of the section last referred to.

SCHOOL AND SCHOOL DISTRICTS: Board may purchase real estate for school purposes from a member thereof.

April 16, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter in regard to the following proposition:

"In a certain school district of her county the school site consists of a half acre. The board wishes to enlarge this site to include an acre but the land surrounding the present site belongs to a member of the board. Would the fact that the land the board would have to secure belongs to a member of the board bar the board from purchasing it?"

The only provisions limiting contracts between an individual member of a board and the school board are contained in Section 4468. We are of the opinion that this section would not prohibit the transfer of a piece of land owned by a member of the board to the board for school purposes. It is, of course, very unusual and the strictest openness should be observed as to the transaction so that no accusal could be made of any collusion between the board and the property owner to secure the sale of the property or to determine the price paid therefor.

LEGISLATURE—BILLS—AMENDMENTS: No bill can be amended after it has been enrolled and sent to the governor before it has been signed by him.

April 18, 1929. *Hon. J. H. Johnson, Speaker of the House of Representatives:* I am in receipt of your communication dated April 18th, requesting the opinion of this department on the following propositions:

"Senate File No. 76 has passed both houses and has been sent to the governor for his approval. It has not yet been signed. It carries with it a publication clause which provides it shall go into effect after publication. Of course not having been signed it has not yet been published and is not in effect.

"There has been introduced and passed by the Senate, Senate File No. 509 which amends Senate File No. 76. The question is whether Senate File No. 509, which is now pending before the House, can be acted upon, which in effect amends Senate File No. 76 before Senate File No. 76 is signed by the governor or before it becomes a law by publication.

"I am also directed to ask you for an opinion whether or not a bill which has passed both Houses and sent to the governor, can be recalled by the House which sent it to the governor, so that it can be amended and then re-sent to the governor."

After making the best research of authorities it is possible to make within the limited time which I feel like taking in this matter, in view of the fact that you are awaiting the opinion of this office, it is my judgment that the legislature cannot amend a bill that has been passed by both houses of the legislature, regularly enrolled, and sent to the governor for his approval, before he acts upon the bill. It is also my opinion that they can amend a bill which has been enacted by both houses of the legislature and signed by the governor before such a law becomes effective, for the reason that all of the legislative functions surrounding the passage of a bill have been performed upon its being signed by the governor. Nothing then remains except the passage of time for it to become effective.

On your last proposition submitted, it is my opinion that to recall a bill which has been sent to the governor, and which has not been acted upon by him, requires the concurrence of both branches of the general assembly. This I find to be the universal practice of the Federal Congress and of the different states.

CORPORATIONS—RENEWAL—AMENDMENTS: A corporation cannot renew its corporate period by amendment to its articles, but must follow the procedure prescribed in Sections 8465-68, inclusive, Code 1927.

April 19, 1929. *Secretary of State:* We acknowledge receipt of your request for an opinion of this department on the following question:

May a corporation, whose corporate period is expiring, renew its corporate existence by amendment to its articles?

Under Section 8364, Code of Iowa 1927, all corporations endure for a period of twenty years except life insurance companies, street railways, steam railways, interurban railways and savings banks.

Sections 8365 to 8368, inclusive, prescribe the method whereby a corporation, organized under the laws of this state, may renew its corporate period. Under Section 8365 the renewal must be made within three months before or after the time for the termination of the corporate existence, and must be done by a majority of the votes cast at the stockholders meeting, and provision must be made for purchasing the stock of such stockholders who do not desire to continue in the corporation for its real value.

Corporations are permitted to organize and exist only by virtue of the statutes, that is, they are creatures of the law and have only such powers as are expressed in their articles of incorporation and the statutes of the states, and such as are necessarily implied from those powers granted.

Were it not for the statutes authorizing corporations to renew their corporate existence a corporation would not have power to do so. The statute pertaining to the renewal of such corporate existence must be substantially followed.

Under Sections 8367 and 8368, it is provided that within five days after the action of the stockholders voting for the renewal, the officers designated to complete the renewal shall make a certificate showing the proceedings resulting in such renewal. This certificate, together with the original articles of incorporation or amended and substituted articles, shall be filed for record with the county recorder and with the Secretary of State within ten days after they have been filed with the recorder; and upon the payment to the Secretary of State of the fee of twenty-five dollars ($25.00), together with a recording fee of ten cents (10c) per one hundred words and an additional fee of one dollar ($1.00) per one thousand dollars ($1,000.00) for all authorized stock in excess of ten thousand dollars ($10,000.00), then they shall be recorded by the Secretary of State and a certificate for the renewal issued by him. The manner of renewal, therefore, being specified before any renewal can be made the manner provided by the statute must be followed.

An amendment to the articles which simply extends the period of the corporation for another twenty years would not be a compliance with the statutes and would not be sufficient.

Our attention has been called to the case of Lamb & Sons vs. Dobson, 117 Iowa, 125. We have examined this case and find that the law, with respect to a renewal, has been changed. Since this decision was rendered Sections 8366, 8367 and 8368, Code of Iowa 1927, have been adopted and first appear in the Supplement to the Code of 1913. Before their adoption no method, other than by amendment, was provided for the renewal of a corporate existence. The decision in said case was, as the law existed

at that time, we think, correct but it does not now have any application to the manner of renewal.

DEPARTMENT OF HEALTH: Department not required to pay for analysis made by laboratory at Iowa City.

April 22, 1929. *Department of Health:* This will acknowledge receipt of your request in which the following question is submitted:

"Under Section 3952, Iowa Code of 1927, the bacteriological laboratory at the University of Iowa shall make necessary investigations by laboratory work to determine the source of epidemics of diseases whenever requested to do so by any state institution or by any citizen, school or municipality, when in the judgment of the local board the same is necessary in the interest of the public health for the purpose of preventing epidemics of disease.

"Section 3953 says that 'Such examination shall be made without charge, except for transportation and actual cost of examination, not to exceed two dollars each.'

"The second paragraph of this section states that 'In addition to its regular work, the laboratory shall perform all bacteriological, serological, and epidemiological examinations and investigations which may be required by the state department of health, and said department shall establish rules therefor.'

"The state department of health has established rules and regulations covering the analysis of water, and under these rules the laboratory charges a municipality or an individual a fee of one dollar per sample plus the transportation costs. The engineers of this department very frequently find it advisable to collect samples for analysis and it has been the custom in the past for the laboratory to charge this department a small fee for making such analyses.

"The question is, does the law above referred to contemplate that this department shall pay fees for this work done in the laboratory? The director of the laboratory is entirely agreeable that such fee should not be paid by this department, but hesitates to make any changes until we have an opinion as to whether or not the law intends that this department shall pay fees for laboratory work."

In reply we would say that it is our opinion that where your department engineers collect samples for analysis at the request of the cities, then the laboratory at the university should make a charge for the same, but where the engineers of your department collect samples in their line of duty, as employes of the state and the same are submitted at the laboratory at the state university, then the laboratory should make no charge to the State Department of Health.

The distinction is that where work is done purely on behalf of the state, as state employees, then no charge should be made, but where samples are taken at the request and on behalf of municipalities, then charges should be made.

COUNTY HOSPITAL: The original bills should be certified to and filed with the county auditor.

April 22, 1929. *County Attorney, Mt. Pleasant, Iowa:* We acknowledge receipt of your request in which you submitted the following question:

"Mr. Blackburn, one of the state checkers, while checking over the auditor's office of this county called attention to the board of supervisors that the procedure of the payment of disbursements by the county hospital of this county, as provided by Section 5358 of the Code of 1927, was not as required by law. The facts relative to this situation are as follows: The original bills, as they are submitted to the superintendent

of the hospital, are retained by her for reference. These bills are then taken up by the board of trustees of the hospital and on special sheets of paper a copy of these bills with their respective amounts are certified to the board of supervisors by the board of trustees of the county hospital acting by its chairman and the superintendent of the hospital. As previously stated, the original bills are never filed with the county auditor, neither are they certified to by the board of trustees of the hospital, but their duplicates, set out on an itemized sheet, are certified to in the manner I have just stated. We are of the opinion that the method pursued by us in the past has been legal and is legal at this time and we feel that Mr. Blackburn is under the erroneous impression that these bills have never been certified to by the board of trustees of the hospital.

"That we might check up on ourselves in this regard, we should like an opinion from your office regarding the legality under Section 5358 of the Code of 1927 of the method of our disbursing our hospital funds."

We are of the opinion that under the provisions of Section 5358, it was the intention of the legislature that the original bills should be filed with the proper county officers and that copies be retained by the superintendent of the county hospital.

MINES AND MINING: Inspection of haulage entries and room roadways prior to their use by employes not required. A "working place" that the miner is required to inspect includes the roadway or spur into his room.

April 22, 1929. *Board of Mine Inspectors:* We acknowledge receipt of your request for an opinion on the following proposition:

"1st. Does Section 1292 require the mine foreman or assistant to inspect haulage entries and room roadways each day before the drivers or other employees are required to use them in the performance of their respective duties?

"2nd. Does the term 'working place' in Section 1293(1), include the roadway which the miner is compelled to use daily in going in and out for his empty cars.

"3rd. Does the mine inspector have the lawful right to order the inspection of haulage entries and room roadways before the employees are required to use them. If so what portion of the law gives him that right?"

The only provisions in Section 1292 concerning the inspection of mines are those contained in paragraphs 1 and 6 thereof. Paragraph 1 reads as follows:

"To make careful inspection of the mine from day to day by himself or assistants and at all times when in his judgment conditions may require."

"To examine all escape ways, the traveling ways leading thereto, or cause them to be examined by his assistant, once each day, and make written report of the conditions and file in the office at the mine, * * *."

There is nothing in the language of the section above referred to requiring the mine foreman or his assistant to make an inspection of haulage entries and room roadway prior to their use by other employes. Under the provisions of paragraph 1, supra, they must be inspected once each day, but the time during the day of the inspection is not specified.

Section 1293 deals with the duties of miners and other employes. Paragraph 1 thereof, to which you refer, reads as follows:

"To examine his working place upon entering the same and not commence to mine or load coal or other material until it is made safe."

We understand that in the operation of mines and the mining of coal

there are rooms driven off the main entries. Certain miners dig coal from certain rooms and continue in that room until it is completed. Entering the room leading from the entry is a branch or spur of the track upon which the cars are run and we understand that this is the roadway to which you refer in paragraph 2 of your request. The miner is compelled to push the empty car into the room through this roadway from the entry and to return the filled car from the room to the entry over the same roadway. The roadway where the spur track from the entry goes into the room is a part of what is known as the room in which the miner works. In construing the language used in a statute such as the one under consideration, the terms used should be construed so as to give them the meaning generally understood and placed upon them by the class to which they apply. We understand that the term "working place" in mine parlance when referring to the miners who are employed in rooms, refers to the whole room. The roadway is a part of the room and thus a part of the miner's working place. Under the provisions of Paragraph 1, Section 1293, supra, the miner must examine his working place or the room and the roadway in it upon entering the same.

The answer to questions 1 and 2 in your request renders it unnecessary to answer question 3.

HIGHWAY COMMISSION: Easements for road purposes should be recorded in county auditor's offce.

April 22, 1929. *County Attorney, Algona, Iowa:* This will acknowledge receipt of your letter of recent date in regard to whether easements granted to the state highway commission should be placed of record in the auditor's office.

We are of the opinion that such easements should be placed of record in the county auditor's office. While it is true the deed or easement is recorded in the auditor's office merely for the purpose of notification as to taxation, yet, for the purpose of offering a full and permanent record of such easements in the county, we believe the county auditor should record it.

SECRETARY OF STATE—FEES: A fee of twenty-five cents per hundred words is mandatory only in case copies are certified. The secretary of state can make such charge for carbon copies unauthenticated as in his judgment is necessary and proper.

April 23, 1929. *Secretary of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"Section 88 of Chapter 8, Code, 1927, relative to the fees charged by the Secretary of State reads as follows:

" 'For a copy of any law or record, upon the request of any private person or corporation, for every hundred words, twenty-five cents.'

"This department is in doubt as to the proper procedure wherein requests are made for copies of records in this department. Where carbon copies or 'ditto' copies are made of the original, has this department any authority to make a lesser charge or to furnish free such copies, or does the law require us to charge the statutory fee of twenty-five cents per hundred words for copies and carbon copies?

"Likewise the same question arises in requests for copies of the enrolled bills.

"Kindly give this department a ruling for its guidance at your earliest convenience."

Section 88, to which you refer, should be considered as a whole and reads as follows:

"The secretary of state shall collect all fees directed by law to be collected by him, including the following:

"1. For certificate, with seal attached two dollars.

"2. For a copy of any law or record, upon the request of any private person or corporation for every hundred words, twenty-five cents."

There have been no decisions of our own supreme court construing this statute. However, the Supreme Court of Indiana passed upon a very similar proposition in the case of *Ex parte Brown*, 78 Northeastern, 553. The fees involved in the case referred to were those to be collected by the clerk of the Supreme and Appellate Court of Indiana. A statute of that state very similar to Section 88, supra, provided in part as follows:

"For every copy of record or other paper, per one hundred words (four figures counting as one word), or if the whole number of words in such copy be less than one hundred words, ten cents. * * *.

"For a certificate and seal, forty cents."

It was argued by the Attorney General of Indiana that the schedule of fees referred to could not be held to refer or mean only certified copies duly authenticated, but meant any copies certified or otherwise. The court in the cited case said:

"We cannot yield our concurrence to this view of the question, for, as it seems to us, such an interpretation or construction would be unreasonable and absurd."

The court goes on to say that the Indiana statute requires officers charged with the custody of public records to make certified copies thereof, and that such copies may be admitted in evidence. This is also true of the statutes of Iowa. The court in the cited case, continuing the discussion, said:

"It is evident and certainly beyond successful controversy that the legislature in authorizing the clerk of this court to charge a fee of ten cents per one hundred words for every copy of record or other paper, meant and intended a certified copy, one duly authenticated as required by law. It certainly did not intend or in any sense mean an unofficial or uncertified copy, a document or paper which could have no legal effect or standing whatever as legitimate evidence or proof of any fact. Such a copy, generally speaking, would be of not particular use or value. What the legislature meant and intended was a duly authenticated copy, as required by the provisions of the law and the decisions of court to which we have referred. Vide 24 Am. & Eng. Enc. of Law, pp. 200 and 208. The words 'copy of any record or paper on file' contained in the statute as generally construed or interpreted, mean a certified copy. This interpretation the authorities fully sustain. In *Muirhead vs. United States*, 13 Ct. Cl. 251, 256, the court, in construing a federal statute in regard to supervisors of election said: 'The words "copy of any paper on file" mean a copy certified and issued by the supervisors as a copy.' See also Sweet's Law Dictionary, p. 208."

The court in the cited case after further discussion of the question, arrived at the conclusion that the term "copy" referred to the certified or duly authenticated copy and not to uncertified or unauthenticated carbon copies. This authority is directly in point and there are no others to the contrary.

We are, therefore, of the opinion that the language used in Section 88, supra, construed as a whole, makes a charge of twenty-five cents per

hundred words mandatory only in the case of certified copies, and that you can make such charge for carbons and unauthenticated copies as in your judgment is necessary and proper.

TRADE-MARK: There is nothing of a "distinctive character" in the use of certain color for which a trade-mark might be granted.

April 24, 1929. *Secretary of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"This department is in receipt of an application for trade mark registration in behalf of the Green River Fuel Company of Mogg, Kentucky.

"Section 9867 of Chapter 430, Code of 1927, reads in part as follows:

" 'Said label, trademark or form of advertisement shall be of a distinctive character * * *.'

"The essential features of the trade mark to be registered consists of green coloring matter, and is applied or affixed to a lump of coal, as shown by the illustration attached hereto.

"This department would like your ruling as to whether or not this trade mark may be registered under the Iowa trade mark law."

Section 9867, to which you refer, in regard to registration of trade marks, requires:

"Said label, trade mark, or form of advertisement shall be of a distinctive character and not of the identical form or in any near resemblance to any label, trade mark, or form of advertisement previously filed for record in the office of the Secretary of State."

You will first ascertain whether or not the trade mark applied for by the Green River Fuel Company is "of the identical form or in any near resemblance to any label, trade mark or form of advertisement previously filed for record" in your office. If it is not, then we presume you desire our opinion as to whether or not the trade mark applied for is "of a distinctive character."

The application for the trade mark contains this statement:

"The essential features of the trade mark consists of green coloring matter and is applied or affixed to the goods by painting, spraying, or otherwise applying same directly to some of the pieces of coal in the mass, and the drawing or illustration herewith is lined to indicate the 'green color'; the exclusive use of the lump of coal shown in drawing or illustration is disclaimed except in connection with the trade mark shown."

We are of the opinion that the design or trade mark consisting of a lump of coal colored green as an emblem is of "distinctive character" and may properly be registered in your office. We do not believe, however, that the mere application of coloring matter to coal contained in wagon loads or other quantities for shipment and delivery can be said to be a "label, trade mark, or form of advertisement" or of "a distinctive character." In other words, a load of coal is not of "distinctive character" and does not become such by the application of coloring matter to the coal. The coloring matter does not change the character of the coal so as to make its use in this manner subject to registration as a trade mark within this state.

CHATTEL MORTGAGES: Sheriff should make proper charges for foreclosure of chattel mortgages.

April 24, 1929. *County Attorney, Fairfield, Iowa:* In reply to your request of April 2, 1929, which pertains to the following:

"Chapter 523 of the Code of Iowa, 1927, provides for the foreclosure of chattel mortgages by notice and sale. Is it a part of the duties of a county sheriff to look after and carry on the proceedings required therein when a chattel mortgage has been turned over to him and a request made of him to commence foreclosure proceedings, by giving notice, etc., as required by this chapter?

"Our county sheriff has been repeatedly requested to perform these duties. There is apparently no compensation in it for him and it takes considerable amount of his time. It appears to me that he is simply acting as an agent for the mortgagee and that he is under no obligation to perform these services."

we would say that it is not the duty of the sheriff to foreclose chattel mortgages unless he is so directed, in which event he should charge for the service of notice, the same as other notices and also charge for the holding of the sale, the execution of the bill of sale and for such other services as he may render and charges made under the statute. But his position as sheriff does not warrant the holders of chattel mortgages to make this request upon him with the expectations that it would be done without the payment of regular fees, as provided by the law. In the event that a chattel mortgage was handed to the sheriff for foreclosure, it would be his duty to do so and make the proper charges accordingly.

TAXATION—BOARD OF SUPERVISORS: The board of supervisors cannot remit from taxation property destroyed by fire when covered by insurance. The treasurer may bring an action for attachment or garnishment against funds in the hands of the insured for the tax unpaid.

April 24, 1929. *County Attorney, Osage, Iowa:* This will acknowledge receipt of your request for an opinion on the following proposition:

"A stock of goods and fixtures, upon which there was insurance, was destroyed by fire after January 1st, 1929; I take it under Sec. 7237 of the Code the board may not remit any of the tax; but this question has arisen:

"In such case, may the auditor and treasurer proceed to assess and collect the 1929 tax at once in case of total loss by fire (with insurance); in other words, does Section 7217 and similar sections (referring to migratory property of non-resident stocks of goods, etc.) apply?"

There can be no doubt that the provisions of Section 7237 do not authorize the remission of taxes because of loss, in the case presented by you, because of the last sentence in said section that reads:

"* * *. The loss for which such remission is allowed, shall be such only as is not covered by insurance."

Neither do we believe the treasurer would be authorized in levying by distress, under the provisions of Sections 7217-7219, Code, 1927. We do believe, however, that the treasurer would be authorized to bring an action, under the provisions of Sections 7186, 7187, Code, 1927, for an attachment of garnishment, providing grounds for the attachment exist, and we would suggest that this plan be followed in case the treasurer believes the debtor is attempting to defeat payment of the taxes.

EXECUTIVE COUNCIL: Duty of executive council to furnish quarters to state departments.

April 30, 1929. *Mr. W. C. Merckens:* I am in receipt of your communication of the 24th instant, which reads as follows:

"The Forty-third General Assembly created several new commissions of

government, which will be effective July 1st or 4th, and it will be necessary that the Executive Council secure quarters for said new departments and also possibly change some locations of the present departments. Under Chapter 18, Section 295, the Executive Council is charged with the placing of the different branches of our government. It will become necessary that outside quarters be provided to take care of the changes as contemplated.

"Can the Executive Council, by proper resolution, contract, lease or rent outside quarters and have same paid for out of Section 306 of said Chapter 18?"

While no express authority is given by statute to the Executive Council to rent quarters for departments of government outside of the buildings owned by the State of Iowa yet, as the administrative body of the state government, it is my notion that if it is impossible to house the various departments of state government within the building owned by the state, it becomes the duty of the council as a matter of business to see that all departments are so housed that they may function as intended by legislative enactment, and for this purpose would have the right to incur the necessary expense if funds are provided that can be used to rent quarters, if necessary, to house the departments.

I am of the opinion that the Executive Council should pay such expense under the provisions of Section 306 of the Code.

This opinion overrules the opinion of the department given under date of September 4, 1926, on this subject.

BUDGET DIRECTOR: Director of the budget may amend a decision making modifications of a proposed plan for paving, and approve certain parts of the plan and specifications appealed from.

May 1, 1929. *Director of the Budget:* You have consulted us concerning certain paving to be done in the town of Albia, and in particular as to the effect of your decision dated March 14, 1929, on appeal involving said improvement.

The improvement contemplated originally was in general the paving of approximately nineteen blocks. In your ruling you modified this to provide for eight blocks of paving and eleven blocks of graveling. The last paragraph of your decision reads as follows:

"Since numerous modifications in the specifications have been suggested it is the decision of the director that these specifications be rewritten and the completed specifications submitted to this department for approval before a new advertisement for bids on this improvement is published."

In the modifications suggested by you no changes were made in the paving specifications. The only changes or modifications in the specifications would be those occasioned by reason of the graveling in lieu of paving. A contract has been submitted to you for approval between the paving company and the town of Albia for the paving of eight blocks recommended in your decision, under the same specifications originally provided for the nineteen blocks and in which you made no changes except to lessen the number of blocks for paving.

You now desire to know whether you can approve this contract and the paving proceed on the eight blocks without submitting complete new specifications for your approval and the advertisement for new bids. It also appears that the paving company is willing to contract for the eight

blocks of paving for the same price that they bid upon the nineteen blocks, and that in your opinion this is a good price for the town.

We do not believe that under the decision of March 14th, supra, you could approve this contract without new specifications being submitted and a new advertisement for bids. We are of the opinion, however, that you can modify your decision of March 14th and approve the specifications for paving on the eight blocks recommended by you, and require new specifications for the graveling, thus making the two types of improvement separate and permitting the paving to go ahead without submitting new specifications and readvertising for bids.

TOWNSHIPS: Trustees entitled to per diem but not mileage when conferring with board of supervisors on township roads; not entitled to per diem for meeting to explain new law.

May 2, 1929. *County Attorney, Maquoketa, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following propositions:

1. Are township trustees entitled to mileage when they are called to the county seat by the board of supervisors to discuss alterations in the township road system?
2. Are such trustees entitled to compensation for a meeting called by the board of supervisors "for the purpose of explaining and discussing the new secondary road law?"

No provision is made for the payment of mileage to the township trustees by statute. We are therefore of the opinion that such township trustees are not entitled to mileage. Neither is there any provision made for paying expenses of township trustees while engaged in official business. We therefore affirm your opinion that the township trustees are not entitled to mileage in the case described by you, but that, since the matter involved alteration of the township road system, the trustees would be entitled to the statutory per diem as provided in Section 5571 of the Code.

We have examined the so-called new secondary road law, being Senate File 169, Forty-third General Assembly, and find no provision for such a meeting of the township trustees as above described. We are therefore of the opinion that the trustees cannot be allowed any compensation either per diem or expenses for the reason that the same would not be considered official business. We therefore affirm your opinion given the board of supervisors to that effect.

The only provision found is in Section 34, which provides for the same per diem and mileage for a "representative from each township" at a meeting to be held as a "board of approval" after the filing of the report of the engineer. This report could not be filed until some time next year.

SHERIFF—MILEAGE: Mileage earned by sheriff may be collected by him after he leaves office.

May 8, 1929. *County Attorney, Cedar Rapids, Iowa:* We acknowledge receipt of your request for our opinion on the following proposition:

"1st. To whom shall the clerk of the district court pay sheriff's mileage collected after the sheriff to whom clerk's books show it is due is out of office—to that sheriff or to county? If to county, in what fund shall it be placed by the clerk?

"2nd. If paid to the county in order for the sheriff to retain mileage must it be collected by him during each year of his term, or at any time while he is in office?"

In determining the question submitted by you it is necessary to enter into a review of the legislative history concerning sheriff's fees and mileage. Prior to 1908, Section 511, Code, 1897, authorized the sheriff to charge mileage in all cases required by law. Section 510-a, Code Supplement, 1902, in reference to the compensation of the sheriff contained this provision:

"And provided further, that all fees earned and uncollected at the end of each year shall belong to the county * * *."

October 21, 1908, the case of *Kremer vs. Wapello County*, 139 Iowa, 580, was decided. The identical question presented to you was determined in the cited case wherein it was held that under the statutes existing at that time the sheriff was not entitled to fees for mileage which he had not collected prior to the expiration of his term of office. Apparently in view of this decision, the Thirty-third General Assembly, in 1909, enacted a statute making such fees the property of the sheriff. This statute was Chapter 35, Acts of the 33d General Assembly, and provided:

"All mileage heretofore taxed under the provisions of Section 510-a, Supplement to the Code, 1907, which has been paid by parties litigant shall be and remain the property of the officer who earned the same, and he shall be entitled to receive the same, when paid, whether in or out of office."

This statute was carried as Section 510-a, Supplement to the Code, 1913, and has never been repealed or amended. The Code editor in preparing the compilation of the laws of this state known as the Codes of 1924 and 1927 omitted this section from the compilation. His omission, however, does not have the effect of repealing the law, so that the law today remains as it was subsequent to the enactment of Chapter 35 by the Thirty-third General Assembly, supra, and under its provisions a sheriff is entitled to receive the mileage earned by him while in office, when paid, whether in or out of office.

TAXATION—MONEYS AND CREDITS—EXECUTOR: Moneys and credits belonging to an estate in the hands of an executor for investment should be listed for taxation in the district wherein said executor lives.

May 8, 1929. *County Attorney, Fairfield, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Should moneys and credits belonging to an estate over which the executor is still acting and who is intrusted with the possession and investment of the estate funds and in whose name the securities are taken, list said moneys and credits for taxation in the district wherein the executor lives or should the same be listed in the district of the residence of the life tenant, who is entitled to the income and such portion of the principal as may be necessary for her care and support?"

We call your attention to Section 6956, Chapter 331, Code of 1927. In Paragraph 3 thereof, the person who has control or management of property subject to taxation which belongs to a beneficiary, and which is held in trust by him, is required to list the property with the assessor.

Under Section 6957, Code of 1927, any person who is required to list property belonging to another shall list it in the same county in which he would be required to list it if it were his own.

We are, therefore, of the opinion that the executor of an estate who has moneys and credits in his possession for the purpose of investment, and in whose name the securities are taken, should list said moneys and credits for taxation with the assessor in the district wherein said executor lives.

BOARD OF CONSERVATION—MEMBERSHIP—WILD LIFE SCHOOL: If the Executive Council and the Board of Conservation determine that membership in Wild Life School would aid in conservation then they may be authorized to do so.

May 8, 1929. *Executive Council:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Board of Conservation desires to take out memberships for each of the members of said board in the Wild Life School at McGregor, Iowa. The cost of each membership is $50.00. Under the statutes can the board, with the approval of the Executive Council, take out such memberships and pay for the same out of funds appropriated for the use of the Board of Conservation?

The question about which you inquire is one largely of policy, and if it is the opinion of the Executive Council and the Board of Conservation that memberships for each of the members of the Board of Conservation in the Wild Life School at McGregor would aid in the conservation and preservation of the natural resources and the wild life of the state, then we are of the opinion that the Executive Council would be authorized to approve the payment of the memberships out of the funds appropriated for the use of the Board of Conservation.

COUNTIES—ROAD BONDS—BONDS: The question of issuing bonds in compliance with increased limitation. May be submitted to vote of the people at any time before or after July 4, 1929. Where limitation increased and a county all ready has authorization in excess of old limitation bonds authorized may be issued after July 4, 1929, without another vote of the people.

May 8, 1929. *County Attorney, Osceola, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Clarke County, in July 1926, voted authorizing the board of supervisors to issue paving bonds in the amount of three hundred eighty thousand dollars, said amount being the maximum indebtedness which this county could incur under the 3% limit. Since the limit of indebtedness has been increased by statute effective July the 4th, 1929, to 4½% and since Clarke County under the 4½% limit may issue two hundred fifty thousand dollars additional bonds after July the 4th, 1929, providing the same is authorized by a vote of the county, would it be possible under the law to present a petition and to hold an election prior to July the 4th, 1929, authorizing the board to issue bonds to the limit of the 4½%."

We are of the opinion that the board may, upon their own motion or upon petition, submit to the voters of a county at a general or special election the question of issuing bonds for the purpose of raising funds to meet the cost of improving the roads of the county, and that the question may be submitted to the vote of the people at an election to be held at any time before July 4, 1929, and that if the people authorize the

issuance of bonds then after July 4, 1929, the effective date of the new law which authorizes the increase of the limit of indebtedness from 3 to 4½%, the board could then proceed to issue the additional bonds. The authority to issue the bonds may be granted by the people at any time. The bonds can be issued by the board from time to time until the limit of indebtedness has been reached. Any authorization in excess of the limit of indebtedness could be issued when the indebtedness has been reduced below the limit or when the limit has been increased. The statute merely prohibits the issuance of bonds beyond the authorized limit of indebtedness.

A county which has already authorized the issuance of county primary road bonds in an amount in excess of the 3% limit can, after July 4, 1929, issue additional bonds up to the new limit.

TAXATION—DRAINAGE ASSESSMENTS: Property owner may pay drainage assessments at any time, and certificate holder must surrender his certificate if paid. Where the property owner has not paid drainage assessment the certificate holder cannot collect from the county but may proceed against the property owner.

May 8, 1929. *County Attorney, Guthrie Center, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Can a property owner, living in a drainage district against whose property an assessment has been made for drainage purposes, after certificates have been issued in accordance with Section 7499, Code of 1927, pay the amount of his assessment at any time and pay the principal plus the interest to the date of such payment, and if so, would the certificate holder be required to surrender his certificate and accept the principal plus the interest to the date payment was made?
2. When improvement certificates have been issued in accordance with Section 7499 what is the procedure of a certificate holder whose certificate is due when it is presented to the county treasurer and there are no funds with which to meet or redeem the certificate, because the property owner had not paid the taxes which were pledged to the payment of this certificate?

(1)

Section 7502, Chapter 353, Code of Iowa, 1927, so far as is material to the question, reads as follows:

"Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. * * * Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates."

Clearly under the above section the property owner may pay his assessment at any time and the certificate holder must surrender his certificate when the assessment, which it represents, is paid and accept the principal plus the interest to the date of payment.

(2)

Section 7500, Chapter 353, Code of Iowa, 1927, so far as is material to the question, reads as follows:

"* * * Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to

collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature."

It will be seen from reading that part of the above section which is quoted that the certificate holder has to look to the property owner whose assessment is represented by the certificate for the payment of the same, and if at the time the certificate is due the property owner is delinquent, having failed to pay his assessment, then the proper procedure would be for the certificate holder to bring such action as the law authorizes against the property owner, to collect the assessments represented by his certificate, together with interest.

We are of the opinion that when a certificate, which is due, is presented to the county treasurer for payment and the property owner has failed to pay the assessment represented by such certificate, that the county treasurer should stamp the same "not paid for want of funds," the assessments not having been paid by the property owner. Of course the certificate holder would have no claim or action for the amount represented by his certificate against the county.

BOARD OF HEALTH—VENEREAL DISEASE: Where a person is infected with a venereal disease and refuses to be treated therefor the local board of health, under Chapter 108, is authorized to make such order in regard to said person as is necessary to protect the public health. The infected person must pay for the expense of treatment if financially able. If not, expense is paid by the county.

May 8, 1929. *County Attorney, Perry, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

We have cases in this county, where persons are infected with a venereal disease. Said persons are able to pay for the treatment but fail to do so. We also have cases where they are not able to pay for the treatments and are not doing so. What are the duties of the local board of health and of the board of supervisors with respect to such cases?

We refer you to Section 2287, Code of 1927 (Chapter 109.) It will be seen from reading that section that the local board of health, when it is informed that a person is infected with a venereal disease, and that said person is not under the care of a physician or is not taking the recognized precautionary measures to prevent the infection of others, that said board shall take such measures as it is authorized to take to protect the public health in the case of other communicable diseases as provided for in Chapter 108.

Under Chapter 108, Code of 1927, they are authorized to make such orders in regard to such persons as are necessary to protect the public health and the local board, under Section 2270, Chapter 108, is authorized, where the person infected or those responsible for their support are, in the opinion of the board, financially unable to pay for the proper care and medical attendance, to furnish the same. In such cases claim for such expense should be filed in the manner provided for in Sections 2274 and 2275, Chapter 108, Code of 1927.

If the infected person is able to pay for the proper care and treatment then the local board may order such person to submit to such treatment voluntarily, either to their physician or to a physician designated by the

local board of health and all expense connected with the same shall be paid by said person, and, of course, if the person refuses to submit to treatment then such person may be punished in accordance with Section 2279, Code of 1927.

TAXATION—DRAINAGE DISTRICT—COUNTY TREASURER: If there is a deficiency in the funds of a drainage district caused by reason of the county treasurer's failure to collect interest to maturity on bonds which have been issued, such deficiency cannot be reassessed against the properties affected; the deficiency could be collected from the treasurer provided a suit could be maintained.

May 8, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

"1. Where a deficiency in the funds of a drainage district occurs by reason of the county treasurer having allowed a taxpayer to pay his assessments in full (after the issuance of bonds) with interest only to date of payment. Can the deficiency be reassessed against the property affected?

"2. If the treasurer cannot be held as per yours of March 20, 1929, on account of the statutes of limitations having run, and this deficiency cannot be reassessed against the particular property causing the deficiency by reason of the treasurer having collected as in question 1 above, how can the deficiency be eliminated?"

1 and 2

We are of the opinion that where drainage bonds have been issued in accordance with the provisions of Sections 7503-12, inclusive, Code, 1927, and the treasurer has failed to collect interest to the date of maturity of the bonds and there is thereby a deficiency in the drainage district funds, that such deficiency cannot be reassessed against the properties affected. The treasurer could, if the statute of limitations had not run, proceed to collect the deficiency from the party or parties who did not pay all of the interest to the date of maturity of the bonds.

If the statute of limitations, however, had run then there would be nothing left but to look to the treasurer and his bondsmen for such deficiency. If the statute of limitations had run as to the treasurer and his bondsmen, then the holders of the bonds who are affected by such deficiency would have to stand the loss. The bonds are not an obligation of the county, but are obligations of the special assessments against which they have been issued.

BOARD OF ACCOUNTANCY—PRINTING—EXAMINATIONS: Board of accountancy may print new law in pamphlet form and distribute it if it will aid in the administration of the law. The examination provided for in Section 11, House File No. 207 may be held at any time after the effective date of the act with or without notice, the provisions of Section 9 not applying to the examination provided for in Section 11.

May 8, 1929. *Board of Accountancy, Des Moines, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Has the present State Board of Accountancy power and authority, either under Chapter 91, Code of 1927, or under the recently adopted statute known as House File No. 207 as amended, to have the new law printed in pamphlet form for distribution to the practicing accountants of the state and pay for the cost of printing out of funds already on hand?

2. Section 11 of House File No. 207, as amended, provides for the

giving of an oral or written examination, at the option of the candidate, for all practitioners, as defined in Section 7, who, on June 30, 1929, shall have been engaged in such practice for seven years or more. This section further provides that such examination shall be held as soon as possible after the application has been received by the State Board of Accountancy or the Board of Accountancy as created by this act. Section 9 provides that the board shall establish the time and place for holding the examinations and shall cause to be published a notice thereof for not less than three consecutive days in three daily newspapers, the last publication to be not less than sixty days prior to such examination. Has this board the right to hold the examination, as provided by Section 11, during the month of July, 1929, and if so, could this board cause to be published the notice of such examination sixty days prior thereto, which, you will note, is before the act takes effect?

(1)

The question of whether or not the State Board of Accountancy has authority to publish the new law, known as House File No. 207, is one largely of policy and, therefore, one for the board itself to determine. If the board is of the opinion that the publication of this law for the purpose of distribution to those interested in the practice of accountancy will be of a benefit and aid in the administration of such law, then we can see no reason why such board would not be authorized to pay for the cost of the same out of the funds appropriated for the use of such board.

(2)

We call your attention to Section 9 of House File No. 207, as amended. From reading it you will see that said section specifically excepts persons actually engaged in such practice at the date of passage of the act and those provided for in Sections 11, 12 and 13 of the act.

We are, therefore, of the opinion that the examination provided for in Section 11 of House File No. 207, as amended, is not governed by the provisions of Section 9 of said House File.

We are also of the opinion that it is within the discretion of the board to fix the time and place for the examination provided for in Section 11, and prescribe the kind of notice and the period for which it shall be published if they desire to give such notice. However, under Section 11 no notice whatsoever is necessary and there is no question but what the board would have the power and authority to hold the examination during the month of July, 1929.

BOARD OF CONSERVATION—DOCKS—CITIES AND TOWNS: One who desires to place a dock out, in, or over the public waters of the state must secure a permit for such purpose from the board of conservation. Under Chapter 294, cities of the first class and cities under commission plan of government, of a population of less than 25,000, have jurisdiction over the river fronts located within the limits of such cities or towns, and under Chapter 303 they are given the power to appoint a dock commission.

May 8, 1929. *Board of Conservation:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Can a man put out a dock on lakes in Iowa governed by the state, providing there is a street running to the lake at said point?
2. Have the cities and towns any jurisdiction on state waters located within their corporate limits?

3. Can a man buy a license or permit to put out a public dock on a public water located within the state?
4. Can a man get damages if his dock is torn out by the city?

(1)

Section 1799-b2, Chapter 87, Code of Iowa, 1927, answers your first question. Under this section it is necessary for anyone who desires to place a dock out in or over any of the public waters of the state to have a permit from your board.

(2)

Under Chapter 294, Code of Iowa, 1927, cities of the first class and cities operating under a commission form which have a population of less than twenty-five thousand are given jurisdiction over the river fronts located within the limits of such cities or towns. Cities and towns, under Chapter 303, Code of Iowa, 1927, are given the power, under certain conditions, to appoint a dock commission. The powers of said commission are defined in Section 5902 and apply generally to the building by the city of docks within the limits of cities or towns.

(3)

Question three (3) is answered by question one (1). Of course, if the city has wrongfully removed a dock the injured person would have a cause of action for any damages sustained.

TAXATION—BANKS: The provisions of Section 23, House File 402, Laws of the 43d General Assembly, concerning the assessment of bank stock, does not affect the assessments made for 1929.

May 13, 1929. *Auditor of State:* We acknowledge receipt of your request for our opinion as follows:

"1st. Under Section 7003 as amended by House File 402, 43d General Assembly, would a bank be entitled to deduct from its surplus and undivided profits the money actually invested in real estate if the money so invested exceeds the amount of its capital stock?
"2nd. If the above is answered in the negative or otherwise, kindly give us the proper method of arriving at the valuation of bank stock under the law as amended.
"3rd. Does the law assessing banks apply to the assessment now being made where the boards of review have already passed on the assessment and adjourned. If so, is the county auditor empowered to make the necessary changes?"

Your entire request can be presented in a single question, that is: Do the provisions of Section 23, House File 402, Laws of the 43d General Assembly, affect assessments made as of January 1, 1929?

House File 402, Laws of the 43d General Assembly, went into effect by publication on the 17th day of April, 1929. Section 23 thereof amends the provisions of Section 7003, Code, 1927, so that as amended Section 7003 reads as follows:

"The assessor from such statement shall fix the value of stock based upon the capital at the same ratio of assessed value to actual value as the assessed value of real estate in the taxing district where such bank is located generally bears to its actual value. All surplus and undivided profits of such bank or trust company shall be taxed as moneys and credits."

Personal property in Iowa is assessed each year as of January 1st and

assessments of personal property relate back to the 1st of January previous.

In re: *Kauffman's Estate*, 104 Iowa, 639; Section 6959, Code, 1927.

Section 7122, Code, 1927, in substance provides that the assessment rolls shall be laid before the boards of review on or before the first Monday in April in each year for correction, and in cities of ten thousand or over the roll shall be laid before the local board of review on or before the first Monday in May. Section 7123, Code, 1927, provides, "When such *correction* has been completed, * * *" that the assessor shall turn his books over to the county auditor. Local boards of review in Iowa meet on the first Monday in April, except in special charter cities having a population of twenty thousand or more, or ten thousand situated entirely within the limits of such cities, wherein the board may begin the performance of its duty on the first day of March, and in cities having a population of ten thousand or over the boards meet on the first Monday in May. In the first instance, the boards are required to complete their duties not later than the first day of May, and in the last instance not later than the first day of June.

Section 7129, Code, 1927.

It is a matter of common knowledge that many of the boards of review in the state of Iowa have met, passed upon the assessment rolls, completed their duties and adjourned. In such cases no relief or change in the method of assessing bank stock can be obtained.

Section 7132, Code, 1927, in substance authorizes persons aggrieved by the action of the assessor to make complaint before the local board of review, "which shall consist simply of a statement of the *errors* complained of, with such facts as may lead to their correction * * *." The assessments made for the year 1929 of bank stock were made under the provisions of Section 7003, Code, 1927, as it was prior to the amendment. The amendment placed the "surplus and undivided earnings" upon a different basis for the purpose of taxation than bank stock, and provided another means for arriving at the value of bank stock than that previously required under the statute, in that the statute prior to its amendment fixed the means of ascertaining the value of bank stock by taking the capital, surplus and undivided earnings of the bank into consideration. In making the assessment of bank stock for 1929 the assessor correctly took into consideration the "capital, surplus and undivided earnings" of the bank, and the assessment could not have lawfully been made upon any other basis.

The local boards of review have, under the provisions of the statute previously referred to, the power to make "correction" of "errors" in the assessment. It has also been held by our supreme court that the board has power to make the assessments that the assessor should have made. (In re Assessment Sioux City Stock Yards Company, 149 Iowa, 5.) There was no "error" in the assessment of bank stock at the time the assessments were made. The assessor was required to assess the stock in the identical manner that is now complained of, thus the boards of review would have no "error" to correct, and if a change in the manner of assessment was made it would not make an assessment that the assessor should have made, but one that he had no legal right to make.

At this time the taxing authorities are confronted with a situation wherein bank stock has been assessed legally under the provisions of Section 7003 prior to its amendment. A large number of these assessments have been approved by the local boards of review in districts where such boards have completed their work and adjourned.

To construe the provisions of Section 23, House File 402, so as to change the manner of assessing bank stock at this time, would be to give the provisions thereof a retrospective meaning. It is a fundamental rule that taxing statutes will not be given a retrospective meaning unless the language of the statute clearly shows the intention of the legislature to have intended such construction. All statutes will be given a prospective construction unless the intention to otherwise interpret them is plain. The language of the statute under consideration can certainly not be said to be retrospective in meaning.

It has been held by numerous courts of last resort that a revision of revenue laws does not affect prior valid assessments.

Alliance Trust Co. vs. Multnamah County, 63 Pac. (Ore.) 498;
City of Hartford vs. Champion, 20 Atl. (Conn.) 471.

Statutes exempting certain property from taxation do not exempt such property from taxes assessed—though not actually levied—before the act authorizing the exemption takes effect.

Aetna Life Insurance Co. vs. City of New York, 47 N.E. 593.

In the case last cited we have a situation presented almost identical with that referred to in your request. On June 15, 1886, the legislature of New York passed a statute which authorized the exemption of certain personal property in fixing the value of insurance companies' stock. Prior to that date no such exemption was authorized. It was contended the stock should be taxed under the provisions of the statute referred to, even though it had been previously assessed. The language of the statute in the case referred to was much stronger in favor of the interpretation urged than the provisions of Section 23, House File 402, Laws of the 43d General Assembly. The court in the opinion said:

"The solution of this question depends upon the construction of this provision of the statute and how far it affected the tax for that year * * *. It is contended by the plaintiff that this statute exempted it from taxation and was applicable to the taxes for the year 1886, although the assessment for that year had been completed prior to its passage. Its claim is that, as it was to take effect immediately, and as the tax had not been actually perfected by extending it upon the assessment roll, it was exempted from the taxes of that year. With that contention we cannot agree. Indeed, the question can hardly be regarded as an open one in this court, as similar questions have been several times decided by us adversely to the plaintiff's claim in that respect. (Citing cases) * * *. It is urged by the plaintiff that the word 'taxation' relates to the imposition of the tax itself and not to the assessment, and, as the tax had not been actually levied when this statute was passed, it exempted its property from taxation for the year 1886. We think there is no distinction between this case and in Re *American Fine Arts Soc.*, supra, as in that case, like this, the exemption was from taxation. As there was no provision in the act under consideration in this case, giving it a retroactive effect it did not affect the assessment and tax for the year 1886. It follows that the appeal of the plaintiff cannot be sustained."

It is also the rule that statutes relating to taxation are to be so con-

strued as to carry into effect the intent of the legislature, rather than to defeat the intent by too strict adherence to the letter.

Cooley on Taxation, 4th Edition, Section 502. Cases cited.

The statutes of this state require every municipality within the state, as defined in Section 369, Code, 1927, to prepare a budget of their probable requirements, and no taxes can be levied by such municipality unless such estimates have been made. In preparing the budget and estimating the amount of revenue that would be derived, the municipalities of the state took into consideration the fact that in 1929 the tax upon bank stock would be upon the basis required by Section 7003, supra, prior to its amendment. A change in the method of assessing bank stock in 1929 to conform to the provisions of Section 7003 as amended would bring about a very material reduction in the amount of revenue derived from this source of taxation by the municipalities of this state. We speak of this for the reason that it must be taken into consideration in determining the intention of the Forty-third General Assembly in the enactment of Section 23, House File 402.

We do not believe it was within the contemplation of the legislature to provide a different means of taxing bank stock during the year 1929, and subsequent to the date House File 402 became effective. Were this permitted, a clear discrimination would result between the stock of banks located in cities having a population of less than ten thousand and those having a population of over ten thousand. It would result in the loss of a large amount of revenue properly taken into consideration by the municipalities of this state in making up their budget, without any warning or notice to them that they were to be deprived of this revenue. It would require a retrospective interpretation of a statute that can only be given a prospective meaning. It would require local boards of review that have not adjourned to in effect make a new assessment and to assess property not as the assessor should have done, but on an entirely different basis and one not authorized at the time the assessment was made. It would disregard the fact that the taxing statutes of this state must be considered and construed as a whole. The assessment is as much a part of the taxation of property as any other step up until the final payment of the tax due. Under the authorities we have referred to and the rules of statutory interpretation announced, we are clearly of the opinion that the provisions of Section 23, House File 402, Laws of the Forty-third General Assembly, do not affect the taxation of bank stock for the year 1929.

TAXATION: A taxpayer cannot deduct from his assessment the amount assessed against his property for drainage purposes.

May 14, 1929. *County Attorney, Spencer, Iowa:* We acknowledge receipt of your request for an opinion in substance whether a taxpayer is entitled to deduct the amount assessed against his property for drainage purposes from his moneys and credits, under the provisions of Section 6988, Code, 1927. The statute to which you refer reads as follows:

"In making up the amount of money or credits which any person is required to list, or to have listed or assessed, including actual value of any building and loan shares, he will be entitled to deduct from the actual value thereof the gross amount of all debts in good faith owing by him."

The following section requires that such indebtedness be founded on actual consideration. The question resolves itself as to whether the term "debt" used in the statute referred to includes assessments for drainage.

We have been unable to find any decision of the supreme court of this state passing squarely upon this proposition. It is the rule, however, that the statute allowing deduction for debts is to be strictly construed. (Appeal of Bailies, 127 Iowa, 124, 127.) And in the same case it was held that "taxes" are not debts that may be deducted.

A special assessment is imposed only for the payment of special benefits conferred upon the property charged by an improvement, the expense of which is thus to be met. (*Cornelius vs. Kromminga*, 179 Iowa, 712.) And it is the universal rule in the absence of an express statutory provision that a levy of this nature creates no personal liability against the owner of the property assessed for the improvement. (*Wright vs. House*, 121 N. E. (Ind.) 433, 436.) It has also been held by numerous courts of last resort that drainage assessments are not "debts" within constitutional limits. (*People vs. Honeywell*, 101 N. E. (Ill.) 571, 572.) It is also the rule that a drainage district cannot sue the owner of the property assessed, for the reason that the liability is not a "debt," nor one arising ex contractu, nor one creating a personal liability, but attaches to the land and is collectible only by proceedings in rem. (*Middle Canal Company vs. Whitley*, 90 S. E. (N. C.) 1. 2.) The supreme court of West Virginia has held that a special assessment is a "tax" or an imposition in the nature of a tax and a lien upon the property imposed by law. (*Fairmont Wall Plaster Co. vs. Nuzum*, 102 S. E., 494, 496.) For a similar ruling see *Murray Brothers, etc. vs. Buttles*, 156 N. W. (N. Dak.) 207, 211. The statutes of this state are in conformity with the decisions above referred to. (Sections 7477, 7478, Code, 1927.) It is also to be noted that in the provisions of the former section such assessments "shall be levied at that time *as a tax*," and in the latter section it is said: "*Such taxes* shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes." In Sections 7480 and 7482, Code, 1927, as well as other sections in the drainage law, the assessments are referred to as "taxes."

In the case of *Bailies vs. City of Des Moines*, supra, the court in construing the provisions of Section 1311, Code, 1897, which is now Section 6988, said:

"The general tenor of the authorities is to the effect that a tax in its essential characteristics is not a debt, but an impost levied by authority of government upon its citizens or subjects for the support of the state. It is not founded on contract or agreement, but operates in invitum. Whereas a debt is a sum of money due by certain and express agreements and originates in or is founded upon contracts express or implied. * * *. A debt, in a legal sense, looks to contract relations, express or implied."

In the case of *Middle Canal Company vs. Whitley*, supra, it was held that a drainage assessment did not arise out of a contract and was not therefore a "debt."

In speaking of the object of Section 1311, the court, in *Bailies vs. City of Des Moines*, supra, said:

"The object and purpose of the act was, no doubt, to prevent double taxation, and not to allow one to offset as against his assessable property

an obligation which could not be assessed to any one, but which was due to the taxing power itself."

Thus the purpose of Section 6988, supra, would be subserved if special assessments were not deductible. They cannot be assessed to any one but are due to the taxing power.

Under the authorities above referred to and the language of our drainage statute, we are of the opinion that a taxpayer may not deduct drainage taxes from his moneys and credits, under the provisions of Section 6988, Code, 1927.

DEPARTMENT OF AGRICULTURE: Chapter 64, Acts 42d General Assembly, Section 3112-b1, Code of Iowa, 1927, does not require that all eggs sold in the state be sold under the grades therein established.

May 15, 1929. *Department of Agriculture:* This will acknowledge receipt of your letter requesting the opinion of this department upon the construction of Section 3112-b1, Code of Iowa, 1927, and especially whether this section requires all eggs sold in this state to be sold under the grades therein established.

The cited section was enacted by the Forty-second General Assembly, being Chapter 64 of the acts thereof. This act merely establishes the grades of eggs and does not specify that all eggs sold in the state shall be sold to that grade. The only thing in the act which refers to the sale of eggs is in the title. It is a well established rule that the title to an act is merely for the information of the legislature and is not a part thereof and that only that portion of the act following the enacting clause becomes the law.

We are therefore of the opinion that the act does not require that all eggs sold shall be sold to the grades established in this act but that it does require, by its establishment of grades, that if eggs are sold to grade or advertised for sale as one of the grades established in this act, such eggs so sold or advertised must conform to the respective grades established in the act and as advertised or sold.

ASSESSOR—BOARD OF SUPERVISORS: Assessor entitled to compensation fixed by board; board may increase but not diminish same.

May 15, 1929. *County Attorney, Fairfield, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following question:

Is the compensation fixed by the board of supervisors under Section 5573 of the Code, for assessors to be paid regardless of whether the assessor is engaged for a time to make such compensation computed at a rate of four dollars per day?

This compensation is fixed for the assessment on a basis of four dollars per day for the time which the board determines may necessarily be required in the discharge of all official duties as such assessor. We are therefore of the opinion that the assessor must accept this compensation and that the board should pay it whether or not the assessor is engaged for a number of days which will actually equal that compensation at four dollars per day. The compensation is fixed upon the basis of four dollars per day for the time which the board determines in advance will be necessary. If the assessor can complete the work in less time, or if it takes him a longer time, this does not affect the compensation.

However, the board has the power, if it finds that the time which it determined would be necessary was unreasonably short so that the compensation would be unreasonably low, the board could thereafter allow a greater compensation. It would not be bound, however, so to do and if the board now decrees it the assessor must accept the compensation fixed by the board at its January session.

COUNTY OFFICERS—TREASURER: Under the provisions of Senate File 169, Laws of the 43d General Assembly, only two funds are required to be kept by the county treasurer.

May 17, 1929. *Auditor of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"Under the Secondary Road Law as passed by the recent general assembly, will it be necessary for the county auditor and treasurer to carry in their respective ledgers a construction fund and maintenance fund in which all levies can be posted, or will there be necessary another fund in which the funds raised under Section 15-a1 of said law be placed."

Section 15-a1, Senate File 169, Laws of the Forty-third General Assembly, reads as follows:

"The board of supervisors shall, annually at the September session of the board, commencing in 1929, levy two and one-half (2½) mills on the dollar on all taxable property of the county, the same to be pledged either to the construction fund or the maintenance fund as the board may direct."

Section 9 of the act creates what is known as the secondary road construction fund, and Section 14 thereof creates the secondary road maintenance fund. The provisions of Section 15-a1, supra, require the board of supervisors to pledge the revenue derived by the levy authorized therein to either the construction or maintenance fund, so that it would not be necessary to maintain a separate account or fund for the levy authorized under this section. The funds when received would be credited to either the construction or maintenance funds, as the board directed.

HIGHWAYS—RIGHT OF WAY: A right of way acquired under the provisions of Chapter 241-b1 may be paid for under the provisions of Section 4755-b5 by issuing certificates anticipating the revenue to be refunded.

May 17, 1929. *County Attorney, Sidney, Iowa:* This will acknowledge receipt of your letter in regard to the provisions of Section 4755-b5, Code, 1927. You inquire whether it is necessary to issue warrants stamping them "anticipatory" and pay them from the money to be refunded the county, under the provisions of this section, or whether certificates anticipating the payments are sufficient.

The statute in this regard reads in part as follows:

"* * *, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years, nor to bear an interest rate to exceed five per cent."

We believe the procedure that should be followed to anticipate this fund would be to issue anticipatory certificates and redeem the certificates from the funds paid annually, under the provisions of the above statute.

TAXATION.

May 20, 1929. *County Attorney, Burlington, Iowa:* This will acknowledge receipt of your request which is as follows:

The Kiwanis Club of Burlington proposes to lease certain ground for the purpose of establishing a free parking space for the public and proposes to charge only a small fee for the purpose of protection to the owners of cars, any surplus to be devoted to charity.

The first question being, will such a project fall within paragraph 9 or 3 of Section 6944? Second, will the taxes for the year 1929 be collectible? Third, would the collection of a nominal fee for police protection deprive this of its charitable features?

In reply to your first question, we do not believe that this project would fall within paragraph 3, as paragraph 3 specifically names the purposes and provisions surrounding the exemption and we do not believe that it falls within paragraph 9 for the reason that this property, while being used by the Kiwanis Club, is owned by a private individual. We refer you to the case of *Laurent vs. City of Muscatine*, 59 Iowa, page 404, in which case property was being used by the church while the title was vested in a private individual and the court therein said:

"But in this case the lots are not the property of the church or of the school * * *. It is true the church and school have used the premises; but this alone is insufficient. By the agreed statement of facts the lots are the private property of the plaintiff.

"* * * It is said that, by the law and usages of the church, the property is held by the bishop in trust for the church. We cannot take judicial notice of such law and usage, and, if it were a material question in this case, we incline to think, for aught that appears in the agreed statement of facts, all of the property in the common enclosure is subject to taxation, for it is not shown that the church has any equitable interest in any of it. In view of the oft repeated rule that taxation is the rule and exemption the exception, we think this property is not exempt. In our opinion, use and ownership, either legal or equitable, should combine, in order to effect the exemption."

In answer to the second question we are of the opinion that the taxes for the year 1929, of course, in face of our ruling on the first question would be collectible and in view of the holding on the first question, it becomes unnecessary to answer your third question. We would suggest, however, that this matter be presented before the city council who, together with the assessor, could, if they desired, reduce the tax as long as this property is used as a benefit to the public.

BOARD OF HEALTH:

May 20, 1929. *Department of Health:* This will acknowledge receipt of your request in which you ask the following question:

"May the board of nurse examiners enter into an agreement with the proper bodies of other states so that reciprocity will apply only to those persons who have satisfactorily fulfilled all the requirements of this state."

In reply, we would say that a reciprocity agreement might be entered into by this board, which would grant reciprocity only to those nurses who have had a course of training and who have passed an examination equal to the requirements now enforced in the State of Iowa and that they might deny reciprocity to all others who cannot meet this requirement.

In other words the standard requirement might be used as a basis for reciprocity.

COUNTIES—POOR: The county wherein a poor person has a legal settlement is the county which must pay for his support.

May 21, 1929. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In the summer of 1926 a family by the name of McBride moved to Fort Dodge from Dallas county, where they stated they had lived one year. This family was served with a notice to depart by Webster county on January 27, 1927. The family ignored the notice and continued to live in Webster county until June 20, 1928, more than one year after the service of the notice. On June 20, 1928, they moved to Humboldt county. The family became public charges in Humboldt county and on May 6, 1929, were sent back to Fort Dodge.

They have eleven children, the husband is out of work. What county is responsible for the support of this said family, that is, has it a legal settlement in any county?

Under Section 5311, Chapter 267, Code of 1927, a legal settlement is acquired by living in this state for one year, and under Section 5315, persons going from one county to another who are county charges or likely to become such, may be prevented from acquiring a legal settlement in the county by giving them notice to depart. If, however, after notice to depart has been served, and the person served continues to live in said county for the period of one year without a further warning said person acquires a legal settlement in said county.

It would, therefore, follow, under the facts above stated, that the McBride family have a legal settlement in Webster county, Iowa; they having remained there for more than one year after the notice to depart was served upon them, to-wit, January 27, 1927. They did not, by their residence in Humboldt county, acquire a legal settlement there for they did not remain in said county for the period of one year. Webster county must, therefore, under the law, support said family if they are in fact public charges.

TAXATION—NURSERY STOCK: Nursery stock should be assessed for taxation when growing on land as a part of the land; when growing in containers separated from the land, as personal property.

May 22, 1929. *Mr. R. S. Herrick:* We are in receipt of your communication of recent date in which you request the opinion of this department upon a matter relative to the taxing of nursery and greenhouse stock.

There seem to be two classes of nursery and greenhouse stock, that which is planted in the ground and is a part of the soil as any other growing vegetation, and the other class is that contained in greenhouses growing in pots or other containers, separate and apart from the general soil or separate from the land. Because of the difference in the nature of these two classes of growing nursery and greenhouse stock, two rules of taxation apply.

If the nursery stock is growing upon the land, it is a part of the realty. The assessor in such a case should make but one estimate of the land and realty and the nursery stock together. He should value the land, taking into consideration the value of the nursery stock growing thereon, but

the assessment will be against the land as such and the assessed value will be the value for taxation purposes of the land as affected or increased by the nature of the use to which it is put. See in this connection *Wilson & Co. vs. Cass County, et al.*, 69 Iowa, 147.

As to growing nursery or greenhouse stock in pots or other containers separated from the land, it is the opinion of this department that such stock should be assessed as any other personal property.

CITIES AND TOWNS—BONDS—REDEMPTION: Under Section 1179-b1, Code 1927, a city or town which has funds in their waterworks account which are profits and which are not needed for other purposes may take up outstanding bonds and pay the face value, accrued interest and a premium therefor, if in so doing it will save the city money.

May 22, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A city has outstanding water-works bonds which are not yet due and has on hands in the water-works fund a cash balance, and desires, out of this balance, to take up the outstanding bonds by paying the face of the same together with accrued interest and a premium, thereby saving the city considerable money.

Is it legal, under the statutes of this state, for the city to pay a premium and take up the bonds?

Section 1179-b3, Code of Iowa 1927, provides as follows:

"Permissive application of funds. Whenever the governing authority of such political subdivision shall have on hand funds derived from any other source than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest, of such bonds such funds may be so appropriated and used and the levy for the payment of the bonds correspondingly reduced."

We are of the opinion that if a city or town has funds on hand in their waterworks account which may be profits and which are not needed for other purposes, that they may use said funds in accordance with the provisions of the above section to take up, before maturity, outstanding waterworks bonds and may pay the face value, accrued interest and a premium thereon if in doing so it will save the city or town money in the way of interest.

CORPORATIONS—STOCK—SECURITIES: All persons, firms, companies, partnerships, associations or corporations which issue stock on the partial payment or installment plan, as defined in Section 8517, Chapter 392, Code 1927, must qualify.

May 22. 1929. *Auditor of State:* Some questions have arisen as to just what corporations, associations, persons, partnerships and firms should qualify under the provisions of Chapter 392, Code of Iowa 1927. In order to settle the question we are, therefore, rendering you an opinion on the same.

We are of the opinion that all persons, firms, companies, partnerships, associations or corporations which issue stock on the partial payment or installment plan, as defined in Section 8517 of said chapter, must qualify in accordance with the provisions of Chapter 392. No other conclusion can be reached after reading the provisions of Section 8517. The Auditor of State, under said chapter, is made the trustee, so to speak, of the purchaser's funds until the stock or security, etc., is paid for.

Under Chapter 385, Section 8412, Code of Iowa 1927, no domestic corporation, except building and loan associations, can issue any stock until the par value has been paid. When stock or securities are sold on the installment plan the payments made by the purchaser do not become a part of the capital of the company selling the same until the stock is paid for in full. There is no capital liability on the part of the company for the amounts paid by the purchaser until the full amount has been paid and the stock issued therefor. If the payments made by the purchaser do not become a part of the capital of the company until the stock is paid for and stock issued, there is no reason why the company should have authority to use these payments in connection with its business. The real purpose of Chapter 392, Code of 1927, is to protect the purchaser. Any other construction than the one herein placed on said chapter would defeat the purposes of the same and would not protect a purchaser on the installment basis.

ROADS AND HIGHWAYS:

1. Road established prior to effective date of Code, 1851, had width as established; if records lost, the presumption is that the fences are on the proper lines; if since the effective date of Code, 1851, the statutory width is 66 feet.

2. Landowner acquires no rights by reason of encroachment upon highway.

May 23. 1929. *County Attorney, Maquoketa, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following propositions:

1. Is a road, now fifty feet wide, but without record of its establishment, to be considered within its present fence limitations, they having been established over a long period of time, or is it to be considered sixty-six feet wide?

2. Does the adjoining landowner acquire any rights by reason of the statute of limitations or estoppel to encroach upon the highway where permanent improvements have been made?

3. Where an appraisal board has been appointed and two agree but the third refuses to concur, must the report be unanimous or is the report signed by the two members and the protests of the third the report of the appraisers?

The court in the case of *Dickson vs. Davis County*, 205 N. W. 456, determined the first question. In that opinion the court said:

"The record in this case shows that, when the new road was established, no reference was made to its width. It is unnecessary, in the establishment of a road under our law, to recite the width of the road, for the reason that the width of the road is determined by statute, unless otherwise fixed by the establishing body. *Quinn vs. Baage*, 138 Iowa, 426, 114 N. W. 205; *Biglow vs. Ritter*, 131 Iowa, 213, 108 N. W. 218. Under this rule it follows that this new road, having been established after the Code of 1851 went into operation, is 66 feet in width."

Therefore, if this road was established after the Code of 1851, it would, by law, without any reference to its width, be a road sixty-six feet wide.

If it was established prior to the effective date of the Code of 1851, its width would be fixed by the authorities establishing it, whether the legislature or the court, and if no record can be found of that establishment, we are of the opinion that it would, by presumption, be the width of the present road contained between the established fences.

In answer to your second question, we believe that the case of *Dickson vs. Davis County*, supra, also governs, it being the last pronouncement of the court upon this question. At division 5 of the opinion, the court said:

"It is our conclusion that, when a highway is established with a legal width, encroachments thereon by fences or other obstructions by adjoining landowners, regardless of the time the highway is so occupied, does not give the party so encroaching any right within the limit of the highway, either through the doctrine of estoppel, laches, or adverse possession."

We believe that this language is broad enough to overrule the opinion in *Biglow vs. Ritter*, 131 Iowa, 213; 108 N. W. 218, for the reason that the language is all inclusive and definitely laid down the rights of one encroaching upon the highway.

In answer to your third question, we shall say, that the report of the appraisers is not required to be unanimous and that the report signed by two of the appraisers is the report of the board. The other may file objections and these may be considered by the board of supervisors, subject, of course, to the right of appeal to the district court.

SCHOOLS AND SCHOOL DISTRICTS: Term "at a general election", as used in S. F. 78, Acts 43 G. A. means the regular school election.

May 23, 1929. *Mr. Ernest R. Moore, Cedar Rapids, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department, at the suggestion of Senator Clark, upon the following proposition:

Is the term "at a general election" as used in Senate File 78, Acts 43d General Assembly, relating to teachers' annuities to be construed as a general biennial state election or the regular school election of a school corporation?

The term "general election" when it applies to cities and towns has been construed to mean the regular election of such city or town. It was so held in the following cases:

Kessler vs. Fritchman, 119 Pac. (Idaho) 692 at 695;
State ex rel Kline vs. Bridges, 94 Pac. (Okla.) 1065;
Vickery vs. Wilson, 90 Pac. (Col.) 490;
Treat vs. Morris, 127 N. W. (S. D.) 554 at 556;
State ex rel Forgues vs. Superior Court of Lewis County, 127 Pac. (Wash.) 313 at 314.

The term "last general election" has also been construed to mean the last election at which there was a general expression of the public will, whether it be state, county, or city election. See *State ex rel Griffin vs. Superior Court of Chehalis County*, 127 Pac. (Wash.) 120 at 121.

We are therefore of the opinion that where the term "general election" is used in connection with a school statute, it refers to the regular school election and not the biennial state election. The board of a school corporation would have no authority to submit a proposition at the biennial state election and the only way it could be submitted at that time would be for the board to call a special election on that date. Such action, we hold, is not necessary under the statute, and it is proper to submit the propositions provided in Senate File 78, Acts of the Forty-third General Assembly, at the regular school election whenever it is held under the statutes.

BOARD OF RAILROAD COMMISSIONERS: Board of Railroad Commissioners has discretion to refuse or grant a franchise.

May 23, 1929. *Board of Railroad Commissioners:* We acknowledge receipt of your request for our opinion as follows:

"A large number of applications for franchises to construct and operate electrical transmission lines upon the public highway is constantly before this commission. In many instances the applicant seeks to invade a territory and highway that is already occupied by another. Then again, there may be two applicants to serve the same territory and over the same highway.

"The question is whether or not, under the above referred to chapter, the commission may withhold or deny a franchise for those reasons."

Chapter 383, Code, 1927, contains the provisions in relation to the granting of a franchise to an electric transmission company. Section 8313 thereof provides for a hearing before the Board of Railroad Commissioners of objections to the proposed improvement or granting of the franchise. The board is authorized therein to consider the petition and objections filed, to take testimony and investigate. The statute then provides:

"It may grant such franchise in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to location and route as may seem to it just and proper. * * * *."

The statute also authorizes the Board of Railroad Commissioners to annul or cancel franchises granted by it for certain specified reasons.

The Board of Railroad Commissioners is authorized to determine the terms and conditions that shall be contained in the franchise. The provisions of the chapter referred to are very broad and general and the language of the section above quoted adds specifically to the general authority granted the board in this chapter. We are of the opinion that the provisions thereof give the Board of Railroad Commissioners the discretion to refuse or grant a franchise for electric transmission lines in instances where a franchise is sought over highways already occupied by other lines, or where the applicants seek to serve the same territory over the same highway. The board must act reasonably and not in an arbitrary or unreasonable manner in exercising this discretion.

SECONDARY ROAD IMPROVEMENT DISTRICTS—HIGHWAYS: Board of supervisors has not lost authority to levy an assessment for special benefits in a secondary road improvement district. The fact that benefited land has changed ownership would not affect the levy, and the board may see that the improvement is completed even though a period of approximately ten years has elapsed from the establishment of the district.

May 23, 1929. *County Attorney, Spencer, Iowa:* We acknowledge receipt of your request for our opinion on three questions that arise by virtue of facts, which may be summarized as follows:

In July, 1919, a petition was filed with the board of supervisors for the establishment of a secondary road improvement district, under the provisions of Chapter 241, Code, 1924. On May 4, 1920, the board established the district known as No. 11, consisting of three miles of township road. The contract for this improvement was let August 3, 1920. All proceedings up to the letting of the contract were legal and complied with the provisions of the statute. The date the contracts were let only one-half of the roads to be improved were graded and drained by the township,

as required by statute, and this work has not been completed to date. No commission was appointed to apportion benefits until March, 1929, when the commission was appointed by the board of supervisors, made the apportionment of benefits and gave notice, as required by statute, of the assessment and hearing. To this assessment objections have been filed, contending that the board lost jurisdiction by reason of the lapse of time and that certain objectors have acquired real estate on which assessments are now attempted to be levied, subsequent to the completion of the improvement. The township has paid its percentage under the provisions of the statute, and it is now sought to assess the twenty-five per cent remaining against abutting property.

The provisions of the statute above referred to in regard to the creation of special improvement districts and the levy of assessments upon property therein, do not contain any provision fixing a time within which the boards of supervisors are required to appoint the commissioners. It is a rule which needs no citation of authority that the statute of limitations does not run against the state and its municipalities when engaged in the performance of a public function.

In the absence of statutory limitation, we are of the opinion that the board of supervisors has not lost jurisdiction to levy the assessment because of a lapse of time. The assessment is against the land and is considered a benefit to the land. The fact that land changes ownership within the time the proceedings to establish the district was commenced and the assessment made would not affect the levy. There is nothing in the statute that makes ownership of the land at any particular time during the course of the proceedings essential.

Section 4749, Code, 1927, provides:

"It shall be the specific duty of the board of supervisors to see that all contracts on secondary roads are faithfully executed. * * *."

We are of the opinion that the board may proceed to complete the improvement program as originally contemplated, and apportion the benefits accordingly.

HIGHWAYS—COUNTIES—LIMIT OF INDEBTEDNESS: The limit of indebtedness of a county for secondary road purposes is in an aggregate three per cent of the actual value of the taxable property, and additional bonds cannot be issued for this purpose until the outstanding indebtedness has been reduced so that the issue will not exceed the constitutional limit.

May 23, 1929. *County Attorney, Marshalltown, Iowa:* This will acknowledge receipt of your request for an opinion concerning the amendment of the 43d General Assembly Senate File 480, to Section 4753-a17, Code, 1927. You state in substance that at the present time Marshall County has an outstanding indebtedness of approximately three per cent of the actual value of the taxable property within the county as ascertained by the last state and county tax list. This indebtedness includes approximately $800,000.00 of primary road bonds. Under these facts you inquire whether or not it would be possible for the county to issue bonds for the improvement, drainage and building of secondary roads in an amount which would bring the total indebtedness of the county up to

four and one-half per cent of the actual value of the taxable property in the county, as ascertained by the last state and county tax list.

Section 4753-a17, Code, 1927, as amended by the Acts of the 43d General Assembly, reads as follows:

"The amount of bonds issued under this chapter by any county to pay for primary road construction, or bonds issued to refund county primary road bonds, shall not, when added to all other indebtedness of the county, exceed in the aggregate four and one-half per cent on the actual value of the taxable property within such county, to be ascertained by the last state and county tax list previous to the incurring of such indebtedness. Any other statute to the contrary notwithstanding. The amount of bonds issued for secondary road construction when added to all other indebtedness of a county shall not exceed in the aggregate three per cent on the actual value of the taxable property within such county to be ascertained as above specified."

It is thus apparent that the legislature has placed a different limit of county indebtedness for primary and secondary road purposes. The limit for secondary road purposes is in the aggregate three per cent, and from the facts stated in your letter it appears that Marshall County has reached this limit. We are, therefore, of the opinion that the county cannot issue secondary road construction or improvement bonds until the indebtedness of the county has been reduced to such an extent that the bonds issued for secondary road improvement construction would not bring the aggregate indebtedness to over three per cent of the actual value of the taxable property within the county.

GENERAL ASSEMBLY—CLERK: There is no authority, under the statute, for paying the chief clerk of the House of Representatives or any other employee compensation for labor performed in the preliminary organization of the House prior to the convening of the session of the 43d G. A.

May 24, 1929. *Chief Clerk, House of Representatives, Des Moines, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Rule 65 of the House Rules was amended by the 43d General Assembly, providing as follows:

"He shall (clerk of the House) be elected for a term of two years, ending with the tenth legislative day of the succeeding general assembly following his election. Upon the convening of the general assembly, or in the absence of both speaker and speaker pro tempore, he shall call the House to order and preside until a temporary speaker is elected. He shall perform such duties for a period not exceeding thirty days prior to the convening of the regular sessions of the general assembly as will expedite the organization of the clerical force of the House, and to that end may retain an assistant, both of whom shall receive the same compensation as is fixed by the general assembly for similar duties."

The reason for this amendment was that, for many years in order to expedite the work of a session of the legislature the clerk of the House necessarily spent about thirty days prior to the convening of the session in organizing the House, and this amendment was to provide for the taking care of the compensation for this extra work.

Under the statutes of this state and the amendment referred to can payment be made for this extra work?

Section 10, Chapter 2, Code of Iowa 1927, provides as follows:

"Officers—tenure. The speaker of the house of representatives shall hold his office until the first day of the meeting of the regular session

next after that at which he was elected. All other officers elected by either house shall hold their offices only during the session at which they were elected, unless sooner removed."

Section 19, Chapter 2, Code of Iowa 1927, provides in substance that the compensation of the officers and employees of the general assembly should be fixed by joint resolution of the House and Senate and that no other or greater compensation shall be allowed such officers or employees.

Section 11 of House File No. 494 appropriates a sum sufficient to pay the per diem compensation made necessary by Senate Concurrent Resolution No. 15, and a sum sufficient to pay the per diem compensation of the additional employees of the Forty-third General Assembly authorized by Senate Joint Resolution No. 1, for services required of them after the 12th day of April, 1929.

It would appear from reading Section 10, above referred to, that all officers elected by either house shall hold their office only during the session at which they were elected unless sooner removed. It would also appear, under Section 19, that the compensation of the officers and employees of both houses of the general assembly must be fixed by a joint resolution of both houses.

Section 11 of what is known as the "Omnibus" bill makes no appropriation for the extra work necessitated by the preliminary organization of the house before the convening of the Forty-third General Assembly.

We are, therefore, of the opinion that there is no authority, under the statute, for paying the clerk of the House or any other employee compensation for labor performed in the preliminary organization of the House prior to the convening of the session of the Forty-third General Assembly.

COUNTIES—INSANE—SUPPORT: Where the insane commission of a county committed a patient to the state insane hospital, finding the patient's residence in another county, but failing to give the notice required by the statute to the county of the patient's residence, the committing county is liable for the support of such patient. The requirements of the statute with respect to notice being mandatory.

May 24, 1929. *County Attorney, Boone, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In 1910 Elmer Winters and his wife were residing at Ames, Iowa, and had resided there for some eight years previous to such time. In that year Mr. Winters became ill and was placed in the Eleanor Moore County Hospital in Boone, Iowa. He was there only a few days when he was brought before the Insane Commission of Boone County, Iowa, and was committed as insane to the State Hospital for the Insane at Clarinda, Iowa. According to the commitment and the records of the Insane Commission of Boone County his legal settlement was found as of Story County, Iowa. There is no record showing that a notice of the findings of the Insane Commission was ever served on the county auditor of Story County, or upon the Insane Commission of said county.

Winters remained a patient at the State Hospital for the Insane at Clarinda, Iowa, for the period from 1910 to 1925, when he was again removed to the Boone County Home, and in 1926 he died there.

The expense in connection with his commitment and care at the State Hospital for the Insane was paid by Boone County, Iowa. In 1927 county officials of Boone County took the matter up with the Story County officials and Story County was billed for the total amount of the expense in

connection with this man's commitment and care. The county officials of Story County refused to pay the bill.

Whether or not notice was served upon the Story County officials is not disclosed by the records of either county. Story County denies this, and Boone County has no evidence as to the same.

Under the above statement of facts what county is liable for the support of this patient? Would the failure of Boone County to serve a notice on Story County preclude Boone County from recovering the amount of the bill, even though Story County was in fact the county of the legal settlement of the incompetent?

The statute in force at the time of the commitment of the said incompetent was Section 2270 of the Code of 1897. Under that section the insane commission committing is required to notify the county auditor of the county wherein they find the legal settlement of the committed patient, and under the case of *Poweshiek County vs. Cass County*, 63 Iowa 244, it was held by our supreme court that *notice by the commission to the county auditor of the county of the legal settlement is a condition precedent to the county's right to recover from the county of the legal settlement.* The law was changed in 1924 to read as it now appears in Sections 3583-84 of the Code of Iowa 1927. Under these sections the commission is required to certify their findings to the superintendent of the hospital to which the patient is committed, and also to the county auditor of the county of such legal settlement. In other words, the law with respect to notifying the county is the same as it was in Section 2270, Code of 1897.

We are, therefore, of the opinion that if the facts are that no notice was given by the Insane Commission of the Boone County, Iowa, to the county auditor of Story County, Iowa, of their findings with respect to the commitment of Winters, that an action to determine the legal settlement of said deceased incompetent would avail Boone County nothing. We are also of the opinion that if the records of either county do not show that notice was given or received, as the case might be, and that you have no evidence which would positively prove the fact of the giving of notice and the receipt of it by Story County, that you could not maintain your action against Story County, Iowa.

BOXING—CONTRIBUTIONS—ADMISSION FEE: The collection of contributions or donations at a prize-fight, where the contestants receive a prize, is a violation of the provisions of the boxing statute.

May 24, 1929. *County Attorney, Burlington, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is it your opinion that where a boxing exhibition is put on where the contestants receive a prize, and *no admission fee is charged*, that it would be illegal to have a receptacle placed at the point of entrance where donations might be deposited, it being understood that the donations are not compulsory and that the admission would be entirely free?

We are of the opinion that it would be contrary to the provisions of the statute, with respect to boxing, to have a receptacle where contributions or donations might be deposited by a spectator if he so desired. This would be an invitation to the public who attended the fight to pay something for their admission, and would be in our judgment a violation, it being an indirect way of collecting admission.

SCHOOLS AND SCHOOL DISTRICTS: H. F. 152, Acts 43 G. A. providing for detachment of territory under conditions is mandatory; board of receiving school district may act for district.

May 24, 1929. *County Attorney, Le Mars, Iowa:* This will acknowledge receipt of your letter requesting the opinion of the department upon the construction of House File 152, Acts of the Forty-third General Assembly.

Your specific questions are as follows:

1. Is the statute mandatory upon the county superintendent upon the filing of the petition?
2. Does the four section limitation specified in Section 4133 of the Code apply?
3. Does the board of the corporation to which the territory is to be attached have the power to act for the district, or must the action to determine whether it will receive the territory require the approval of the voters?

We shall answer your inquiries in the order submitted.

1. The act provides that when the petition is filed the county superintendent must forthwith detach the territory therein described and attach the same to the adjoining school corporation named in the petition, provided such school corporation so named will receive such territory. We are of the opinion that if the school corporation will receive such territory there is no discretion in the county superintendent and she must detach the territory if the petition, as prescribed in the statute, is filed. She could determine, of course, the sufficiency of the petition but, further than that, she would have no discretion.

2. In answer to your second question, we call your attention to the fact that this amendment is made to Section 4131, which applies in the case of natural obstacles. In construing this section the court has held, before amendment, that the four section limitation prescribed in Section 4133 of the Code, does not apply. In *School District No. 10 vs. District of Kelley*, the court said:

"But the provisions of the Code, Section 2791 (being Section 4131 of the present Code, which was amended) authorizes the county superintendent to attach portions of one school corporation to another where by reason of natural obstacles any portion of the inhabitants of the one cannot, with reasonable facility, attend school in their own corporation, and there is no limitation under this section to a reduction of an independent district to less than four sections."

The holding in this case was definitely followed in *Cutler vs. Board of Supervisors*, 154 N. W. 671 at 672, and it was held that this provision of the statute was not repealed by later legislation with reference to independent districts. See *School District vs. Stockport*, 149 Iowa, 480, 128 N. W. 848. The later legislation referred to is doubtless the present Section 4133 of the Code.

Since the amendment was made to Section 4131, above construed, instead of to Section 4133, we are of the opinion that the four section limitation of the latter section does not apply and that it is not necessary that four sections be left in the Independent District of Remsen after the territory described in the petition is detached. The cited case also holds, in substance, that the four section limitation does not apply where the independent district contains a city or town, the population being the unit rather than the territory.

Your third question presents greater difficulty. The language of Section 4133 specifies that the boards of directors may agree upon a change in the boundary lines. Section 4131 provides that the board of the corporation may consent to attach the territory. The language used in the amendment is "providing such school corporation so named will receive such territory." No provision is made for an election and the question to be determined is whether or not, in such matter, the board of directors of the receiving school corporation can act for it. It becomes then, a question of general statutory construction to determine the powers of the electors and the powers of the board of directors.

The powers of the electors are contained in Chapter 212 of the Code, particularly, Section 4217. A careful reading of this chapter fails to disclose any power in the electors to determine such a question. The powers of a special election of the voters of any school corporation are contained in Section 4197 and nothing in that section gives to the electors the power to determine such a question as that raised here.

It is a general rule of law, which is fundamental, that the board of directors of any corporation manage the corporate business except where their power is restricted or granted to the electors of the corporation. The board of directors has charge of the schoolhouse and grounds and the property, subject to the limitations of the statute. It determines the school year subject to the statute, enters into contracts with teachers, purchases general supplies, and has general management of the school property. As hereinbefore indicated, it acts for the corporation in questions concerning boundaries.

In the instant case, we are of the opinion that it was the intention of the legislature that the receiving school corporation should act through its board of directors and that said board may determine when notified of the act of the superintendent in attaching the territory whether or not it will receive the same and accept it as a part of its district.

FISH AND GAME—PRIVATE PRESERVE—SALES—BLACK BASS—SPEARING FISH: The owner of a private preserve may sell black bass and may spear fish out of his private preserve.

May 24, 1929. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

(1) Under the statutes of this state can one who has a private fishing preserve sell and dispose of black bass?

(2) Is it lawful to spear a fish in a private preserve?

(1)

Under Section 1707, Code of 1927, persons who raise or propagate fish upon their own premises, or whose premises upon which are waters having no natural inlet or outlet, are the owners of fish therein and may take them therefrom or may permit them to be taken. Section 1754, Code of 1927, prohibits a commercial institution, commission house, restaurant, cafe keeper, or fish dealer, from having in his possession or from buying or selling, or offering to buy or sell, any black bass, whether caught or taken within or without the state or lawfully or unlawfully taken. Such prohibition only applies to those persons or corporations or agencies named in said section, and if a person did not come within any of the

agencies named in said section he would not be prevented from selling black bass.

(2)

We do not find any provisions of the statute which would prevent the taking from a private fishing preserve of fish by spearing. Section 1707, Code of 1927, provides that the title to fish in such preserves belongs to the owner thereof and authorizes him to take or permit the same to be taken from such waters.

STATE OFFICERS—CONGRESSMEN—CODE: Senators and Representatives of the United States Congress are not state officers and, therefore, are not entitled to receive free copies of the Code and other publications mentioned in Section 235.

May 24, 1929. *Superintendent of Printing:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under Section 235, Code of Iowa 1927, are the Senators and members of Congress from this state entitled to receive free copies of the Code of Iowa and other publications mentioned in said section? If Senators and Congressmen are entitled to receive free copies of the Code of Iowa and other publications, under Section 235, it would be under sub-division 10 of said section, this applying to state officers.

We are of the opinion that Senators and Congressmen are not state officers and are, therefore, not entitled to receive free copies of the Code and other publications mentioned in Section 235 of the Code of Iowa 1927.

BUDGET DIRECTOR: The amendment to the present budget law as contained in Senate File No. 329, does not change or modify the power of the Budget Director.

May 24, 1929. *Director of the Budget:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

What effect has the amendment to Section 357, as contained in Senate File No. 339, with respect to the power of the Budget Director in connection with the hearings and decisions as in said section provided?

We are of the opinion that said amendment did not alter or change the power of the Budget Director with respect to the hearings, that is, that he has the same power under Section 357 as he had before the amendment was made. The only effect said amendment has is to strike out surplusage in Section 357.

CORPORATIONS—INSTALLMENT OR PARTIAL PAYMENT PLAN—"LIABILITY" DEFINED—KINDS OF SECURITIES:

May 25, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

(1) Section 8521, Chapter 392, Code of 1927, provides in part as follows:

"* * * At the end of such calendar year, such association shall deposit with the auditor of state securities of the kind above provided in an *amount equal to all its liabilities to persons residing within this state and shall keep such deposit at all times equal to such liability;* * * *."

Under the above section, what is the measure of the liability with respect to the amount that should be deposited with this office?

(2) Section 8521, Chapter 392, Code of 1927, also provides in substance that before any association or company shall be authorized to do business within the provisions of Chapter 392 it shall deposit with the Auditor of

State a bond approved by the Executive Council, of securities of the kind designated in sub-divisions 1, 2, 3, 4, and 5 of Section 8737, Code of 1927, or such other securities as shall be approved by the Executive Council in an amount equal to $25,000.00. Said section also provides that, at the end of the first year they shall deposit with the Auditor of State securities of the kind above provided, referring to the kind designated in lines eight and nine of said section.

The question is, under this section, and this language, after the first year does the Executive Council have authority to approve the kind of securities which a company may deposit with the Auditor of State?

(3) We call your attention to a sample copy of a contract which is offered by the Investors Syndicate, especially to paragraph 1 of said contract, which paragraph reads as follows:

"1. Security. The company agrees to keep and maintain at all times first mortgages on improved real estate, cash and government bonds in an amount equal to at least $110 for each $100 of its liability hereunder and under all other like outstanding certificates issued by it, said liability being the cash value as shown in Paragraph 3, less the amount of any loans made thereon."

You will note from a reading of this paragraph that it defines the company's liability as the cash value as shown in Paragraph 3 of their contract, which paragraph defines the cash surrender and also loan values after the 18th month. If you hold that the liability of the company, under their contract, is more than the cash surrender or loan value then should this company be required to rewrite paragraph 1 of their contract in order to comply with Section 8521 of the Code?

(1)

We are of the opinion that, under Section 8521, Code of 1927, the liability which such company is required to deposit with the Auditor of State is equal to the amount that such company would have to pay the investor in the event such company should choose to call in the contract, or in the event of the liquidation of the company. This liability would be the amount that the investor paid in, plus the rate of interest which the company agreed to pay the investor on his investment.

(2)

We are of the opinion that, under Section 8521, Code of 1927, the only kind of securities which may be deposited with the Auditor of State, after the termination of one year's business, by a company who has qualified under Chapter 392, are the kind of securities designated in sub-division 1-5, inclusive, of Section 8737, Code of 1927, and that the Executive Council has nothing to do with the approval of the kind of securities that may be deposited after the first year the company does business in this state.

Our attention has been called to the fact that Section 1806 of the Code of 1897, which was the section in force at the time of the passage of Chapter 392, has been repealed and that Section 8737 of the Code of 1927, is the substitute section which was enacted by the legislature and that, therefore, the old section having been repealed, companies operating under Chapter 392 are not governed with respect to the kind of securities which they may deposit by the new Section 8737, Code of 1927. Under Chapter 392, sub-divisions 1-5, of Section 1806, were the kind of securities which companies operating under said chapter were authorized to deposit with the Auditor of State. The legislature, in repealing Section 1806, Code of 1897, necessarily took into consideration any statutes in existence which the repeal would affect and, in substituting Section 8737 of the Code of

1927, did not change Chapter 392, but left the kind of securities which might be deposited with the Auditor of State as those defined in subdivision 1-5 of the new section. The presumption, therefore, is that the new sub-divisions 1-5 of Section 8737 of the Code of 1927 are the subdivisions which define the kind of securities which a company, operating under Chapter 392, Code of 1927, may deposit with the Auditor of State.

(3)

Under the company's contract it has two liabilities, one, the liability in the event the investor, at his option, chooses to surrender the contract or secure a loan thereof. This is the liability as fixed in paragraph 3 of the sample contract submitted by you; two, the liability which it has in the event the investor performs his part of the contract; that is, makes the payments in the manner and at the time provided for in said contract. This liability is the amount the investor has paid in in accordance with the terms of his contract less such expense loading as may be properly chargeable to the certificate holder, plus interest compounded annually at the exact rate necessary to accumulate the maturity value of said contract.

Having construed the measure of the liability provided for in Section 8521, Code of 1927, as being the amount which the investor pays in in accordance with the terms of his contract less an expense loading charge, plus interest compounded annually at the exact rate necessary to accumulate the maturity value of said contract, it necessarily follows, that the company cannot limit its liability to the cash surrender or loan value and that, therefore, the provisions of paragraph 1 of the Syndicate contract are contrary to said Section 8521, and that said paragraph should be changed so as to comply with the statute.

In connection with the revision of the syndicate contract so as to make it comply with Section 8521, we are attaching hereto, two paragraphs which you should require the company to insert in all contracts sold in this state. The first of the paragraphs attached under the head of "Reserve" defines the liability, so to speak, of the company in accordance with the provisions of Section 8521 and no company engaged in the same business as the syndicate should be permitted to sell any contracts in this state unless they have such a provision in their contract.

The second paragraph which is attached hereto, under the heading of "Security" should be in all contracts issued by any company operating in this state under the same plan as the Investors Syndicate.

DRAINAGE BONDS—ASSESSMENTS: Interest should be paid on drainage bonds for the period outstanding after maturity.

May 25, 1929. *County Attorney, Northwood, Iowa:* We acknowledge receipt of your request for an opinion concerning the payment of interest upon drainage bonds that are past due. It appears from your letter that part of the land assessed for benefits has not paid and a shortage resulted in the funds for the retirement of bonds. Some of the bonds with interest thereon are now in default and the treasurer, at this time, has a substantial sum of money on hand that can be used for the payment of bonds and interest.

There is no provision in the statute directly concerning a payment of

interest upon past due drainage bonds. In the absence of provision in the bonds stopping the interest at maturity, we are of the opinion that interest should be paid on the bonds that have matured up to the date of their payment. Section 7509, Code, 1927, indicates that it was the intention of the legislature to pay interest upon drainage bonds until the bonds were retired. In the section referred to provision is made for the payment of interest and principal of outstanding bonds when assessments are insufficient to meet the same, by an additional levy.

TAXATION—PERSONAL PROPERTY: Statute of limitations does not run against the collection of delinquent personal property taxes by distress and sale.

May 25, 1929. *County Attorney, Sigourney, Iowa:* We acknowledge receipt of your request for an opinion as to whether or not taxes assessed on personal property for the years 1921 and 1922 are collectible by distress and sale at this time.

Section 7189, Code, 1927, authorizes the treasurer to proceed to collect delinquent personal property taxes. There is nothing in the statute placing a limitation upon the time that these taxes may be collected in this manner. In *Collins Oil Company vs. Perrine,* 188 Iowa, 295, this question was raised and it was held that the five year statute in regard to bringing actions did not apply. In view of this decision and the absence of any statutory limitation, we are of the opinion that, providing the tax has been regularly brought forward, distress and sale for its collection could now be resorted to.

SCHOOLS AND SCHOOL DISTRICTS: Stranger to case before county superintendent cannot appeal to state superintendent.

May 27, 1929. *Department of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following question:

Could a minority of the board of directors of a school district prosecute an appeal to the Superintendent of Public Instruction from the decision of the county superintendent as individuals and not as the official act of the board; or could any person not a party to the appeal from the decision of the school board to the county superintendent appeal from the decision of the county superintendent on the matter on appeal thereto?

We are of the opinion that only such persons as are parties to the appeal of the county superintendent from the decision of the board could appeal from the decision of the county superintendent to the Superintendent of Public Instruction. Therefore, a majority of the board could not appeal if the decision was against the board. The procedure before the Superintendent of Public Instruction is appellate in its nature. The hearing before the county superintendent is in the nature of a trial de novo and any person interested in the matter could intervene there. Any such intervenor could then appeal to the Superintendent of Public Instruction, but a person who is an entire stranger to the action before the county superintendent could not so appeal.

SCHOOLS AND SCHOOL DISTRICTS: Treasurer cannot deposit bond proceeds in trust; must deposit same in legally designated depository.

May 28, 1929. *Superintendent of Public Instruction:* This will acknowl-

edge receipt of your letter in which you enclose a copy of a letter from F. N. Olry, county superintendent Crawford County, and a copy of a proposed contract between the Carleton D. Beh Company and the board of directors of the Consolidated School District of West Side, Iowa, and request the opinion of this department upon the question of the validity of such contract.

The contract provides for the purchase of sixty thousand dollars worth of school building bonds to be issued by the said school corporation, and provides as follows:

"For such funds deposited by your district with the Des Moines National Bank, Trust Department, Des Moines, Iowa, for the account of this company, we hereby agree to pay your district four and three-fourths per cent on daily balances, and to deposit with said Des Moines National Bank, Trust Department, as security for the said funds, the bonds of your district above described, United States government bonds, municipal obligations, or cash, aggregating in the face amount at all times the amount due your district. This company reserves the right to substitute for such security other security of like character and value. Withdrawals may be made by your district upon said funds as the work on your school building progresses, upon five days written notice addressed to this company at Liberty Building, Des Moines, Iowa.

"It is understood and agreed that the duty of the Des Moines National Bank, Trust Department, shall extend only to the safe keeping of the said collateral, and that the Trust Department, shall be in no way considered a guarantor of the validity or value of said collateral."

The statute provides that the school treasurer shall deposit all funds in his hands, as such treasurer, in a bank to be designated by the board and provides specifically that the bank must be "within the county or within five miles of its border within the state of Iowa."

We are therefore of the opinion that the board of directors of this district has no authority to issue these bonds for anything but cash and that the proceeds thereof must be deposited in a bank within the provisions of the statute. There is no authority whatever in the statute for the deposit of such funds or of such bonds in trust and any such action would render the school treasurer liable personally upon his bond and would subject the board to an injunction requiring it to order the funds deposited as specified by statute.

There are only two courses open to the board. It may sell all the bonds and issue them at one time and deposit the proceeds in its legally designated depository, as provided by law, or it may sell the bonds and issue them as it needs the funds and deposit the proceeds thereof as issued in its legally designated depository bank.

BANKS AND BANKING: State or savings bank cannot loan its bonds to a national bank.

May 29, 1929. *Department of Banking:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

May a state or savings bank loan or deposit with a national bank, or other bank, its bonds or securities on a safekeeping receipt under the terms of which the national bank, or other bank, can demand twenty days notice from the savings bank before the return of the bonds?

Under the plan proposed, the bonds would be shown as a bond asset in each institution and the bonds are to be used by the national bank to pledge as collateral to certain deposits therein.

There is no authority whatever empowering a state or savings bank to so loan or deposit its bonds or securities. The only purpose for which such bonds can be deposited is the purpose of safekeeping, returnable upon demand, or to secure postal savings deposits under the provisions of Section 9268, Code of Iowa, 1927, or deposited under the provisions of House File 402, Acts Forty-third General Assembly.

We are of the opinion that the above practice is contrary to the laws of this state and that steps should be taken by your department immediately to correct the condition.

INTOXICATING LIQUOR—MOTOR VEHICLES: Motor vehicles seized for the conveyance of intoxicating liquor under the provisions of S. F. 269, 43d G. A.—it is a matter for the court to determine the bona fides of a chattel mortgage given upon such vehicle.

May 31, 1929. *County Attorney, Muscatine, Iowa:* This will acknowledge receipt of your request for an opinion concerning the provisions of Section 2012, Code, 1927, as amended by Senate File No. 269, Laws of the Forty-third General Assembly. You inquire particularly concerning the status of an unrecorded chattel mortgage given on an automobile seized for the conveyance of intoxicating liquor. The statute as amended now reads as follows:

"On a hearing the court shall determine whether any claim or lien shall be allowed. If allowed, he shall enter an order fixing therein the amount and priority of all such claims or liens allowed, and shall enter such further order for the protection of the claimants or the lien holders as the evidence may warrant."

We are of the opinion that under the provisions of the statute above quoted it is discretionary with the court what liens he will allow, and that it is only a question of evidence that the chattel mortgage is recorded. We believe the court should find that the mortgage was given in good faith and without any knowledge on the part of the mortgagee that the car was to be used in the transportation of intoxicating liquor. We believe it is permissible to show the reputation of the mortgagor in regard to the violation of intoxicating liquor laws, and if it is shown that the mortgagor has a bad reputation in this respect and one that is well known in the community we believe the mortgagee would be stopped to deny knowledge of this fact. It is now a question of the bona fides of the transaction and the court is given unlimited discretion as to his findings based upon the record introduced.

TOWNSHIPS: Under the provisions of Section 62, S. F. 169, 43d G. A., a county cannot assume and pay outstanding illegal obligations of a township incurred for township road work.

June 3, 1929. *County Attorney, Webster City, Iowa:* We acknowledge receipt of your letter in which you inquire concerning the payment of obligations incurred by a township for road work during 1929, some of which will be payable in 1930.

Section 62, Senate File 169, Laws of the Forty-third General Assembly, provides:

"All levies made in 1929 by township trustees for township road drag or drainage purposes shall be null and void."

Section 63 thereof provides:

"On January 1, 1930, the county shall be deemed to have taken over and assumed all valid and legal outstanding contracts and obligations entered into by the various boards of township trustees of the county in furtherance of their duties relative to township roads."

The work contracted for by township trustees on township roads comes within the classification of "legal outstanding contracts and obligations" within the provisions of Section 63, supra, and we are of the opinion that the cost of this work may be assumed and paid by the county, under the provisions of the statute referred to.

LEGISLATURE: Member thereof would forfeit membership by accepting employment by the state or a department thereof.

June 3, 1929. *Iowa State Highway Commission:* I have your communication of the 29th ultimo, which reads as follows:

"We have applications from three different members of the general assembly asking for employment on our force. I am just wondering as to the legal status of this matter. Therefore, I am writing to ask your opinion on the following question:

"Are there any provisions of the law which would restrict or prohibit the employment of a member of the legislature by one of the state departments?"

There are no provisions of the Constitution or statutes of this state which would prevent a member of the legislature from being employed by the state in any position which was not specifically created by the General Assembly of which he was a member. The Constitution, however, would prevent him from holding a seat in the General Assembly should there be a special session called because of the fact that he is employed by the State of Iowa. He would thus by becoming a member of your force forfeit his right to sit in the legislature and it would have the effect of creating a vacancy in his office in case a special session is called.

I call your attention to Section 22, of Article III of the Constitution, which would make him ineligible to hold a seat in the General Assembly.

MINORS—SOLDIERS—TAX EXEMPTION—ADOPTION: The adoption of the child of an ex-service man does not take away the right of exemption.

June 4, 1929. *County Attorney, Vinton, Iowa:* This will acknowledge receipt of your request of May 28, 1929, wherein the facts were related, as follows:

A minor child by the name of Noeller, whose father was an ex-service man but who is now deceased and whose mother, also being dead, has certain property but this child was recently adopted by Mr. and Mrs. Roy Rundall. Would the adoption of this child interfere or prohibit this child from securing the tax exemption granted under paragraph 5 of Section 6946?

In reply we would say that the right of exemption, under paragraph 5 of Section 6946, is one, which may be inherited by a minor child of a deceased soldier, and would not terminate by adoption of the minor by other parties. Under the laws of this state, this child, even though adopted, would have the right to and does inherit, from its natural parents as well as from its adopted parents, and we can see no reason why this child would not be entitled to the regular exemption, as provided by the present statute.

BOARD OF HEALTH—ITINERANTS — COSMETOLOGISTS — BARBER SHOPS: Where a cosmetologist is called to another city or town to perform permanent waving, he would not fall within the definition of an itinerant.

June 4, 1929. *County Attorney, Storm Lake, Iowa:* This will acknowledge receipt of your request in which you relate the following statement of facts:

A party who operates a barber shop and beauty parlor in a nearby town is occasionally called by operators of regular licensed beauty shops in nearby towns to perform permanent waving on a commission basis. This party is a licensed cosmetologist. Would it be necessary for this party to secure an itinerant's license under the new law passed by the 43d G. A.?

In reply we would say that under the practice acts, itinerant is defined at Section 2511 as one who in the practice of a profession by himself, agent or employe goes from place to place, or from house to house, or by circulars, letters or advertisements, solicits persons to meet him for professional treatment at places other than his office maintained at the place of his residence.

In addition to this we find in Section 2514, certain exception to the rule of construction, which permits the attending of patients in any part of the state to which he may be called in the regular course of business, or in consultation with other practitioners.

In view of the above cited sections, which, of course, do not apply directly to cosmetologists but which, we feel, the court would be obliged to take into consideration, we are of the opinion that under the facts as related, this party would not be required to secure an itinerant's license.

TAXATION—PROPERTY: Property destroyed by fire and sold subsequent thereto would not preclude the board of supervisors from remitting taxes. Under the provisions of Section 7237, Code, 1927.

June 4, 1929. *County Attorney, Atlantic, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"The facts are that a man named E. Kirchner, of Cumberland, Iowa, owned an elevator on January 1, 1928, and on the night of January 2, 1928, this elevator burned to the ground and became a total loss. Later the Farmers Cooperative Company of Cumberland, Iowa, purchased this lot.

"The taxes for the year 1928 were fixed by the assessor at $174.98. The question I would like to have you answer is whether or not the board of supervisors of Cass county can remit this tax down to the value of the lot, and whether or not it could be assessed as moneys and credits owing to the fact that the owner of the property carried insurance and received the same from the company."

We wish to call your attention to the provisions of Section 7237, Code, 1927, which reads as follows:

"The board of supervisors shall have power to remit in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire * * *, if said property has not been sold for taxes, or if said taxes have not been delinquent for thirty days at the time of the destruction. The loss for which such remission is allowed shall be only such as is not covered by insurance."

From the provisions of this statute it is plain that a sale of the real estate after the fire would not affect the authority of the board of super-

visors to make a remission of taxes under the above section. They cannot remit taxes, however, on the value of property lost by fire which is covered by insurance. The property should be assessed in the same manner as though there had been no fire but a remission allowed by the board, if they see fit, for the value not covered by insurance.

POLICEMEN'S PENSIONS: Section 1422 held applicable to special deputy sheriff while killed in line of duty.

June 5, 1929. *Industrial Commissioner:* We have your communication requesting the opinion of this department upon the question of whether the provisions of Section 1422 of the Code, 1927, are applicable to the case of a special deputy sheriff appointed for a short period of time and for a special purpose, who received injuries while in the course of his official duties which resulted in his death within a few hours.

Section 1422 of the Code provides as follows:

"Any policeman (except those pensioned under the policemen's pension fund created by law), any sheriff, marshal, constable, and any and all of their deputies, and any and all other such legally appointed or elected law-enforcing officers, who shall, while in line of duty or from causes arising out of or sustained while in the course of their official employment, meaning while in the act of making or attempting to make an arrest or giving pursuit, or while performing such official duties where there is peril or hazard peculiar to the work of their office, be killed outright, or become temporarily or permanently physically disabled, or if said disability result in death, shall be entitled to compensation, the same to be paid out of the general funds of the state for all such injuries or disability.

"Where death occurs, compensation shall be paid to the dependents of the officer, as in other compensation cases. Such compensation shall be the maximum allowed in compensation cases. The industrial commissioner shall have jurisdiction as in other cases."

You will note that this section provides specifically that any sheriff, and any and all of his deputies, and any and all other such legally appointed law-enforcing officers who shall, while in the line of duty or some cause arising out of or sustained while in the course of their official employment, receive injuries, etc., are entitled to the benefits provided in this section. In your communication to us you state that the officer in question was a special deputy sheriff duly appointed by a sheriff of the county, and that he was attacked and injured while in the course of his employment and while in the line of duty. We are of the opinion that the language of the section of the law set out herein, is rather comprehensive and does include such an officer and is applicable to the case described in your communication.

CORPORATIONS—AMENDMENTS—STOCK: Held that exchange of one class of stock for another was not an increase in the authorized capital. Held amendment should authorize specifically the new class which is used for the purpose of exchange.

June 5, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

We are submitting herewith amendment to the articles of incorporation of the Central Steel Products Company. We call your attention to Article IV. It will be noted from reading said article that the authorized capital of said company is $500,000.00, and that the stock is divided into

class B common stock, 7 per cent cumulative preferred stock, and series A, 6½ per cent cumulative convertible preferred stock. The article then provides that the purchasers and owners of series A 6½ per cent cumulative convertible preferred stock may, up to a certain date, have the option of converting said stock for class A non-voting common stock. The question we desire an opinion on is whether or not the issuance of the class A non-voting common stock constitutes an increase in the amount of the authorized capital stock of said corporation, and whether or not under article IV of said amendment the company is authorized to issue such a class of stock as class A non-voting common etock.

We are of the opinion that the conversion of the Series A 6½ per cent cumulative preferred stock to Class A non-voting common stock in the same amount as authorized does not constitute an increase in the amount of the authorized capital stock of said company.

We are also of the opinion that the amendment should specifically authorize the company to issue what is known as Class A non-voting common stock, and then provide for the retirement of the Series A 6½ per cent cumulative convertible preferred stock and the issuance of Class A non-voting common stock for the same in an equal amount.

BOATS—INSPECTION: The Des Moines river is "inland waters of the state" and a boat operating thereon is subject to inspection. No provision is made for the payment of costs of the inspection other than the fees enumerated.

June 8, 1929. *County Attorney, Spirit Lake, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"Is a passenger boat operating upon the Des Moines river above or below Des Moines required to have the boat inspected and issued a certificate as therein provided? The inspector, being enabled by statute to require advanced payment for the inspection in the amounts required by law, is he yet enabled by any statute, within this chapter or otherwise, to recover from the state or from the applicant for license, his actual expenses or mileage incurred in the making of such an inspection?"

Section 1692, Code, 1927, provides for the inspection of boats "upon the inland waters of the state." In determining what are "inland waters" we refer you to the case of *Cogswell vs. Chubb*, 36 N. Y. Supp., 1076, 53 N. E. 1124, wherein the court said, in reference to what were "inland waters"—

"Such waters are canals, lakes, streams, rivers, watercourses, inlets, bays, etc., and arms of the sea within projections of land."

We are clearly of the opinion that the Des Moines River comes within the term of "inland waters of the state," and that a boat falling within the class enumerated within the provisions of Chapter 85, Code, 1927, operating upon the aforesaid river would be subject to inspection.

There is no provision in the chapter referred to or elsewhere in the code for the payment of the inspector's expenses. He is only entitled to the fees therein enumerated and cannot charge expense or mileage to the state or applicant.

BOARDS OF EUGENICS: Board of Eugenics does not have authority to employ full time secretary, but may employ person to take minutes of hearings and proceedings incident to investigations.

June 13, 1929. *Commissioner of Health:* We acknowledge receipt of your request for an opinion as to whether the Board of Eugenics, created

under the provisions of House File No. 243, Laws of the Forty-third General Assembly, has authority to employ a secretary either on a full time or part time basis; and if so, who may determine the salary. The only provision in the act referred to regarding expenses is contained in Section 18 thereof, which reads as follows:

"The state shall be liable under this act, except as hereinabove provided for, only for the actual traveling expenses of the members of the board incurred in the performance of their duties and the actual and necessary expense incident to the investigations of said board either on original case or an appeal therefrom."

The last clause in the section quoted is the only one that can be construed to give the board authority to employ a secretary. Under the provisions thereof we are of the opinion that the board does not have authority to employ a full time secretary but that it does have authority to employ a person to take minutes of hearings and proceedings conducted by the board in the performance of their duties incident to investigations, but for this purpose only.

WEEDS—AGRICULTURE: Weed law, H. F. 204, effective upon publication; supervisors should appoint weed commissioners; commissioners paid from county general fund in case of townships and city general fund in case of cities.

June 15, 1929. *Secretary of Agriculture:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following propositions in connection with House File 204, Chapter 116, Acts of the Forty-third General Assembly:

"Is the law in effect at this time?
"If the law was in effect in April and the board of supervisors did not take action on the appointment of weed commissioners, can they make such appointments and take such action at this time?
"How are the weed commissioners to be paid?"

This act became effective by publication as provided therein on April 18, 1929. From and after that date it is necessary that weeds be destroyed under the terms and conditions of said act.

It is provided in Section 1, paragraph 4, that in cities having a population of five thousand or over the enforcement of the law shall be in the council or commission, as the case may be. In cities and towns having a population of less than five thousand, and in townships, it is necessary for the council or the trustees to designate one of their number as commissioner. Each commissioner is to be paid a per diem and mileage to be fixed by the board, commission, or council which he represents. We are therefore of the opinion that in cities and towns the commissioner would be paid from the general fund of such town. In the case of townships the trustee, acting as weed commissioner, would be paid by the board of supervisors out of the county treasury in the same manner as other compensation to trustees as provided in Section 5571 of the Code.

Since the law is in effect, it is incumbent upon the board of supervisors to publish notice as provided therein and to appoint weed commissioners under the provisions of Section 1, paragraph 4, if the township trustees or city councils have not made the appointment. This may be done at any time subsequent to the April meeting under the opinion of this department heretofore rendered to you on a similar subject, July 6, 1927.

TAXATION—FRUIT TREE RESERVATIONS: Apply whether within or without incorporated town or city.

June 17, 1929. *County Attorney, Winterset, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"Would the tax on fruit tree reservations as set out in Chapter 126 of the 1927 Code of Iowa, apply to a five acre tract within the corporate limits of a city, if the planting and care were in accordance with the requirements of said chapter."

We find no construction of this statute among the decisions of our court. However, the tax exemption section, being Section 2605, provides as follows:

"Any person who establishes a forest or fruit tree reservation as provided in this chapter shall be entitled to the tax exemption provided by law."

The descriptive section, being Section 2606, provides as follows:

"On any tract of land in the state of Iowa, the owner or owners may select a permanent forest reservation or reservations, each not less than two acres in continuous area, or a fruit tree reservation or reservations, not less than one nor more than ten acres in total area, or both, and upon compliance with the provisions of this chapter, such owner or owners shall be entitled to the benefits provided by law."

In these sections you will note that there is no exception provided and that exemption is to *any person* who establishes a fruit tree reservation *on any tract of land* in the State of Iowa.

We are therefore of the opinion that it is immaterial whether land is located within or without the limits of an incorporated city or town and that any person who establishes a fruit tree reservation within the limits of said Chapter 126 is entitled to the exemption.

BOARD OF SUPERVISORS—SCHOOLS: Members of board of supervisors not incompatible with member of school board.

June 18, 1929. *County Attorney, Primghar, Iowa:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following propositions:

1. Is membership of the board of supervisors incompatible with membership of the board of directors of a school corporation?
2. When a person, who is the holder of one office incompatible with another, accepts the latter, does this ipso facto constitute a vacancy in the former?

While there is a possible contingency of conflict of interest, we are of the opinion that such possibility is so slight that the office of member of the board of supervisors is not incompatible with the office of school director. As to levying the tax which you mentioned, there is no discretion in the board of supervisors if the amount asked by the board of school directors is within the statutory requirements. Neither can we see any possible conflict as to prescribing roads for school purposes since in neither case would the one body be purchasing from the other.

In regard to your second question, this department has ruled that when a person holding one office, accepts another incompatible therewith, it renders the former office vacant ipso facto.

SCHOOLS AND SCHOOL DISTRICTS: Section 4191 of Code, is a limitation upon Section 4135, with respect to changing boundary lines of school districts.

June 18, 1929. *County Attorney, Primghar, Iowa:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following proposition:

Is it possible for the board of directors of an independent school district, including an incorporated town, and the board of directors of a rural school township, by concurrent action, to change the boundary lines between said districts, being contiguous school corporations under the provisions of Section 4135, without a vote of the electors as required in Section 4191 of the Code; and the necessary procedure where the strip of land involved has no residents?

The provisions of Section 4133 of the Code of Iowa, 1927, are merely incorporated in toto from Section 2793, Code of Iowa, 1897, and were therefore enacted prior to that time by the Thirty-fourth General Assembly, Chapter 142.

The provisions of Section 4191 were reenacted and amended by the Fortieth Extra General Assembly, Chapter 16, Section 11-a1. Therefore, Section 4191 is the later enactment and is, in our opinion, a limitation upon the provisions of Section 4133. We are therefore of the opinion that if it is sought to change the boundary line between an independent city, town, or consolidated district and an adjoining district in such manner as to add territory to the existing independent city, town, or consolidated district it can be done only under the provisions of Section 4191.

If there are no voters residing on the territory proposed to be added to the independent city, town, or consolidated district, this would be a physical bar to the action, since it can be added only by the expressed will of the electors at an election at which the electors residing thereon may vote in a separate ballot box. See also 206 Iowa, 1183.

BANKS—RENEWAL OF CORPORATE CHARTER: Must have two-thirds vote for renewal. Provisions of Section 8371 applicable and not Section 8365.

June 18, 1929. *Superintendent of Banking:* You have requested the opinion of this department upon the following proposition:

"May a savings bank by two-thirds vote of its stockholders vote to renew or extend its charter without the possibility of any stockholder making demand for payment of the real value of his stock?"

Your attention is invited to the provisions of Sections 8364, 8365, and 8371 of the Code. You will observe that Section 8364 provides that corporations for the conduct of certain businesses, including savings banks, may be formed to endure fifty years. Section 8365 contains the provisions relative to the renewal of the chapter of the corporations mentioned in Section 8364. However, note the provisions of Section 8371 of the Code, which pertain especially to the renewal of the corporate charters of state or savings banks:

"The corporate existence of any state or savings bank may be renewed or extended, from time to time, for a period not longer than the time for which such banks may organize, by an affirmative vote of two-thirds of the shareholders thereof, at a stockholders' meeting held for that purpose, within three months before or after the time of the expiration of its

charter as shown by its certificate of incorporation issued by the secretary of state."

Hence, it will be observed that there is a special procedure provided for the renewal of bank charters, and in this special procedure there is no requirement whatever made that those voting against renewal are entitled to have their stock bought by those voting for renewal.

In view of the special provisions of law relative to renewal of bank charters, as contained in Section 8371 of the Code, we are of the opinion that the law does not require that those shareholders in any state or savings bank desiring to renew their charter shall purchase the stock of those stockholders who are not in favor of renewal.

EMBALMERS—SENATE FILE 191: The gratuity given by one embalmer to another who assists in the burial of a body is not such a division of profits as contemplated and prohibited by the statute.

June 21, 1929. *Department of Health:* This will acknowledge receipt of your request of May 27, 1929, which request was as follows:

"In case the embalming and funeral service in connection with one body is participated in by two embalmers, one living at the place where the person died, and the other at the place where the person was buried, is it contrary to Paragraph 4, Section 2493, of the Code of 1927, or Section 7 of the new Embalming Bill, which was passed by the Forty-third General Assembly, and represented by Senate File No. 191, for the embalmer who embalms the body and provides a casket, to divide the profits on the casket with the embalmer in another city who looks after the burial?"

We are of the opinion that the Forty-third General Assembly by repealing Chapter 124 of the Code of 1927 eliminated licensed embalmers from the prohibitions outlined in Section 2493 of the Code of 1927, and in lieu thereof placed them under the restrictions of Section 6 of Chapter 69, Laws of the Forty-third General Assembly. Under Section 6, Chapter 69, the question you submit would not be one that would be prohibited.

As to Section 7, we do not believe that the division of the profits on the casket would fall within this section of Chapter 69 as Section 7 specifically prohibits wilful solicitations of patronage and from giving or agreeing to give money, property or some other reward therefor. We are of the opinion that the question, as submitted by you, does not fall either within Paragraph 4 of Section 2493, Code of 1927, or Section 6 or 7 of Chapter 69, Laws of the Forty-third General Assembly.

PUBLIC CONTRACTS: Claims for work and labor on highway improvements filed with the Auditor of State forwarded to the State Highway Commission; memorandum retained by auditor.

June 22, 1929. *Auditor of State:* We wish to acknowledge receipt of your request for an opinion on the following situation:

"I will appreciate your opinion as to method of procedure for claims filed with this department under Section 10305, Code of Iowa, 1927, for primary road improvement or construction.

"It will be noted in the wording of the above section that claimant 'may file with the officer authorized by law to issue warrants in payment of such improvement.'

"Since the law puts all the power of letting contracts and approval of claims on the primary road matters in the hands of the highway commission, it is an impossibility to protect a claimant through this office when claims are filed, because of the fact that we have no record of the

number of estimates that have been approved and paid on the contract or amount retained. In fact, no record whatever concerning the payments on contracts, as the payments may be made by the county auditor from the county bond fund by the Highway Commission from the primary road contingent, or by the Auditor of State from the primary road fund.

"If the old and new road laws are read and considered, it appears to me it is impossible for this office to protect a claimant as provided by Section 13305. When we do accept claims under the above section, we do not know when claims are adjudicated as we get no report on payment of same as the Auditor of State is not a party in the case.

"Up to the present time I have notified C. R. Jones of the Highway Commission that claims against certain contractor are filed by claimant, giving county, number of project and the amount claimed, giving all information regarding claim in question."

Section 10305, Code, 1927, to which you refer, provides for the filing of claims for labor or material in the construction of a public improvement "with the officer authorized by law to issue warrants in payment of such improvement, an itemized, sworn written statement of the claim for such labor or material, service or transportation." Section 10306, Code, 1927, provides:

"In the case of highway improvements by the county, claims shall be filed with the county officer of the county holding the contract."

We understand that it is the practice in filing claims for labor or material, under the statute referred to, on primary road improvements, to file, in some instances, with the county auditor, Auditor of State, and Highway Commission. This practice, of course, protects the claimant in every respect and it gives all of the officers involved the information required. It is also the practice to file claims with both the Highway Commission and Auditor of State, and in a few instances they are filed with the Auditor of State only. The latter procedure is unsatisfactory for all the reasons suggested in your letter, but at the same time it meets the requirements of the statute above referred to. Where claims are filed only in your office, it is necessary that the Highway Commission be advised of the same, and have the information contained in the claim in order that the provisions of the statute in regard to the retention of funds may be complied with.

We therefore believe the best practice to be and would recommend that when claims of this nature are filed in your office that you make a memorandum thereof and forward the claim to the State Highway Commission where all claims can be gathered and the proper percentage of the contract price retained.

HIGHWAY COMMISSION—PRIMARY ROADS: Highway Commission does not have authority under the provisions of Chapter 25, Laws of the Forty-third General Assembly to employ a force of traffic patrolmen for primary roads.

June 22, 1929. *Iowa State Highway Commission, Ames, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"Chapter 25 of the Acts of the Forty-third General Assembly relates to the control of traffic on the primary roads and places certain responsibility on the State Highway Commission in connection therewith. Section 6 of this chapter provides 'All primary road patrolmen and maintenance engineers are designated as peace officers and as such shall have authority

to apprehend all violators of the authorized rules, regulations and orders of the Highway Commission and of the law pertaining to the primary highways of the state.' I am writing to ask your opinion on the following questions:

"1. Do the words 'primary road patrolmen' as used in Chapter 25, Laws of the Forty-third General Assembly, refer to the patrolmen who do the maintenance work on the primary roads, or do said words refer to patrolmen employed for the policing of traffic on the highways?

"2. Would the Highway Commission under said Chapter 25, Laws of the Forty-third General Assembly, have authority to employ a force of traffic patrolmen for the policing of traffic on the primary roads?

"3. If the Commission does have authority to employ a force of traffic patrolmen for the policing of traffic on the primary roads, from what funds would the salaries and expenses of such patrolmen be paid?"

Considering the questions in the order submitted by you we hold that the "primary road patrolmen" referred to in Section 6, Chapter 25, Laws of the Forty-third General Assembly, must of necessity refer to the road patrolmen provided for in Chapter 243, Code, 1927. There are no other road patrolmen provided for in the statutes of this state, and in the title to Chapter 25 it states that the provisions thereof are "to amend section four thousand seven hundred seventy-nine (4779) relating to the powers of road patrolmen * * *." Section 4779 is contained in Chapter 243 and relates to the authority of the road patrolmen. Chapter 25 merely increases the authority of such patrolmen.

There is no authority contained in Chapter 25, Laws of the Forty-third General Assembly, authorizing the State Highway Commission to employ a force of traffic patrolmen for the policing of the primary roads. It was clearly the intention of the legislature that the road patrolmen referred to under Chapter 243, Code, 1927, and the "maintenance engineers" employed by the State Highway Commission are to perform these duties in addition to their other duties.

ACKNOWLEDGMENTS: Signature of official administering oath affixed by rubber stamp should not be accepted although under the decisions of our supreme court such a "signature" might be sustained as legal.

June 24, 1929. *State Highway Commission, Ames, Iowa:* We acknowledge receipt of your request for an opinion as to whether an acknowledgment by a notary public on which his signature is stamped with a rubber stamp is valid.

Section 10103, Code, 1927, sets out the forms of acknowledgments and provides that the "signature" of the officials administering the oath shall be affixed thereto. We fail to find any cases in this state squarely upon the question submitted. However, in *Loughren vs. Bonnewell*, 125 Iowa, 518, the supreme court passed upon the validity of an original notice signed by a justice of the peace with a "stenciled stamp bearing a facsimile of the justice's signature." The court in referring to this method of signing the notice, said:

"Facsimile stamps such as were used in this case are quite common in these days of haste and hurry, and courts have generally regarded such a signature as sufficient and the equivalent of a signature with pen and ink or pencil." (Citing cases.)

The court in the cited case sustained the validity of the notice, although

the attack made upon it was in the collateral proceedings which also entered into the court's decision.

In *Cummings vs. Landes,* 140 Iowa, 80, the supreme court sustained the validity of an original notice to which the signature was printed. The court said:

"No more is exacted than that the name of plaintiff or that of his attorney be attached to the notice by any of the known methods of impressing the same on paper, whether this be in writing, printing or lithographing, provided it is done with the intention of signing or be adopted in issuing the original notice for service." (Citing cases.)

We are of the opinion that an acknowledgment signed in the manner you refer to would probably be sustained as a valid "signature" by our supreme court, in view of the authorities above referred to. However, we are of the opinion that the State Highway Commission should not accept acknowledgments of this character. There still remains a question which might develop into a law suit resulting in considerable loss to the State of Iowa.

TAXATION—DELINQUENT SPECIAL ASSESSMENT INSTALLMENTS —INTEREST: Delinquent special assessment installments carry interest at the rate of 6% after delinquency, in addition to the penalty.

June 24, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Do installments of special assessments after delinquent carry interest at 6% and penalty?

For answer to your question whether installments of special assessments, after delinquent, carry a penalty, you are referred to the opinion of this department rendered you under date of July 27, 1928. That opinion held that they would carry a penalty after delinquency.

Under Section 6032, Chapter 308, Code of 1927, unless the owner of any lot or property against which an assessment is made within thirty days objects to the legality or regularity of the assessment or levy, he shall be deemed to have waived objections on these grounds and shall have the right to pay said assessment *with interest thereon not exceeding* 6% *per annum in equal annual* installments.

Section 6033, Chapter 308, Code of 1927, provides in part as follows:

"* * * 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.

* * *"

We are of the opinion that installments of such special assessments, after delinquency, carry interest in addition to the penalty until such time as they are paid. This is true of all special assessments levied in accordance with the provisions of Chapter 308 for street and sewer improvements, including paving, curbing, guttering, oiling, graveling, etc.; of special assessments for street opening as provided for in Chapter 307; of special assessments for joint municipal sewer under provisions of Chapter 308-a1; of special assessments in cities under commission form of government provided for in Chapter 306; of special assessment for street improvements and sewers in special charter cities, Chapter 329;

special assessments for sidewalks; of special assessments for drainage purposes; of special assessments for county road improvements as provided in Chapter 241, Code of 1927.

COUNTY OFFICERS: Superintendent of schools is entitled to legal counsel; if county attorney is disqualified, application should be made to the board of supervisors for an appointment.

June 24, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"When there is a trial before a school board should the county attorney take the case for either side? If he should and the case were appealed to the county superintendent who would she consult for advice during the hearing? Is it not true that a county officer is entitled to legal counsel? In this case if the county attorney could not be consulted, from what fund would the other attorney be paid? Please instruct me as to just what steps to take."

Inasmuch as the county attorney must advise the county superintendent when a case comes on for hearing before her on appeal, it would be improper for such attorney to represent either party in a case which may be appealed to her. He is required, of course, to give advice to the school board but, if the matter comes to the point of hearing before the board, it would be improper for the county attorney to appear for either side at that hearing. If the county attorney does so appear, the county superintendent should apply to the board of supervisors for the employment of an attorney to advise her in connection with her official duties should she need such advice.

SCHOOLS AND SCHOOL DISTRICTS: May purchase real estate from a member of the board upon appraisal; may also condemn.

June 24, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"A certain school board wishes to proceed with the erection of a school house. The site it wishes to procure belongs to a member of the board. Is there anything in the law that would make it illegal for the board to purchase a site from one of its members? There seems to be a feeling that this particular member of the board is asking a higher price for the site than is justified. Could the board start condemnation proceedings to secure a site that belongs to one of its members?"

There is nothing in the law which would prevent a school board from purchasing real estate from one of its members although such purchase is unusual. In order to conform to the rule of public policy we suggest two courses.

The board should, if it purchases this property, do so only after an appraisal by a competent board of appraisers with whose appointment there should be no collusion or connivance. They should be three disinterested persons recognized for their ability as such appraisers. If this course is not followed, the board should condemn the land. The latter procedure would, in our opinion, be preferable.

DOCTORS—LICENSES—BOARD OF HEALTH: Where license has been revoked, application for reinstatement should be made to board of health.

June 26, 1929. *Department of Health:* This will acknowledge receipt of your request of June 21, 1929, in which you ask the following question:

"Where the license to practice medicine has been revoked by the district court, will it be necessary for the practitioner who desires to again practice to make application for an examination and take the regular examination before the board of medical examiners?"

In reply we would say that it would only be necessary for the practitioner to take an examination before the board where his license had been revoked on account of incompetency. In the event that his license had been revoked for any other reasons, then he should make application to the Board of Health and they, setting as a quasi judicial board, should pass upon the facts presented to them by all parties and decide whether or not the applicant would be entitled to again practice the profession. In case they so found, it would be within their jurisdiction to have this party reinstated without any regular examination.

SCHOOLS AND SCHOOL DISTRICTS: Board may excuse person over 21 years of age from payment of tuition.

June 26, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting an opinion upon the following proposition:

"Does a local school board have the legal right to excuse a pupil over twenty-one years of age from paying tuition for attendance at a day school if the student has not spent any time in the army, or navy, or marines of the United States government?"

This question is governed by the statute, Code Section 4273, Code of Iowa, 1927, which provides as follows:

"Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years, and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before they became twenty-one. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person."

From the above section, it will be noted that every person who shall attend any school after graduation from a four year course in an approved high school or its equivalent, shall be charged a sufficient tuition fee to cover the cost of instruction received by such person. We are of the opinion that the language of this statute is mandatory and that any taxpayer may compel the board of education of any school district to charge such a tuition fee.

However, in the case of a person who is past twenty-one years of age, a different rule applies. The statute merely provides that the school *shall* be free of tuition to all actual residents between the ages of five and twenty-one years. It is mandatory to that extent but there is no language in the statute which makes it mandatory to charge tuition for pupils below or above those age limitations similar to the language which requires and makes it mandatory to charge tuition after such person has graduated from a four-year course in an approved high school.

We are, therefore, of the opinion that it is within the discretion of the

board of education of a school district to permit a person under five years or past twenty-one years of age to attend school without a tuition charge.

COUNTY OFFICERS—BOARD OF SUPERVISORS: Board of supervisors has discretion as to supplies furnished county superintendent.

June 26, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"Is it a discretionary matter with the county board of supervisors as to what supplies it will furnish to the county superintendent's office? Would it be illegal for the county board of supervisors to furnish the county superintendent with school officer's blanks, award cards, attendance certificates, eighth grade graduation diplomas, proficiency certificates, and such other teaching aids as the county superintendent might specify?"

The statute, as it was amended by the Forty-second General Assembly, Section 5233, provides as follows:

"The county superintendent shall, on the first Monday of each month, file 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 and such expenses shall be allowed by the county board of supervisors and paid out of the county fund, as other expenses of the county, but the total amount so paid in any one year for traveling expenses of the superintendent shall not exceed the sum of four hundred dollars, unless approved by the board of supervisors."

Since this allowance is made by the board, it follows that it would be within the discretion of the board to determine what supplies would be furnished. Under a previous statute, the entire expense of the office, exclusive of postage and stationery, could not exceed four hundred dollars. Under that statute, this department ruled that certain blanks, pupils' report cards, and other school supplies, could not be furnished. We are of the opinion that the legislature, by the amendment, intended that whatever supplies the county superintendent needs, within the discretion of the board of supervisors, may be furnished.

BOARD OF EDUCATION—COUNTIES: State board of education may turn over monies withheld under Section 10313 after expiration of time.

June 26, 1929. *State Board of Education:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following propositions in connection with Section 10313, Code of Iowa, 1927:

"1. Must a sub-contractor bring action in equity in the county where the public improvement was made not later than six months after the completion and final acceptance of said public improvement, provided the contractor has not settled the claim of the said sub-contractor?

"2. If the sub-contractor does not begin legal action against the contractor within the period of six months, does he waive his rights insofar as the claim is concerned?

"3. If your answer to question No. 2 is *yes;* what would the Iowa State Board of Education do with the amount of money that was retained in accordance with Section 10312 of the Code, 1927?"

The sub-contractor must bring his action in equity if notice is given within six months after the completion and final acceptance of the final improvement. If the sub-contractor does not bring this suit within a

period of six months he waives any claim to the amount withheld by the public body.

The Iowa State Board of Education, in a case of this kind, may, after the expiration of six months, if no suit in equity has been begun and no notice thereof served upon you, pay the money retained, in accordance with Section 10312, of the said Code. It would be advisable for you to wait a short time over the six months period to make sure that the suit has not been begun.

TAXATION—INHERITANCE TAX—APPRAISEMENTS—FEES: Inheritance taxation appraisers under Section 1219, Code, 1927, are entitled to collect 50 cents per hour for each appraiser for the time necessarily spent in making the appraisement, and in addition thereto, 5 cents a mile for the distance traveled in going to and returning from the place of appraisement.

June 27, 1929. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department upon the following question:

What fees under the law are inheritance tax appraisers entitled to receive for their services, and what fee are they entitled to charge for mileage?

We refer you to Section 1219 of the Code, 1927. It will be seen from reading this section that all appraisers of property appointed by authority of the law, are to receive fifty cents per hour for each appraiser for the time necessarily spent in effecting appraisement, and in addition thereto, five cents a mile for the distance traveled in going to and returning from the place of appraisement.

We call your attention to the fact that the inheritance tax appraisers are appointed by authority of law and that no compensation is fixed by the law which provides for their appointment. It would therefore follow that the compensation and mileage to be received by said appraisers would be governed by Section 1219 of the Code, 1927. Fifty cents per hour and five cents per mile is all that an inheritance tax appraiser is entitled to collect, and is all that can be charged as a part of the costs against the estate.

CORPORATIONS — EXECUTIVE COUNCIL — NON-PAR STOCK — ISSUANCE FOR PROPERTY: Non-par stock cannot be issued for property under the laws of this state without first complying with the provisions of Sections 8413-16, inclusive, of Chapter 385, Code, 1927.

June 27, 1929. *Executive Council:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Chapter 6 of the Acts of the Forty-third General Assembly authorizes corporations organized before or after its passage to provide in their articles for the issuance of non-par stock,—that is stock without par value. The question has arisen as to whether, under the provisions of Chapter 6 of the Acts of the Forty-third General Assembly, particularly with reference to Section 4 thereof, where a corporation which has been authorized to issue non-par stock proposes to issue non-par stock for property, it is necessary for such corporation to proceed in accordance with Sections 8413 to 8416, inclusive, of Chapter 385, Code, 1927.

We call your attention to that part of Section 4 which provides as follows:

"* * *. Nothing in this act shall be so construed as to repeal the law

as it now appears in Sections eighty-four hundred thirteen (8413), eighty-four hundred fourteen (8414) and eighty-four hundred fifteen (8415) of the Code, 1927."

This would seem to be the legislature's expression of the intent with which they passed the act contained in Chapter 6 of the Acts of the Forty-third General Assembly, particularly with reference to the issuance of non-par stock for property. We are, therefore, of the opinion that no corporation which is authorized by its articles of incorporation to issue non-par stock may issue such stock for property without complying with the provisions of Sections 8413 to 8416, inclusive, Chapter 385 of the Code, 1927. Where an application is made to the Executive Council by a corporation for authority to issue non-par stock for property, it will be necessary for the Executive Council not only to determine the value of the property but to determine the value of the non-par stock, and therefore the number of shares which might be issued for the property.

CITIES AND TOWNS: An ordinance of a city or town which imposes a poll tax of $4.00, and then provides for a discount in the sum of $1.00, provided such tax is paid on or before the 1st day of October, 1928, is contrary to Chapter 318, Code, 1927, for the reason that the statutes do not allow the city or town to impose upon those who do not pay a poll tax at a designated time, a penalty, the statute itself providing for a penalty of not to exceed $2.00; same to be assessed within the discretion of the court.

June 27, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department upon the following question:

The following resolution was adopted by a certain city of this state:
"Be it resolved by the city council of the City of Manchester, Iowa, that all able-bodied male residents of said city between the ages of 21 and 45 shall pay to said city the sum of $4.00 as poll tax for the year 1928, provided that a discount in the sum of $1.00 shall be allowed to all persons paying said poll tax to the city clerk of said city before the first day of October, 1928, and
"Be It Further Resolved, that the city clerk be and he is hereby authorized to allow said discount as herein provided."

The question is whether or not the resolution is in conformance with the statutes pertaining to poll taxes which a city and town are authorized to levy. We call your attention to Chapter 318 of the Code, 1927, and to Section 6231 of said chapter, wherein you will note that cities and towns are authorized to impose a poll tax not exceeding $5.00. We also call your attention to Section 6233 of said chapter, wherein it is provided that in case one who is subject to the poll tax imposed, fails to pay the same, that said city may collect the same and a penalty of not more than $2.00. It will be seen from reading the two sections above referred to that the city is authorized to impose a tax of not exceeding $5.00, and that if the tax imposed is not paid when due, that the city is authorized to collect the same and a penalty not exceeding $2.00, the amount of the penalty being determined by the court.

We are, therefore, of the opinion that the resolution above quoted is not in conformance with the statute, for the effect of the resolution is to impose on those who do not pay at the time designated, an additional sum which would be construed as a penalty. The city or town does not have authority under the statutes to impose a tax and offer a discount if paid

when due. The purpose of the penalty provisions is to secure the payment of the tax at the time it is due, and the resolution above set out is in effect, an imposition of an additional penalty for the purpose of securing revenue when due.

BUDGET DIRECTOR—CITIES AND TOWNS—SALE OF ABANDONED CITY HALL SITE: Cities and towns have the right to sell and dispose of abandoned city hall sites, where the city has no longer any use for such property.

June 27, 1929. *Budget Director:* We are herewith submitting you an opinion on the following question:

A city was some years ago authorized by vote of the people to purchase a site and erect a city hall thereon. This was done pursuant to the statutes pertaining to such matters. This building and site, as the city grew in size, became inadequate and unsuitable for the purposes for which it was erected. A new site and new building was secured in accordance with the law and the old site abandoned. The old building was sold and removed. The site was beautified and converted into a small park. The city having no longer any real use for this site, it being unsuitable and insufficient for any purpose demanded by the city, has sold said site and the question now arises as to what fund or funds the proceeds of said sale shall be credited.

We refer you to sections 6205 and 6206 of the Code, 1927. These sections give the city power to dispose of lands unsuitable or insufficient for the purposes for which they were originally acquired. Therefore, the city has power to sell the site which was abandoned because it was unsuitable and insufficient for the purposes for which it was originally acquired.

When the building and site was abandoned as a city hall, said property lost its character as such and the property was held by the city from that time in the same manner as any other property held by a city which is not used or needed for any particular purpose. We are, therefore, of the opinion that the proceeds of the sale of this property should properly be credited to the general fund of the city.

In the event the city does not need this fund in its general fund, the council might, upon proper application to the budget director, transfer such part as it might determine, to any other fund or funds of the city.

ENGINEERS: A firm advertising themselves as "an engineering company" which does not contain as a member thereof any licensed engineer cannot use the name "engineering company."

June 28, 1929. *Executive Council:* We acknowledge receipt of your letter with the enclosed copies of letters from Howard R. Green Company of Cedar Rapids, and the president of the State Board of Engineering examiners concerning a firm appearing under the name of Green Engineering Company. In these letters it appears that the firm in question is engaged in the electrical repair business and that none of the members of the concern are licensed engineers under the laws of this state. Complaint is made of the name used in their business.

Section 1875, Code, 1927, in part reads as follows:

"Any person who is not legally authorized to practice in this state according to the provisions of this chapter, and shall practice, or shall in connection with his name use any designation tending to imply or designate him as a registered practitioner within the meaning of this chapter * * * shall be guilty of a misdemeanor * * *."

We would suggest that you have this matter taken up with the county attorney of Linn county who can call the attention of the individuals operating the "Green Engineering Company" to the section just referred to and undoubtedly the practice will be discontinued. Otherwise an information can be filed and prosecution had under the statute.

FARM AID ASSOCIATIONS—COUNTIES—BOARD OF SUPERVISORS: Farm aid associations complying with Chapter 80, Acts of Forty-third General Assembly; in view of Chapter 80 said act removes difficulties found by court in *Jefferson County Farm Bureau vs. Board of Supervisors*, Jefferson County.

July 1, 1929. *County Attorney, Des Moines, Iowa:* This will acknowledge receipt of your request for the opinion of this department as to the effect of the case of the *Jefferson County Farm Bureau vs. Board of Supervisors, Jefferson County*, upon the application of a county farm bureau which has complied with Chapter 80, Acts of the 43rd General Assembly, and in view of Chapter 8 of said acts.

The case above cited and recently decided by the supreme court was commenced under Chapter 138 of the Code of Iowa, 1927. Chapter 80 of the Acts of the 43rd General Assembly amended the statute to provide that the articles of incorporation shall be "substantially" as prescribed in the statute and that the membership dues shall be not less than one dollar and that the appropriation is to be based upon "dues and pledges."

It will be observed, therefore, that all of the objections raised in the cited Jefferson county case have been eliminated by the amendment to the statute so that the case does not affect a county farm bureau now applying for aid.

The legislature also legalized all corporations organized "prior to January 1, 1929," by the enactment of Chapter 8 of the Laws of the 43rd General Assembly.

We are therefore of the opinion that the case recently decided would not affect any present application for the county appropriation and that the remedy which the court suggests, that is, "with the legislative branch of our state government" has already been sought and granted by the legislature.

WEEDS: A land owner is required to cut weeds in an open drainage ditch through his land, also along the highway crossing his land.

July 6, 1929. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter in which you inquire whether a landowner is required to cut weeds in an open dredge ditch crossing his land, and also the weeds in the highway crossing his land.

In this connection we call your attention to the provisions of Section 4819, Code, 1927, as amended by Chapter 246, Acts of the 43d General Assembly. This section requires each land owner or person in possession of land to destroy noxious weeds in the manner prescribed by the board of supervisors. Paragraph 2 of this sections reads as follows:

"Cause all weeds on the streets or highways adjoining said lands to be cut at the time prescribed by the board of supervisors * * *."

Under the provisions of the section just quoted there can be no doubt but that the land owner is required to cause all the weeds on his land

adjoining the highways to be cut or destroyed as prescribed by the supervisors. He owns the land through which the drainage ditch flows, and we are of the opinion that he should destroy the weeds in the ditch in the manner prescribed by the supervisors.

FISH AND GAME—STATE WATERS DEFINED: State waters are all waters of the state which have been meandered or to which ownership has been acquired by purchase.

July 10, 1929. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department upon the following question:

What waters are included under the term "state waters" as it is used in the acts of the Forty-third General Assembly in connection with fishing license?

"State waters" are usually defined as all waters of the state which have been meandered. A meandered stream or body of water is one which has been surveyed and the meandered line established. It also includes such waters of the state as have been purchased and are now owned by the state.

FISH AND GAME—TROT LINES: Under Section 1734, Code, 1927, as amended by Section 16, Chapter 57 of Acts Forty-third General Assembly, it is unlawful to use trot lines in this state.

July 10, 1929. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 1734, Code of Iowa, 1927, was repealed and Section 16, Chapter 57, Acts of the Forty-third General Assembly was enacted in lieu thereof. Under the new section can a trot line be used in the state waters of the state?

Under the old section the manner of using a trot line was prescribed. The new section does not prescribe any method by which a trot line may be used. We are, therefore, of the opinion that under the new section no trot line may be used in any of the state waters.

STATE HOSPITAL — TREATMENT NON-RESIDENTS — RESIDENCE DEFINED: A non-resident of this state not entitled under Section 4014, to treatment at State Hospital as provided in Chapter 199, Code, 1927, the statute requiring as a prerequisite to treatment that the person be a legal resident of state. The term "legal residence" of Iowa as used in Section 4005, Code, 1927, is defined as a residence in the county with the good faith intention of making a home in said county, coupled with the physical facts showing such intention.

July 10, 1929. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Can a non-resident of the State of Iowa, temporarily residing within this state obtain treatment in the State Hospital as an emergency case under Section 4014 of the Code?
2. Does the word "residence" in Section 4005 of the Code require a year's actual residence as provided in the poor relief statutes or may a person become an actual resident within this section of the Code by moving within the state and intending to become a citizen thereof without reference to the term of actual residence?

1.

Section 4005, Chapter 199, Code of 1927, provides for the filing of complaints by adult residents of the state against any *legal resident of the state.* It being necessary that the person against whom complaint may be made must be a legal resident of the state. It would, therefore, follow that a non-resident, temporarily residing in the state, is not entitled to the benefits of Chapter 199 and cannot, therefore, obtain treatment at the State Hospital at Iowa City within the meaning of Section 4014.

2.

The term "legal resident of Iowa" as used in Section 4005, Code of 1927, in our opinion should be defined as a residence in the county with the good faith intention of making a home in said county coupled with the physical facts showing such intention. That is, the residence must not be for a temporary purpose only but must be with the present good faith intention of making it a home without any present intention of removing therefrom. The term "legal residence" as used in said section is not, in our opinion, synonymous with the term "legal settlement."

WIDOW'S PENSION: A widow to be entitled to a widow's pension must have had a residence of one year in the county prior to the filing of the application for such pension. If she does not have the required residence she is not entitled to a pension.

July 11, 1929. *County Attorney, Audubon, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Ben Salcedo was sentenced in 1926 to one year at Fort Madison for desertion. He was paroled and moved to Carroll County with his family and lived there about eighteen months. A few days ago his parole was revoked and he is again at Fort Madison. He has a wife and four children dependent upon him. They are destitute. About three weeks ago the wife of said Ben Salcedo removed from Carroll County to Audubon County, she taking up her residence in the latter county. Notice to depart has been served upon her by the proper authorities of Audubon County.

Is the wife eligible for a widow's pension as provided in Section 3641, Code of 1927, and if so which county is the proper county for her to apply for such support?

There is no doubt but that, under Section 3641, Code of Iowa 1927, the wife of the said Ben Salcedo is a widow and she will have that status until her husband is released from the penitentiary. However, before Mrs. Salcedo is entitled to receive a widow's pension under Section 3641 she must be and has been a resident of the county for one year preceding the filing of the application, and she must be unable to support her children.

It would appear from the facts stated in the question that Mrs. Salcedo has abandoned her residence in Carroll county, she having taking up her residence in Audubon county, she cannot therefore file application for a widow's pension in Carroll county for she does not now have a residence in that county. It also appears under the facts that she has only been a resident of Audubon county a few months. She is not, therefore, entitled to apply for a widow's pension in that county for she has not had the residence required by the statute.

However unfortunate the above ruling may seem no other construction can be placed upon Section 3641 of the Code of Iowa 1927. We might suggest that under the facts stated Mrs. Salcedo has a legal settlement in Carroll county and if she is unable to support herself and family and is a public charge she may be able to secure poor relief from that county for herself and children.

LIBRARY FUND—BOARD OF SUPERVISORS: Not necessary to publish items of expenditure of library fund made by county board of education.

July 11, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of July 5, 1929, requesting the opinion of this department upon the following proposition:

"A board of supervisors asks if the library fund cannot be turned over in a lump sum to the county superintendent in order to cut down the expense the board of supervisors has to incur in connection with the publication of its report.

"Is it necessary for the board of supervisors to include the expenditures of the library fund by the county board of education in the published reports of the board of supervisors?"

We have held in former opinions that the library fund cannot be turned over in a lump sum to the county superintendent but that it must be expended through the regular channels of the county auditor's and county treasurer's offices. However, the fund is not expended by the board of supervisors, but by the county board of education and, therefore, is not properly a part of the published report of the board of supervisors. The latter board has no discretion as to its expenditure and its connection with the expenditure is merely a matter of administration only.

We are, therefore, of the opinion that the action of the board of supervisors in connection with the expenditures of the library fund need not be published as a part of the board's proceedings.

ROADS AND HIGHWAYS—BONDS—COUNTIES: Mandatory construction levies cannot be anticipated by secondary road bonds under the provisions of Chapter 242, Code of 1927.

July 11, 1929. *County Attorney, Des Moines, Iowa:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following propositions:

"Under the law as it appears in Chapter 242 of the 1927 Code as amended by the Forty-third General Assembly, does the county have a right under the provisions of said law to vote and issue bonds for the paving of county roads and if the bonds were voted and issued, could the secondary road construction fund be used for the payment of any portion of said bonds?"

It is provided by Chapter 20, Section 10, Acts of the 43rd General Assembly, as follows:

"Thirty-five per cent (35%) of the yearly secondary road construction fund is hereby pledged to the improvement of, and shall be expended on, those local county roads which the board finds are of the greatest utility to the people of the various townships."

Therefore, thirty-five per cent of the secondary road construction fund is set apart and appropriated to the construction of the local county roads which, under the classification of said Chapter 20, are the present township roads.

It is further provided in Section 11, of said chapter as follows:

"The balance of said secondary road construction fund shall be used for any or all of the following purposes at the option of the board of supervisors:

1. To the payment of the cost of constructing the roads embraced in the existing county trunk road system.
2. To the payment of the outstanding county road bonds of the county authorized and issued under chapter two hundred forty-two (242), Code, 1927, to the extent heretofore pledged.
3. To the payment of legally outstanding bridge or road bonds of the county (not including primary road bonds), when construction work on the county trunk system of the county is complete.
4. To the discharge of any legal obligation or contract which, under the provisions of this chapter, is required to be taken over and assumed by the county.
5. To the payment of all or any part of special drainage assessments which may have been, or may hereafter be, levied on account of benefits to secondary roads.
6. To the payment of the cost of constructing local county roads and expenditures pertaining thereto, but only when the construction work on the county trunk roads has been fully completed, and when the board deems it inadvisable to make additions to said trunk roads."

From sub-section 2 above, it will be noted that the balance or remaining sixty-five per cent of the secondary road construction fund may be used to pay outstanding county road bonds authorized and issued under Chapter 242 of the Code of 1927, *to the extent heretofore pledged.*

We are therefore of the opinion that those elements of the secondary road construction fund which remain intact can be used for the purpose of paying outstanding county bonds to the extent pledged prior to the effective date of said Chapter 20. This date was July 4, 1929. This act repealed Section 4635 of the Code, which provided for the levy of a county road fund, county road building fund, county drainage fund, and county bridge fund. Under the provisions of Chapter 242, these funds could be pledged to the payment of county road bonds. The only element which could be pledged under Chapter 242, and which remains intact under Chapter 20, is the gasoline license fee. Therefore, only that element can now be pledged under the existing statutes to the payment of secondary road bonds now issued under Chapter 242 of the Code.

The only means provided by the Bergman bill for the anticipation of the secondary road construction fund is contained in Section 49, Chapter 20, of the bill, which provides as follows:

"Construction fund anticipated. The board before issuing anticipatory certificates shall seek the advice of the state highway commission and issue said certificates to an amount not exceeding fifty per cent (50%) of the estimated funds which will accrue to the secondary road construction fund during any stated period of from one (1) to two (2) years."

We are therefore of the opinion that none of the secondary road construction fund except the license fee provided by statute can now be pledged to the payment of secondary road bonds now issued under the provisions of Chapter 242 of the Code, for the reason that such pledge would be in violation of Sections 10 and 11 of said Chapter 20, and contrary to the spirit of the law enacted therein where a method of anticipation is provided by the act which creates the secondary road construction fund.

See also *Dee vs. Tama County*, 209 Iowa 1341.

DEPARTMENT OF AGRICULTURE—STALLIONS: Persons acting in good faith may own jointly un-registered stallion for their own joint or individual use; not, however, for public service.

July 11, 1929. *County Attorney, Chariton, Iowa:* This will acknowledge receipt of your letter in regard to joint ownership of an unregistered stallion and the use of such stallion by members or joint owners exclusively and, particularly, whether such joint ownership would exempt the owner from the provisions of Section 2618, Code of Iowa, 1927.

If the joint ownership is in good faith and merely an arrangement to evade the statute, the owners could use such animal exclusively upon their own mares only, without being in violation of this section. Such ownership must, of course, be in fact and in good faith a joint ownership and the animal must not be offered for public service. No fee can be charged and the owners must share equally in the expense of maintaining the animal.

CRIMINAL LAW—"ROAD HOUSE" DEFINED.

July 11, 1929. *County Attorney, Ottumwa, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

Should Chapter 152, Acts of the Forty-third General Assembly, defining roadhouses, apply to the following:

"An oil station located on a public highway selling pop and other soft drinks, is it to be considered a roadhouse? A temporary shack or stand erected along the public highway selling soft drinks, etc., should it be considered a roadhouse? Should a grocery store located on a public highway outside the limits of a city or town in which pop and soft drinks were sold be considered as a roadhouse within the meaning of the amendment?"

We are of the opinion that this amendment is broad enough and was intended to include any building or establishment which furnishes food or drink to the public generally for hire, sale, or profit, and that it would include all of the above places of business. An "establishment" is defined by Webster's Dictionary, as follows:

"The place where one is permanently fixed for residence or business; residence, including grounds, furniture, equipage, etc., with which one is fitted out; also any office or place of business, with its fixtures; as, to keep up a large establishment; a manufacturing establishment."

Some discretion is, of course, vested in the township trustees in this matter and we are of the opinion that the acts should not be construed to cover "kid" enterprises along the highway, but that it should be construed to apply to any building or establishment used for the purposes described in the statute.

SCHOOLS AND SCHOOL DISTRICTS: School secretary is within the Soldiers' Preference Law.

July 11, 1929. *County Attorney, Audubon, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"Does the office of school secretary of an indepedent school district come within the provisions of Soldiers' Preference Law, Chapter 60 of the Code, 1927?"

The chapter in question, and Section 159 thereof, makes it applicable to employes of school boards excepting the position of school teachers. The chapter in question, Section 1165, also exempts private secretaries or deputies and persons holding a strictly confidential relation to the appointed officer.

We are of the opinion that the office of secretary of a school board is not one of such a confidential relationship as will bring it within the exemption provided in Section 1165. We are therefore of the opinion that the office of the secretary of the school board comes within the provisions of the soldiers' preference act.

INSURANCE — INVESTMENTS — MUNICIPAL TRUST OWNERSHIP CERTIFICATES: Insurance companies under paragraph 3 of Section 8737, Code, 1927, are not authorized to invest their funds in municipal trust ownership certificates, said certificates not being the obligations of a municipality.

July 12, 1929. *Commissioner of Insurance:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Do the statutes of this state with respect to the investments which life insurance companies and associations may make, authorize investment, by insurance companies, in municipal trust ownership certificates, such certificates being issued by virtue of a trust agreement and being secured by special assessment certificates, bonds, etc., issued by a municipality?

If insurance companies are authorized to invest in such certificates the authority must be found in Section 8737, Chapter 401, Code of Iowa 1927, and these trust certificates being secured by special assessment certificates or bonds issued by a municipality the particular authority must be found in Paragraph 3 of Section 8737, this paragraph dealing particularly with municipal and state bonds.

It will be noted from reading this sub-paragraph that the municipal bonds or certificates which an insurance company is authorized to invest in are bonds and certificates as are *issued* by a municipality, such as a city, county, town, school district, road or drainage district, etc. The trust ownership certificates which are issued by a trustee and are secured by special assessment certificates or bonds issued by a municipality are not *issued* by the municipality but by a trustee having no connection or relation with the municipality.

We are, therefore, of the opinion that insurance companies and associations are not authorized, under the statutes of this state, to invest their funds in municipal trust ownership certificates which are secured by special assessment certificates or bonds issued by a municipality.

SECURITIES ACT—CORPORATIONS: Chapter 10, Sections 7 and 8, Acts of the Forty-third General Assembly construed: Under Sections 7 and 8, Chapter 10, Acts of the Forty-third General Assembly, Secretary of State is to retain all fees for registration regardless of fact of whether or not application is approved or rejected.

July 12, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Are the fees provided for in Sections 7 and 8, Chapter 10, Acts of the Forty-third General Assembly, to be retained in the event the application for registration under either section is rejected?

We are of the opinion that the fees provided for in Sections 7 and 8, Chapter 10, Acts of the 43rd General Assembly, are to be retained by the Secretary of State regardless of the fact of whether or not the application is approved or rejected.

CORPORATIONS—SECURITIES ACT—DEALER: See opinion for construction of who is considered to be a dealer within the meaning of the new act.

July 13, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

A dealer is defined in the new Iowa securities law, in Section 4, Chapter 10, Acts of the Forty-third General Assembly. Notwithstanding the fact that a dealer is defined a great many questions have arisen as to just who must qualify as a dealer under the new act. In order to clarify the matter we are, therefore, submitting herewith the following hypothecal questions for you to answer:

"1. If a bank sells securities to the public, for another, and receives compensation from the seller, in the way of commission, discount, rebate or credit.

"2. If a bank sells to the public, at a profit or at a loss, securities purchased by it for its own investment account.

"3. If a bank, at the request of a customer, purchases in its own name expressly specified securities and delivers the same to such customer upon the payment of the quoted price, and in connection with the transaction receives from the seller a commission, discount, rebate or credit.

"4. If a bank handles a transaction similar to the one set out in paragraph 3, but receives no compensation from the seller, and does receive compensation from the purchaser, based upon the amount of the purchase.

"5. If a bank handles a transaction similar to the one set out in paragraph 4, but the compensation received from the purchaser is not based on the amount of the purchase.

"6. If a bank handles a transaction similar to the one set out in paragraph 3, but receives no compensation therefor, other than the payment of postage, insurance or other actual expenses incurred.

"7. If in any of the cases set out in paragraphs 3, 4, or 5, the purchase of the securities is made in the name of the purchaser or customer rather than in the name of the bank."

(1)

We are of the opinion that if a bank sells securities to the public, for another, and receives compensation from the seller, either directly or indirectly, in the way of commission, discount, rebate or credit that such bank is engaged in the business of selling securities and is, therefore, a dealer as defined in Section 4, Chapter 10, Acts of the 43rd General Assembly, and must qualify as provided therein.

(2)

We are of the opinion that if a bank sells generally to the public at a profit or at a loss securities purchased by it for its own investment account that it is engaged in the business of selling securities and is a dealer as defined in Section 4, Chapter 10, Acts of the 43rd General Assembly, and must qualify as such in accordance with the provisions of said act.

(3)

We are of the opinion that if a bank, at the request of a customer, pur-

chases in its own name expressly specified securities and delivers the same to such a customer and upon the payment of the quoted price and in connection with the transaction receives from the seller a commission, discount, rebate or credit, either directly or indirectly, that as to whether or not said bank is a dealer within the meaning of the definition contained in Section 4, Chapter 10, Acts of the 43rd General Assembly, would depend upon whether or not such bank was engaged in the business of purchasing or otherwise acquiring such securities for the purpose of offering them for sale to the public. If the bank makes a practice of securing securities for its customers in the manner above stated and has a series of successive or repeated transactions of the nature above described that it would be a dealer within the meaning of the definition contained in Section 4, Chapter 10, Acts of the 43rd General Assembly, and would have to qualify in accordance with the provisions thereof.

(4)

We are of the opinion that if a bank handles a transaction similar to the one set out in paragraph three (3) hereof but receives no compensation from the seller and does receive compensation from the purchaser, based upon the amount of the purchase, that the same rule as to whether or not such bank is engaged in the business of purchasing or otherwise acquiring securities for the purpose of re-selling them would apply as is suggested in paragraph three (3) hereof.

(5)

We are of the opinion that if a bank handles a transaction similar to the one set out in paragraph four (4) hereof, but the compensation received from the purchaser is not based upon the amount of the purchase, that as to whether or not such bank is engaged in the business of purchasing securities for the purpose of re-selling them would depend upon the same rule as is set out in paragraph three (3) hereof.

(6)

We are of the opinion that if a bank handles a transaction similar to the one set out in paragraph three (3) but receives no compensation therefor other than the payment of postage, insurance or other actual expenses incurred, that such bank would not be engaged in the business of selling securities or purchasing securities for re-sale or offering, buying or selling securities within the meaning of the definition of "dealer" as defined in Section 4, Chapter 10, Acts of the 43rd General Assembly.

(7)

We are of the opinion that if in any of the cases set out in paragraphs 3, 4, and 5, the purchase of securities is made in the name of the purchaser or customer rather than in the name of the bank that the same rule as set out in paragraphs 3, 4 and 5, with respect to whether or not they were engaged in the business of selling, offering, buying or purchasing securities for re-sale would apply.

SCHOOLS AND SCHOOL DISTRICTS—CENSUS: Inmates at Juvenile Home and Iowa Soldiers' Orphans Home may be counted in school census in school district where institution established.

July 16, 1929. *Superintendent of Public Instruction:* This will ac-

knowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"May the inmates of a state institution, like the Iowa Soldiers' Orphans Home at Davenport, or the Juvenile Home at Toledo, be counted in the school census of the school district in which said institution is located, providing such children are between the ages of five and twenty-one?"

Our supreme court in the case of *Stephens vs. Treat*, 202 Iowa, 1077, held that the commitment of a child to the Iowa Juvenile Home at Toledo, Iowa, by proper court order, permanently deprives the parent of all right to the custody and control to the child, and that such child becomes a ward of the state. While it is true that such child is a ward of the state, its residence, as the residence of its parents, is entirely severed by the adjudication. The child is a citizen of the state as well as a ward and, therefore, must have a residence somewhere within the state. Since the child cannot form an intention, the only element of residence found is the element of personal presence in the above institution.

It is also true that residence for school purposes is a much broader term than residence for voting purposes.

We find, also, that children committed to the Iowa Soldiers' Orphans Home at Davenport, Iowa, have been counted as residents of the independent school district at Davenport and have been counted in the school census there.

We are therefore of the opinion that the children committed to the State Juvenile Home at Toledo, may be counted in making up the school census of the school district within which they reside.

BOARD OF SUPERVISORS—WEED COMMISSIONER—DEPARTMENT OF AGRICULTURE: Board of supervisors should appoint a township trustee as weed commissioner though he refuses to act.

July 17, 1929. *County Attorney, Marshalltown, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"What should the county board of supervisors do in regard to the appointment of a weed commissioner in the case where all three trustees refuse to act? Do they then have power to appoint someone outside of the trustees as a weed commissioner or is it compulsory on the part of one of the trustees to act as a weed commissioner?"

We are of the opinion that the statute makes it the duty of one of the township trustees to act as weed commissioner and that one of the trustees must so act. The board of supervisors, where all three trustees refuse to act, should proceed with the appointment of one of them and, if he refuses to act, he is subject to removal as trustee or to mandamus to compel the performance of his duties.

BOARD OF SUPERVISORS—LEVIES—DEPARTMENT OF AGRICULTURE: Sufficiency of amount of tax up to 3 mills determined by Secretary of Agriculture.

July 17, 1929. *Secretary of Agriculture:* This will acknowledge receipt of your letter requesting an opinion of this department upon the following proposition:

"Is it mandatory upon the board of supervisors to make a levy for bovine tuberculosis eradication?

"If it is mandatory upon the board of supervisors to make a levy, how much of a levy should be made? Would the board conform to the law by making an insufficient levy to carry on the work?

"In case an insufficient levy is made how should the department proceed in that county?

"If the board of supervisors refuse to make a levy what action should be started to compel them to make a levy and by whom?"

It is provided by Section 2686, Code of Iowa, 1927, as amended by the 43d General Assembly, as follows:

"In each county in the state, the board of supervisors shall each year when it makes the levy for taxes, levy a tax sufficient to provide a fund to pay the indemnity and other expenses provided in said Chapter 129 as amended, except as provided therein, but such levy shall not exceed three (3) mills in any year upon the taxable value of all the property in the county."

We are of the opinion that the use of the word "shall" by the legislature makes it the mandatory duty of the board of supervisors to make a levy which is sufficient to carry out the provisions of Chapter 129, as amended, except that the levy shall not exceed three mills in any one year. This section read in connection with Section 2689 of the Code, makes it mandatory upon the board of supervisors to make the levy in such amount as is determined by the Secretary of Agriculture as will be needed to carry on the work in such county for the ensuing year. The discretion to determine what is a sufficient levy up to the maximum of three mills, as stated in the statute, is placed upon the Secretary of Agriculture. If the board refuses or fails to make the levy as requested by the Secretary of Agriculture in the performance of his discretionary duty as to the amount which will be needed, an action in mandamus would lie to compel the board to act.

Under Section 2689, cited above, the Secretary of Agriculture may certify to the county auditor that no levy will be needed in a given county and when such certification has been made the board is not required to make a levy for the given year.

BANKS AND BANKING: Limitations upon use of words "state," "savings," or "trust" in application to national banks.

July 20, 1929. *Department of Banking:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following proposition:

"This office would greatly appreciate an opinion from your department as to whether any banking association, private banker or person, not incorporated under the provisions of the state banking laws, may incorporate in their title the word 'state,' 'savings,' or 'trust'."

It is provided by statute with reference to the names used in the title of a bank, as follows:

"9202. 'State banks' defined. Associations organized under the general incorporation laws of this state for transacting a banking business, buying or selling exchange, receiving deposits, discounting notes and bills, other than savings banks, shall be designated state banks, and shall have the word 'state' incorporated in and made a part of the name of such corporation; and no such corporation shall be authorized to transact business unless the provisions of this code have been complied with.

"9203. Other use of name prohibited. No partnership, individual, or unincorporated association engaged in buying or selling exchange, re-

ceiving deposits, discounting notes and bills, or other banking business, shall incorporate or embrace the word 'state' in its name, but this section shall not apply to associations organized under the laws of the United States.

"9295. Mandatory use of 'trust,' 'state,' or 'savings.' Any trust company, state or savings bank, which under this chapter and by its original or amended articles of incorporation shall be authorized to exercise any of the powers herein granted, shall have the word 'trust,' 'state,' or 'savings' incorporated in the name thereof.

"9296. Prohibited use of word 'trust.' No corporation hereinafter organized without complying with the terms of this chapter, and no partnership, individual or unincorporated association, shall incorporate or embrace the word 'trust' in its name."

It will be noted from the above sections that Section 9203 does not apply to associations organized under the laws of the United States. There is no exemption in the other sections. Therefore, no banking association, private banker or person can use such name unless it is incorporated under the banking laws of this state, with the above noted exceptions. However, it has been held that the state laws do not apply in any instances to national banks or banks organized under the laws of the United States.

In the case of *State vs. Easton*, 113 Iowa, 517, the supreme court of the state of Iowa held that such laws did apply and that an officer of a national bank, who received deposits knowing the bank to be insolvent, was guilty of the violation of state laws making such act criminal. This case was appealed to the supreme court of the United States on writ of error to the supreme court of the state of Iowa, and was by the supreme court of the United States reversed on February 2, 1903. In the cited case the supreme court of the United States said, at page 230:

" 'National banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriated to that end.'

"Such being the nature of these national institutions, it must be obvious that their operations cannot be limited or controlled by state legislation, and the supreme court of Iowa was in error when it held that national banks are organized and their business prosecuted for private gain, and that there is no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking."

The question of the use of such words in the title of a national bank must, therefore, be governed by the statutes of the United States and the rulings of the United States Treasury Department regulating the establishment and operation of national banks.

MOTOR VEHICLES: A reconstructed or junked automobile which has again been placed on the highways cannot obtain a license for a part of the year.

July 20, 1929. *County Attorney, Indianola, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"Does the monthly penalty as set forth in Section 4931 of the 1927 Code accrue in the case of a car which has previously been junked, and has not been used on the highway, and which the owner decides to reconstruct after January 1st? Also, does this penalty accrue on a car which is not licensed before January 1st, but is not used on the highways, or is stored?"

The provisions of the motor vehicle law in regard to reconstructed automobiles were repealed by the Acts of the Forty-third General As-

sembly. Paragraph 19 of Section 4863, Code, 1927, was repealed by Section 3, Chapter 122, Forty-third General Assembly, and the second paragraph of Section 4971, Code, 1927, was repealed by Section 14, Chapter 122, Forty-third General Assembly; so that there is now nothing in the statute authorizing any different treatment of a reconstructed automobile in regard to licensing. This action was taken by the Forty-third General Assembly for the purpose of preventing what the owner of the car you refer to is apparently trying to do,—that is obtain a license for part of the year. There is nothing in the statute authorizing licensing of a car for only part of the year by reason of the fact that the car has been in storage. The license fee in both of the instances you refer to must be for the full year.

BOARD OF CONSERVATION—LICENSES: Board of conservation may license craft on waters under jurisdiction of Section 1799-b1, Code, 1927.

July 22, 1929. *Board of Conservation:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

May the board of conservation require a license of a person operating a boat upon a state owned and controlled lake and charge a license fee therefor?

It is provided by statute, Section 1799-b1, Code of Iowa, 1927, in part, as follows:

"It shall be the duty of the board to adopt and enforce such rules and regulations as it may deem necessary *regulating and restricting* the use by the public of any of the state parks or state owned property or *waters under their jurisdiction.*"

Under this provision your board would have the power to charge a license fee, the only limitation being that it be a reasonable fee for the regulation of such craft.

FISH AND GAME: Fishing license required under Sections 1719, 1727, 1740, in meandered lakes and streams and stocked waters.

July 23, 1929. *Fish and Game Department:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

Construing Sections 1719, 1727, and 1740, of the Code, as amended by Chapter 57, Forty-third General Assembly, together, in what waters is a fishing license required?

Under these provisions, a fishing license is required of all male persons over the age of eighteen years who fish in any state waters which have been defined in an opinion heretofore rendered as those waters over which the state has jurisdiction, that is, the meandered lakes and streams of the state. In the case of waters stocked under the provisions of Section 1740 no person can fish therein for one year providing proper notices are posted, and, under the provisions of the last sentence of Section 1727, of the Code of Iowa, 1927, as amended, a license is required in all waters of the state which have been stocked by the fish and game department. Notice of the fact that the waters are stocked under Section 1740 should be posted by the game warden.

We are, therefore, of the opinion that a license is required in the fol-

lowing cases: (1) In all meandered lakes and streams over which the state has jurisdiction; (2) In all waters stocked by the fish and game department of the state; and (3) In all waters stocked under the provisions of Section 1740, after one year from the date of such stocking. No person can fish under any circumstances within the year under said section if notice is posted as required by this section.

ELECTIONS: General election ballot sufficient under Section 816 of the Code, if one blank column under "independent" be provided.

July 23, 1929. *Secretary of State:* This will acknowledge receipt of your letter requesting the opinion of this department on the following proposition:

"Section 816 of the code provides as follows:
" 'The voter may also insert in writing in the proper place the name of any person for whom he desires to vote and place an X in the square opposite thereto.'
"Since this department is now compiling the primary and general election laws as amended by the Forty-third General Assembly, it is very desirable that we have an opinion from your department as to what is required in the section quoted. Does it mean that the general ballot must provide a means whereby every voter may cast a vote independent of any party nomination, and will the law be fully complied with if this provision is made in the column designated 'independent'?"

All that is required by this section is that the voter have an opportunity to express his wishes in addition to the printed names on the ballot.

We are of the opinion that in the primary election (so-called) it is necessary to print one blank line for each office in addition to the names printed thereon for each party, in order to comply with the above section and to comply with the provisions of Section 553 of the Code.

In the general election we are of the opinion that the ballot is sufficient if it carries a blank column under the title "independent," and that a ballot so printed would conform to the requirements of the statutes of this state.

SCHOOLS AND SCHOOL DISTRICTS: Superintendent or janitor not "official" within Sections 13301-2; member of board is.

July 23, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting an opinion of this department upon the following propositions:

"1. Is the superintendent of schools a public official as used in the above sections?
"2. Is the janitor such an official?
"3. Would a superintendent of schools acting as purchasing agent for a school, and receiving a personal remuneration based on percentage of total purchases, be liable under Section 13301?
"4. Would the company who was paying the superintendent, janitor, or other employee, or member of the board personal remuneration for serving his own board be liable under Section 13302?"

We are of the opinion that none of the above persons would come within the term "public official" as used in these sections, except a member of the board of the school district. The janitor and superintendent are merely employees of the board and are not public officials.

MOTOR CARRIERS: A ton-mile tax to be computed on motor carriers

should be based upon the capacity at which the truck is licensed and not the manufacturer's rated capacity.

July 24, 1929. *Board of Railroad Commissioners:* We acknowledge receipt of your request for an opinion on the following proposition:

"Section 5105-a42, Code of Iowa, 1927, in setting out the method of computing the ton-miles operated by freight motor carriers, for taxation purposes, provides that the maximum capacity of each motor vehicle shall be added to the weight of the vehicle, this sum to be multiplied by the number of miles the vehicle is operated and the amount thus obtained divided by two thousand.

"This board has been using the factory rated capacity of trucks as the maximum capacity referred to in Section 5105-a42.

"Chapter 131, Laws of the Forty-third General Assembly, provides, however, that owners of motor trucks may secure a license therefor at a higher rated loading capacity than that specified by the manufacturer, by the payment of an additional fee.

"In case a motor carrier secures a license on a truck at a capacity in excess of the factory rated capacity, should the higher capacity be considered as the maximum capacity for taxation purposes under Chapter 252-a2, Code of Iowa, 1927?

"We also request that you kindly advise whether or not the insurance policies filed by motor carriers should describe the truck at its factory rated capacity or the higher capacity at which the truck is licensed."

Section 5105-a42 is contained in Chapter 252-a2, Code, 1927, relating to taxation of motor vehicle carriers. The statute referred to reads as follows:

"The ton-miles of freight travel shall be computed as follows: The maximum capacity of each motor vehicle, including trailers, shall be added to the weight of the vehicle; this sum shall be multiplied by the number of miles the vehicle is operated, and the amount thus obtained divided by two thousand."

As will be noted, there is nothing in the provisions of the section quoted or of the chapter referred to that makes the factory rated capacity the basis upon which the computation is to be made. The computation is based upon the "maximum capacity" of the motor vehicle, which may or may not be the factory rated capacity.

Chapter 131, Laws of the Forty-third General Assembly, authorizes owners of motor trucks to obtain a higher rated capacity by making application and payment of an additional sum, under the provisions of Section 4913, Code, 1927. There is nothing contained in Chapter 131 in reference to the factory rated capacity of trucks, but the owner is required to place his own rating upon the truck in making application for authority to carry an increased load.

The "maximum capacity" would be the largest quantity of freight or merchandise that the truck is licensed to carry, and the factory rated capacity would not govern in the computation of the tax due under the provisions of Chapter 252-a2. We are therefore of the opinion that the capacity at which the truck is rated by the owner should be taken as a basis for the computation of the tax.

Chapter 130, Laws of the Forty-third General Assembly, requires motor carriers operating under certificates of convenience and necessity granted by the Board of Railroad Commissioners, to file with the commission an insurance policy in a form to be approved by the commission. Nothing is contained in this chapter requiring a statement of the factory rated

capacity or of the higher rated capacity at which the truck is licensed. The form of the policy must be approved by the commission, and we are of the opinion that it is immaterial whether or not the capacity of the truck is described at its factory rated or at the rating placed upon it by the owner for the purpose of obtaining a license.

MOTOR CARRIERS: Motor carriers operating under the provisions of Chapter 252-a1 are not effected by Chapter 128, Laws of the Forty-third General Assembly, removing the speed limit.

July 24, 1929. *Board of Railroad Commissioners:* We acknowledge receipt of your favor of the 22d in which you request our opinion on the following proposition:

"Your attention is respectfully called to Section 5105-a34, Code of Iowa, 1927, and to Chapter 128, Laws of the Forty-third General Assembly, with the request that you furnish this board with your opinion as to whether or not any of the provisions of Chapter 128 apply to motor carriers operating under the provisions of Chapter 252-a1, Code of Iowa, 1927."

Chapter 128, Laws of the Forty-third General Assembly, to which you refer, is an act to amend and revise Sections 5021, 5028 and 5029 of the Code, 1927. The statutes just referred to are contained in the general motor vehicle law and law of the road, Chapter 251, Code, 1927, and relate in general to the operation of all miscellaneous motor vehicles within the state. Section 5105-a34, Code, 1927, is contained in Chapter 252-a1, relating to motor vehicle carriers. The chapter just referred to is complete insofar as the regulation of motor vehicle carriers in Iowa is concerned and needs no reference to the provisions of the general law regarding motor vehicles contained in Chapter 251. Section 5105-a34 limits the speed of motor vehicle carriers and does not refer to the miscellaneous motor vehicles to which the provisions of Chapter 251 apply. It is a well established rule of statutory construction that special provisions in the statute take precedence over general provisions, and this has been the interpretation placed upon the statutes prior to their amendment by the Forty-third General Assembly.

We are, therefore, of the opinion that Chapter 128, Laws of the Forty-third General Assembly, does not affect the provisions of Section 5105-a34, Code, 1927, but only amends and revises the statutes referred to in said chapter relating to the general class of motor vehicles, and not the special class of motor vehicle carriers regulated by Chapter 252-a1.

SCHOOLS AND SCHOOL DISTRICTS: Reduction in curriculum which would remove school from approved list releases home district from liability for tuition.

July 24, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"If a high school has been approved for one, two, three, or four years of work, and if after the opening of school the board without the knowledge or consent of this department cuts down its offering to such an extent that students have only three subjects to carry, may the board hold the home district of any non-resident students enrolled responsible for tuition?"

If the change or alteration made in the curriculum would render the

school subject to disapproval or disqualification by your department, if the matter had been submitted to you, we are of the opinion that such change would relieve the school district of the pupil's residence from the payment of tuition. However, this would not relieve the parent of the pupil from the responsibility of paying the reasonable value of the instruction received by the pupil.

SCHOOLS AND SCHOOL DISTRICTS—COUNTY OFFICERS: Person holding first grade uniform county certificate validated for life not qualified for county superintendent.

July 26, 1929. *County Attorney, Boone, Iowa:* You have requested the opinion of this department upon the following proposition:

Is a person who holds a first grade uniform county certificate issued under the provisions of Section 3876, and validated for life under the provisions of Section 3871 of the Code of Iowa, 1927, eligible for the office of county superintendent of schools under the requirements of Section 4097 of the Code?

The qualifications for county superintendent are set out in Section 4097 of the Code, as follows:

"Such superintendent may be of either sex, shall be a holder of a regular five year state certificate or life diploma, and have had at least five years' experience in teaching or superintending; but anyone now serving shall be deemed eligible to re-election."

The subjects required for state certificates and diplomas are set out in Sections 3863-4. The certificate requirements for county superintendent, as set out in the above section, are either a regular five year state certificate or a life diploma. The uniform county certificate of the first grade is a county certificate, not a state certificate and is issued upon examination in the branches covered in Section 3876 of the Code. This certificate is for a term of three years under the provisions of Section 3879. The subjects required for the first grade county uniform certificate are elementary in comparison with the subjects required for the state certificate or diploma.

We are, therefore, of the opinion that a life validated uniform county certificate could not be construed to mean a life diploma and that one who holds a first grade uniform county certificate issued under the provisions of Section 3876, even though validated for life under the provisions of Section 3871, would not be eligible for the office of county superintendent.

DENTISTS: Licensed dentist may own and operate more than one dental office in the state.

July 29, 1929. *Department of Health:* This will acknowledge receipt of your request of July 29, 1929, in which you submit the following question:

"May a licensed dentist own, operate or control dental offices in more than one city in Iowa?"

We are unable to find any prohibition in the statute which would prohibit a licensed dentist from operating under his own name two or more dental offices; provided, of course, that he operates under the provisions of the chapter pertaining to dentistry and meets the requirements thereof.

CHILD LABOR: Child under sixteen years of age not permitted to work in restaurant even though owned and operated by his parents.

July 29, 1929. *Bureau of Labor:* This will acknowledge receipt of your request of July 18, 1929, which is as follows:

"Miss Goodrell, director of child labor, reports a child of fourteen employed in a restaurant operated by the father. She desires to know the attitude of this department and states that your department has held such employment as illegal. It would seem to me that this case is covered by the last clause of Section 1526, but if your department held this employment illegal, naturally we will be guided by your opinion. Please advise."

Your reference to Section 1526 is an exception for those children who work in mines, manufacturing establishments, factories, mills, shops, laundries, slaughter houses or packing houses, livery stables, garages, places of amusement, etc., but the controlling section, as regards your request, is Section 1536 of the Code of 1927, which prohibits any person under sixteen years of age from working in a restaurant. There is no exception in this section which permits a child under sixteen years of age to work in a restaurant where owned by his parents or operated by his parents.

DRAINAGE ASSESSMENTS: Drainage assessments may be paid from either the secondary road construction fund or the secondary road maintenance fund.

July 30, 1929. *Auditor of State:* We acknowledge receipt of your request for an opinion on the following proposition:

"In regard to the payment of special assessments which are obligations of townships and which are to become obligations of the counties on January 1, 1930.

"The question involved is whether or not the installments of the special assessments which become due from year to year for the payments of bonds and interest, which bonds were issued for the construction or repair of a drainage improvement district, are to be paid from the secondary road construction fund or from the secondary road maintenance fund, and also, whether or not the amount of these assessments is to be first set aside from the construction or maintenance fund before the appropriation is made for the construction program or the maintenance program, as the case may be."

We presume the drainage improvement referred to in this request is one that was levied on account of benefits to secondary roads.

Section 7, Chapter 20, Laws of the Forty-third General Assembly, requires the board of supervisors to make a levy for the secondary road construction fund. Section 8 authorizes an additional levy for this purpose, and Section 10 pledges 35 per cent of this fund to the improvement of and to be expended upon certain county roads. Section 11 is a pledge for the balance of the secondary road construction fund. Paragraph 5 thereof reads as follows:

"To the payment of all or any part of special drainage assessments which may have been, or may hereafter be, levied on account of benefits to secondary roads."

It is to be noted, however, that Section 10 pledges 35 per cent of the construction fund first and that Section 11 deals only with the balance of this fund, so that in the event the drainage assessments are taken

from the secondary road construction fund it would be necessary to first deduct the 35 per cent pledged in Section 10.

Section 12 requires the board of supervisers to make a levy for secondary road maintenance purposes. Section 13 authorizes an increase in this levy and Section 15 is a pledge of the maintenance fund. Paragraph 3 thereof reads as follows:

"To the payment of all or any part of special drainage assessments which may have been, or which may hereafter be, levied on account of benefits to secondary roads."

It will be noted that the provisions of paragraph 5, Section 11, and paragraph 3, Section 15, are identical. We are, therefore, of the opinion that the special drainage assessments may be paid from either the maintenance fund or the construction fund, subject to the conditions hereinbefore referred to.

TOWNSHIPS: Townships' indebtedness may be paid from 1929 funds if valid when contracted.

July 30, 1929. *County Attorney, Eagle Grove, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following question:

A township in June, 1927, contracted a debt to P. Luick, for road graveling in the sum of $671.40, and on November 18, 1927, to the Lick Gravel Company, in the sum of $374.22, which bills have not been paid. Is it possible for the township trustees to pay these bills out of the 1928 tax collected and available in 1929?

Township trustees cannot expend their funds or contract indebtedness unless the funds have been made available by an authorized levy. The specific provision of the statute is found in Section 4781 of the Code, and is as follows:

"They shall not incur debts for said purposes (repair and improve the roads of said system in their township) unless funds have been provided for the payment thereof by an authorized levy."

Therefore, if there were sufficient funds on hand in June, 1927, when the P. Luick indebtedness was contracted, but the funds were used for other purposes, the claim would be a valid claim when contracted and is, therefore, a valid indebtedness of the township.

In regard to the Lick Gravel Company claim, since it was incurred on November 18, 1927, it would be a valid indebtedness of the township if there were sufficient funds then levied and to be collected in the year 1928 to pay the same.

If this indebtedness was valid when contracted, it is still a valid indebtedness of the township and can be paid from the funds for the current year 1929.

As to the other bills which have been already paid by the township trustees, we are of the opinion that if the township actually received the benefit for the work done or the materials furnished there is no way to recover the amounts from the individual members of the board.

COSMETOLOGY—LICENSES: Where a fee is charged, a license must first be procured.

July 31, 1929. *Department of Health:* This will acknowledge receipt of your letter of May 24, 1929, in which you inquire as follows:

"Where a party is demonstrating a permanent wave machine and in demonstrating works on patrons of the shop in which he is demonstrating and charges a fee therefor, is a license required under the cosmetology law?"

There is no question but that the law is clear that under the circumstances above related, a license would be required. If, however, no charge was made and the demonstration was for the purpose of selling or to demonstrate the operation of the machine to the public, then in that event no license would be required.

TAXATION: Real estate entering exempt class after January 1st cannot be sold for taxes.

August 1, 1929. *County Attorney, Red Oak, Iowa:* This will acknowledge receipt of your letter in regard to the liability of a church for real estate taxes for the year 1928, due and payable in 1929, where the church purchased the property on March 28, 1928; and also, whether the property is subject to sale for such taxes.

We concur in your opinion that the board has no authority to remit the tax, the power of the board in such cases being limited under the provisions of Sections 7235-7, cited by you.

We also concur in your opinion that the property cannot be sold at tax sale for the non-payment of taxes. The case cited in the opinion of this department on March 20, 1919, *Independent School District of Oakland vs. Hewitt*, 105 Iowa, 666, construing the provisions of Chapter 101, Acts of the Seventeenth General Assembly, is directly in point in view of the provisions of the present statute, Section 7268 of the Code of 1927. The original Chapter 101 cited, did not include lands exempt from taxation by law but merely included the public properties. Under that section, in the Oakland case, the court held that the real estate, even though subject to taxation at the time of the levy and purchase by the school district, could not be sold at tax sale. The present statute applies this principle to "all lands exempt from taxation by law."

In the Oakland case the court said "How these taxes may be collected cannot be determined in this action. It is sufficient that the statute prohibits collection by sale." See *Iowa College vs. Knight*, 207 Iowa, 1238.

LICENSE—BOATS: Board of Conservation has power to license and regulate boats of all kinds on state waters under its jurisdiction and charge reasonable license fee therefor.

August 2, 1929. *Board of Conservation:* You have submitted to this department for our attention, letter of the Honorable Byron W. Newberry, member of the Board of Conservation, in regard to the power of that board to adopt rules and regulations licensing boats operated for hire, or otherwise, in the lakes and rivers under the jurisdiction of the board, and its power to prescribe a license fee therefor and to determine the use thereof.

It is provided by statute, Section 1799-b, 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."

From the underlined portion of the above section, it will be observed that the statutes place a duty upon the said board, not only to adopt, but to enforce rules and regulations prohibiting, restricting or controlling the speed of boats, ships, or water craft of any kind. It will also be noted that the statute enjoins upon the board the duty to adopt and enforce such rules 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. There is no limitation upon the power of the board and we are of the opinion that the power given to it is broad enough to require the licensing of boats whether used for hire or otherwise, and to charge a reasonable fee therefor, and also, to require the licensing of pilots who drive boats operated for hire.

From a consideration of the rule submitted, we are of the opinion that it is within the discretion of the board to make additional restrictions than those contained in Section 1, sub-section O, and Section 1, sub-section P, with regard to the operation of boats on state waters. It occurs to us that the distinction as to rowboats or other boats propelled by hand or sail may be removed and the rule made applicable to all boats. The board also has the power, under this section, to establish a maximum speed at which boats may operate at all times and on any portion of the lake. This may apply to boats whether operated for hire or otherwise.

The board also has the power to require the lights required in Section 1, sub-section P, and to require a warning light at the stern of the boat if, in the board's discretion, such should be required.

The license fee which the board may require under this section must, of course, be in the nature of a regulatory fee and must necessarily be reasonable in view of the amount of inspection necessary to enforce the regulation. Such fees being in the nature of license fees, could, under the rules made by your board, be used for the enforcement thereof.

BOARD OF CONTROL: Minor child who has been abandoned by parent to other persons and who lives with these other parties and does not intend to ever return to the parental home, takes the residence of the persons with whom he lives, and the county of that residence will be responsible for the maintenance charges in any of the state institutions in which said child may become an inmate.

August 9, 1929. *Board of Control:* You have requested the opinion of this department upon the following proposition:

"I do not find that we have any ruling as to the residence of a minor child living away from the parents and I would be pleased to have one for our use hereafter.

"The case in point is that of Ruth Hulbert, fifteen years of age, who has lived with Charles Mattox family at Beacon, Mahaska County, since she was four years of age, that is, for eleven consecutive years. She has never been legally adopted by the Mattox family; they have simply taken care of her. The Mahaska County authorities now wish her admitted as

a patient from Pottawattamie County where her father has lived all this time."

A similar question to that involved in the proposition submitted was involved in the case of *Mount Hope School District vs. Hendrickson*, 197 Iowa, 191, wherein the liability for tuition of a child attending school in the district of its so-called adopted parents was the issue.

In that case the supreme court held that inasmuch as the parent of the child had abandoned the child and that it had left the natural parent's residence and had assumed and adopted a new residence with the people with whom it was living, with no intention to ever return to the home of its natural parent, and the natural parent having apparently abandoned the child, it was held that the legal residence of the child was where it now lived and not that of its natural parent.

The statement of facts submitted do not indicate whether the child in question has been abandoned by its natural parent to the family which has raised it in Mahaska County. If, upon investigation, it be found that the natural parent has abandoned the child entirely, has given up any claim whatever to the child, and has, in fact, relinquished full control, supervision and responsibility for the child to the Mahaska County family, then it is the opinion of this department that the legal residence of that child would be in Mahaska County, and that Mahaska County would be chargeable for the costs of her maintenance in one of the state institutions, if she is committed to such an institution.

BOARD OF CONTROL—INSANE—MINORS: Incompetent child who has passed age of majority not entitled to support under Section 3297.

August 14, 1929. *Board of Control:* This will acknowledge receipt of your request of August 14, 1929, which is as follows:

"We have in mind a case of a daughter of one of the superintendents of an institution in Iowa who has been living with the parents for some years after she has attained her majority. Section 3297 of the Code provides that maintenance and substance shall be furnished to the chief executive of the institution and his or her minor children. The superintendent makes the defense that the daughter, having been placed in the hospital for insane and having been discharged as 'not cured' and up to the present time her disabilities have not been removed, is the same as a minor and that he is not subject to the provisions of this statute and is exempt from paying for her support and maintenance."

In reply we desire to quote the following sections:

"3297. Dwelling house and provisions. The board shall furnish the executive head of each of said institutions, in addition to salary, with a dwelling house or with appropriate quarters in lieu thereof, and, from supplies purchased for the institution, the necessary household provisions for himself, wife, and minor children."

"10492. Period of minority. The period of minority extends to the age of twenty-one years, but all minors attain their majority by marriage, and females, after reaching the age of eighteen years, may make valid contracts for marriage the same as adults."

It is our opinion that your question is fully answered by Section 10492. A minor attains a majority at the age of twenty-one, so that it was clearly the intention of the legislature, when speaking of minor children at Section 3297, to refer to those children under the age of twenty-one, if unmarried, and the fact that the daughter of the superintendent of one

of your institutions was so unfortunate as to remain incompetent, after having passed the age of twenty-one, would not place her within the meaning of a minor child, as used in Section 3297.

BOARD OF HEALTH—LICENSE—COSMETOLOGY: One cannot practice cosmetology without a license.

August 14, 1929. *County Attorney, Spencer, Iowa:* This will acknowledge receipt of your request in which you ask whether the provisions of Section 2522, being the penalty section of the practice act, applies to a person practicing cosmetology without a license.

We are of the opinion that Section 2522 applies to one who is practicing cosmetology without a license. Under the provisions of Chapter 70 of the Forty-third General Assembly an apprentice is one who has completed his course at an accredited school, made application for an examination and received his apprentice card, but who has not passed an examination as a fully qualified cosmetologist.

Sub-section 4, paragraph 2585-b2 is still a defense that may be offered under the new law, as that sub-section was not stricken out or repealed and still remains active. However, this would not be a legitimate defense for one who had been employed by a regular cosmetologist. We are of the opinion that where a person, employed by a regular cosmetologist, who is not a licensed apprentice or cosmetologist, and who has been engaged in giving permanent waves, is guilty of violating the provisions of Chapter 124-b1 and Chapter 70 of the Forty-third General Assembly, and is liable under the section providing penalties, being Section 2522.

INSANE FUND ACCOUNTS—LIMITATIONS: Statute of limitations on insane fund accounts would run from the last payment by the county to the state.

August 14, 1929. *County Attorney, Waverly, Iowa:* This will acknowledge receipt of your request of August 13, 1929, which is as follows:

"We have a number of accounts that are due the insane fund and are more than five years old.

"Do the limitations as provided in Section 11007 of the 1927 Code of Iowa run against such accounts?"

This question was before our court in cases of *Cedar County vs. Sager*, 90 Iowa, page 11; *Jones County vs. Norton*, 91 Iowa, 680; *Scott County vs. Townsley*, 174 Iowa, page 92, and also the case of *Harrison County vs. Dunn*, 84 Iowa, page 328. In these cases the supreme court held that when the county paid its debt to the state, the payment gives rise to an obligation of the estate to the county and the right of action therefor, and with that right of action began the running of the statute. This referred to the quarterly payments as certified to the counties by the Auditor of State, and with the last payment by the county to the state, the statute of limitations began to run, and the account, as between the county and the state, constituted an open and continuous account. While the Fortieth Extra General Assembly made some change in the wording of this statute, we are of the opinion that the statute of limitations, as provided in Section 11007, would commence to run from the date of the last payment by the county to the state.

FISH AND GAME—ADVISORY BOARD: No authority for compensating an advisory board.

August 15, 1929. *Fish and Game Warden:* I have your communication of the 13th instant, in which you make the following inquiry:

"There has been appointed an advisory board by the governor, a copy of which is enclosed.

"Is it possible under the law, as it now is, to compensate these extra assistants for their labor and the expense they incur? The law permits us to have three assistants which we have."

The officers and employees of the Fish and Game Department are specified and their compensation fixed under the provisions of Section 52, Chapter 287, Acts of the Forty-third General Assembly. I do not find any provision of law authorizing the employment of any other officers than those enumerated in said section.

Therefore, it is my opinion that there is no authority for compensating an advisory board such as the one suggested in your communication.

TAXATION: Plot of ground used for the buildings is not tax exempt.

August 20, 1929. *Secretary of Agriculture:* This will acknowledge receipt of your request in which you submit the following question:

"A question has arisen in regard to the exemption of taxes in regard to the forest and fruit-tree reservation law.

"The case is as follows: A tract of land is all located within the limits of Storm Lake and the land consists of enough trees to qualify as a fruit-tree reservation but the city council and board of supervisors will not consent to that portion of the land where the buildings are located to be included in the reservation and exempt from taxes. They are willing to exempt the remainder of the tract as the law specifies. I am enclosing a drawing showing the tract of land.

"Should the building lot with house and buildings on it be included in the reservation?"

We are of the opinion that this question is answered by the last three lines of Section 2607, Code of 1927, which reads as follows:

"No ground upon which any farm buildings stand shall be recognized as part of any such reservation."

In view of the clear intention of the legislature we hold that the city council and the board of supervisors are clearly within their rights in not consenting to the inclusion in the reservation of that portion of the land upon which the buildings are located.

ROADS AND HIGHWAYS—CITIES AND TOWNS: Extensions in cities and towns. Primary road fund cannot be anticipated or pledged for future payments to assist in the extension of improvements in cities and towns, $200 per year being the limit.

August 21, 1929. *State Highway Commission, Ames, Iowa:* We have your request for an opinion on the following proposition:

"Section 4755-b29 of the Code of 1927 provides that the State Highway Commission may refund, under certain circumstances, to cities and towns for the maintenance of primary road extensions at not to exceed $200 per mile per year. Would it be legal for the commission to make refunds at the rate of $200 per mile per year over a period of years, all of which refunds would go to pay for maintenance performed in one year? For example, supposing a town has one mile of primary road extension to which it is entitled to refund. Could they spend in 1929 $1,000 for the

maintenance of this mile and bill the state $200 per mile for the next five years to pay off this $1,000?"

Section 4755-b29, Code, 1927, to which you refer, provides for the maintenance of primary roads, and in part reads as follows:

"On extensions of primary roads within that part of any city having a population over twenty-five hundred, including cities under special charter, where the houses or business houses average less than two hundred feet apart, the state highway commission may make payment to the city from the primary road fund for maintenance work performed after this chapter becomes effective, in no event exceeding an average of two hundred dollars per year per mile of such primary road extension."

We are of the opinion that the language "in no event exceeding an average of two hundred dollars per year per mile of such primary road extension" refers to an extension consisting of more than one mile and limits the sum that may be paid for the improvement on this extension to an average per mile of $200 in any one year. We do not believe that the primary road fund could be used in the manner stated in your example. This would be in effect anticipating the use of this fund for a period of years, which is not authorized by statute.

The primary road fund may be used to assist in the improvement of a primary road extension such as referred to in the section above quoted only from year to year, and may not be anticipated. That is if the improvement entails an expenditure of $1,000 in 1929, only $200 from the primary road fund could be used by the State Highway Commission to make payment to the city for such maintenance work.

"BLUE SKY LAW" — SECURITIES — FUR-BEARING ANIMAL CONTRACTS: A person, firm or corporation which offers for sale to the public fur-bearing animals under a conditional sales contract, and a ranching contract, both contracts are so dependent upon each other that they are in fact one contract, is engaged in the business of selling or offering for sale securities within the meaning of Chapter 10, Acts of the Forty-third General Assembly.

August 23, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Some breeders of fur-bearing animals conduct their business on the following plan or scheme:

A pair of fur-bearing animals, one male and one female, is sold to the purchaser on a conditional sales contract providing for certain stated payments. Said contract also provides that the title shall remain in the seller until the full purchase price is paid, and that the possession of said animals and their progeny shall remain with the seller until the full purchase price is paid, at which time the seller is to deliver to the purchaser a bill of sale to said animals plus 50 per cent of the progeny born during such period. Said contract further provides that at the time the bill of sale is delivered to the purchaser the seller will furnish the purchaser with pens, together with the registration number of said animals. The contract further provides that the seller will ranch the animals pursuant to its regular ranching agreement.

A ranching contract or agreement is also offered to the purchaser, under which agreement the seller agrees to ranch the animals purchased together with their progeny and during the first year to accept one-third of the progeny of the animals purchased as compensation for ranching the animals, and after the first year the seller is to receive one-half of the progeny. The ranching contract further provides that in the event the purchaser desires to sell his share of the progeny that the seller will sell the same either on the pelt basis or as breeders, according to the desire of

the purchaser, and charge an additional sum of ten per cent (10%) if the animals are sold on a pelt basis and twenty per cent (20%) if sold on a breeders basis.

The question is, are such persons, firms or corporations, who operate a fur farm and sell to the public upon the plan or scheme above set out subject to the provisions of Chapter 10, Acts of the Forty-third General Assembly, and, therefore, required to qualify in accordance therewith, that is, are such persons or firms selling securities within the meaning of said chapter?

We are of the opinion that a person, firm or corporation who offers for sale to the public fur bearing animals under a conditional sales contract and a ranching contract, as outlined above, is engaged in the business of selling or offering for sale securities within the meaning of the provisions of Chapter 10, Acts of the Forty-third General Assembly, and that such persons, firms or corporations must comply with the provisions of said chapter.

INSANE COMMISSION—COUNTIES—WITNESS FEES: Fees of witnesses subpoenaed on the part of a defendant in an insanity hearing are payable by the county in accordance with the provisions of Sections 3541 and 11326, Code of 1927, either with or without an order of court.

August 23, 1929. *County Attorney, Cedar Rapids, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Can the county pay witness fees for witnesses which are subpoenaed by the defendant in an insanity hearing before the insane commission without an order of court?

We refer you to Section 3541, Chapter 176, Code of 1927. It will be noted from reading that section that under paragraph 4 thereof the witnesses in an insanity hearing are to receive the same fees as witnesses in the district court.

We also refer you to Section 3542, Code of 1927, and it will be noted from reading said section that the compensation or expenses provided for in Section 3541 shall be allowed and paid out of the county treasury in the usual manner.

Section 11326, Chapter 494, Code of 1927, is the section which fixes the amount of fees and mileage which a witness is entitled to receive in district court.

We do not find any reference to Section 13880, Code of 1927, as suggested in your letter, but we do find from examining this section that it applies to witnesses subpoenaed in criminal cases.

We are, therefore, of the opinion that witnesses subpoenaed on the part of the defendant in an insanity hearing are entitled to collect their witness fees from the county in accordance with the provisions of Section 3541 and Section 11326, Code of 1927, and that the county is required to pay such fees with or without an order of the court.

MOTOR VEHICLES: A judgment in a justice court is not a final judgment in a court of record within the provisions of Chapter 117, Forty-third General Assembly.

August 23, 1929. *Motor Vehicle Department:* We acknowledge receipt of your letter in which you enclose letter from Mr. Hale, County Treasurer at Fort Dodge, requesting our opinion as to whether or not a judgment

obtained in a justice court is considered in a court of record, under the provisions of Chapter 118, Laws of the Forty-third General Assembly.

Section 1-a of the chapter referred to reads in part as follows:

"Whenever a final judgment is recovered in any court of record in this state in an action for damages for injury to or death of a person or for injury to property caused by the operation or ownership of any motor vehicle on the highways of this state, * * * that the license shall be suspended."

You are advised that a justice court is not a court of record in this state, and a judgment obtained in a justice court would not fall within the provisions of the section referred to.

INCOMPETENTS—COUNTIES: The information against an incompetent may be filed in any county where the alleged incompetent is found.

August 26, 1929. *County Attorney, Vinton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Must the information provided for under Chapter 177, Code of 1927, be filed in the county of the residence of the alleged incompetent?

It will be found from reading Section 3544, Code of 1927, that all that is necessary for the information to show is that the alleged incompetent has been found in the county where the information has been filed.

Section 3552, Code of 1927, provides for the commission's determining and entering of record the county which is the county of the legal settlement of the alleged incompetent. It would, therefore, follow that the information may be filed in any county where the alleged incompetent is found.

TAXATION—SOLDIERS—EXEMPTIONS: A civil war veteran must file, either with the assessor or board of supervisors within the time required in Section 5, Chapter 144, Code 1927, a claim for exemption, and if no statement or claim is filed the board of supervisors does not have power to cancel, remit, or refund taxes assessed against the property belonging to said veteran.

August 26, 1929. *County Attorney, Sac City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department upon the following question:

In 1921 the Thirty-ninth General Assembly enacted Chapter 144 providing for exemptions to soldiers, sailors, marines and nurses. Under that chapter, Section 4 required the beneficiary of the exemption to file with the assessor a statement under oath that such beneficiary was the owner of the property on which the exemption was claimed. Section 5 provided that if the statement was not filed, no exemption should be allowed by the assessor, but that if the statement was filed before September 1st of the year for which the exemption was claimed, the board of supervisors could allow the exemption.

Perry Myrick, a civil war veteran, owned property in Sac City, Iowa. In 1920 he moved from this city, still retaining ownership of said property. No claim or statement for exemption was filed by him since the year 1920. The tax record shows that the taxes for 1921 and 1922 on said property were unpaid and that the property was sold for the taxes for 1924 and 1927, and the taxes of 1925 were paid by his daughter. Has the board of supervisors of Sac County power under the law to cancel the taxes and redeem from the sales?

It would seem that the law was plain with respect to the power of the

board of supervisors to allow the exemption, Section 5 of Chapter 144 of the Acts of the Thirty-ninth General Assembly specifically providing that the board of supervisors may allow the exemption if it is filed before September 1st of the year for which the same is claimed.

We are, therefore, of the opinion that if no statement was filed either with the assessor or with the board of supervisors within the time required in Section 5 of Chapter 144 that the board of supervisors does not have power to cancel, remit or refund the taxes assessed against the property belonging to the said Perry Myrick.

It is true that the law in this case may work a hardship, but tax exemptions are strictly construed, and the filing of the statement or claim of ownership is a condition precedent to the allowance of the exemption, and the deceased soldier not having complied with the statute within the time specified therein, the board of supervisors does not now have the power to grant any relief.

"TRACT" DEFINED—NOXIOUS WEEDS—WEEDS: "Tract" is defined to mean a contiguous quantity of land in possession of or owned by, or recorded as the property of a person, firm or individual. The landowner is required, under the law, to destroy noxious weeds in front of his property along a road and if he refuses to destroy the same the cost of such destruction may be assessed against his property.

August 26, 1929. *Iowa State Highway Commission, Ames, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. How is the word "tract" in line fifty, Section 1, Chapter 116, Acts of the Forty-third General Assembly, to be defined?
2. Who must pay the cost of the eradication of noxious weeds on the primary road right-of-way, it being assumed that such weeds have been eradicated by the weed commissioner?

(1)

The word "tract" as used in line fifty, Section 1, Chapter 116, Acts of the Forty-third General Assembly, not being defined by the statute itself must be given the ordinary meaning of "tract."

"Tract" is usually defined to mean a contiguous quantity of land in the possession of or owned by or recorded as the property of the firm, claimant, person or company.

We are, therefore, of the opinion that "tract," as used in line fifty, Section 1, Chapter 116, Acts of the Forty-third General Assembly, should be construed to mean any contiguous quantity of land owned by one person or company.

(2)

Section 4819, Chapter 246, Code of 1927, provides that the owner or the person in possession or control shall cut, burn or otherwise destroy, in whatever manner may be prescribed by the board of supervisors, noxious weeds growing on the land. It also provides that they shall cause all weeds on the street or the highways adjoining said land to be cut or destroyed in the manner and at the time prescribed by the board.

We are, therefore, of the opinion that the land owner whose land adjoins a primary road is, under Section 4819, required to cause all of the noxious weeds growing on the highway opposite his premises to be cut

and destroyed in the manner and at the time provided under said section.

Section 4820, Code of 1927, defines the duties of the owner or person in control of the land which adjoins a public highway; he is to destroy and cut the weeds only to the line in the highway to which his land would extend in case no highway existed.

Under Section 4824, Code of 1927, if a land owner failed to cut and destroy noxious weeds in accordance with Section 4819, the trustees, council or commissioner of the board of supervisors are authorized to assess the costs of cutting and destroying the weeds against the owner of the property, said tax to be collected in the same manner and at the same time as ordinary taxes.

We are, therefore, of the opinion that where the land owner or his agent refuses or fails to destroy or cut noxious weeds along a primary road at the time and in the manner specified in Section 4819, Code of 1927, and said noxious weeds are cut and destroyed by the proper authorities of the township, city or county, as the case may be, that the cost of such cutting and destroying may be assessed against the adjoining land owner to the extent that it was his duty to have same cut and destroyed.

BOARD OF EDUCATION: Held that board of education does not have power or authority to employ firemen and assign them to duty with the fire department of the city of Iowa City, Iowa.

August 26, 1929. *State Board of Education:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Has the Iowa State Board of Education legal right and authority to employ two men who shall be members of the fire department of Iowa City and to pay their salaries out of money belonging to the State University but not appropriated by the legislature?"

Under the statute cities and towns are authorized to provide for fire protection and to levy a tax for that purpose, and in connection therewith to establish fire departments. There is no statute which would authorize anyone to assist in paying the expense or part of the expense of said fire department. We do not find any statute which would authorize the State Board of Education to employ anyone as firemen; neither is there any authority to pay out any money for this purpose.

We are, therefore, of the opinion that the Iowa State Board of Education does not have the power or authority to employ two men to act as firemen of the Iowa City fire department and to pay their salaries.

TAXATION: Shares of interest in a revocable trust held by an Iowa resident are taxable under the laws of this state as monies and credits.

August 26, 1929. *Iowa State Board of Assessment and Review, Des Moines, Iowa:* We acknowledge receipt of your letter, together with enclosure, requesting an opinion of this department on the following question:

"Where a resident of the State of Iowa has purchased shares of interest in a revocable trust, of which a resident of New York is sole trustee, and the Iowa resident is sole beneficiary, the body of the trust consisting of common stocks, are such shares of interest required to be listed for personal property taxation in Iowa?"

We are of the opinion that, under the laws of this state, shares of

interest in the revocable trust, such as set out in your question, are taxable as monies and credits.

COUNTIES: Held that a court house is not a general or ordinary indebtedness within the meaning of the 1¼% limitation contained in Section 6238, Code, 1927, but is a special authorized indebtedness.

August 26, 1929. *County Attorney, Glenwood, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is the indebtedness created by the building of a court house to be considered as a general or ordinary indebtedness within the meaning of the 1¼% limitation contained in Section 6238, Code of 1927?

Section 6238, Code of 1927, limits the indebtedness which a county may incur for its general or ordinary purposes to an amount not exceeding in the aggregate of 1¼% of the actual value of the taxable property within such corporation. It will be noted that the limitation as to the indebtedness is for general or ordinary purposes.

Section 5261, Chapter 265, Code of 1927, provides for the submission, by the board of supervisors, of the question of whether or not the county shall incur certain specified indebtedness for the purpose of building a court house, to a vote of the people when the probable cost will exceed ten thousand dollars, and if the majority of all the persons voting for and against such proposition at a general or special election approve the incurring of said indebtedness then the board is authorized to proceed. Were it not for the authorization contained in Chapter 265 the board would not have the power to build the court house. Certainly the incurring of indebtedness for the purpose of building a court house is not the incurring of such indebtedness for a general or ordinary purpose, but is for a special or extraordinary purpose. This, we believe, is true for the legislature has, by the enactment of Chapter 265, specifically authorized the county to incur indebtedness for the purpose of building a court house when they proceed in accordance with the provisions thereof.

Our Supreme Court, in the case of *France vs. City of Des Moines*, 183 Iowa, 1311, in construing the 1¼% limitation with respect to its application to cities and towns in its connection with the building of a bridge, have held that the limitation would not apply to the indebtedness incurred for the purpose of building a bridge in accordance with the provisions of a special statute authorizing the building of bridges within cities and towns. That is, that the building of a bridge in accordance with the special statute was not the incurring of an indebtedness for a general or ordinary purpose, but for a special or extraordinary purpose.

We are, therefore, of the opinion that where a county proceeds in accordance with the provisions of Chapter 265 that the indebtedness created by the building of a court house shall not be considered as a general or ordinary indebtedness within the meaning of Section 6238, Code of 1927, but shall be considered an indebtedness for an extraordinary or special purpose, and that the 1¼% limitation of indebtedness for general or ordinary purposes, as provided for in Section 6238, Code of 1927, would not apply unless the 3¾% of the 5% of indebtedness permitted by the Constitution has been exhausted.

It must be remembered that the constitutional limitation of 5% is applicable to the indebtedness which a county may incur and this provision must be complied with.

COUNTY FAIRS—AGRICULTURAL SOCIETIES—TAX LEVY FOR FAIR GROUND FUND: Webster County Farm Bureau entitled to aid under Section 2905, Code of 1927.

August 27, 1929. *County Attorney, Fort Dodge, Iowa:* This will acknowledge receipt of your request of August 14th, as follows:

"Our board of supervisors has requested that I ask an opinion of your office on the legality of a tax levy under Section 2905 of the Code of 1927, as amended by Chapter 77 of the Forty-third General Assembly.

"The contemplated levy in this county is to create a fair ground fund to aid the Webster County farm bureau which is a corporation that has leased the fair grounds here. These fair grounds are worth more than $50,000.00. I am advised that the Budget Director has given an unfavorable opinion on this proposed levy but perhaps that opinion was before the amendment above mentioned."

We desire to quote Section 2894, and Chapter 77 of the Forty-third General Assembly, and Section 2905, Code, 1927:

"2894. For the purposes of this chapter:

1. 'Fair' shall mean a bona fide exhibition of agricultural, dairy, and kindred products, livestock, and farm implements.

2. 'Society' shall mean a county or district fair or agricultural society incorporated under the laws of this state for the purpose of holding such fair, and which owns or leases at least ten acres of ground and owns buildings and improvements situated on said ground of a value of at least eight thousand dollars."

"Section 1. Amend paragraph two (2) of section twenty-eight hundred ninety-four (2894) by striking out period (.) at the end of said paragraph and adding the following: ', or any incorporated farm organization authorized to hold an agricultural fair which owns or leases buildings and grounds especially constructed for fair purposes of the value of fifty thousand dollars ($50,000.00) in a county where no other agricultural fair receiving state aid is held.'" (Chap. 77, Acts Forty-third General Assembly.)

"2905. The board of supervisors of the county in which any such society is located may levy a tax of not to exceed one-half mill upon all the taxable property of the county, the funds realized therefrom to be known as the fair ground fund, and to be used for the sole purpose of fitting up or purchasing fair grounds for the society, provided such society shall be the owner in fee simple, or the lessee of at least ten acres of land for fair ground purposes, and shall own buildings and improvements thereon of at least eight thousand dollars in value."

In view of the above sections, we feel that it is the clear intention of the legislature to include all incorporated farm organizations and that the Farm Bureau of Webster County, under the facts as related in your letter, would be entitled to the aid contemplated in Section 2905.

CORPORATIONS—SECURITIES—QUALIFICATION: All securities, except those securities owned by a bona fide owner, must be qualified in accordance with the provisions of Sub-paragraph d of Section 37, Chapter 10, Acts of the Forty-third General Assembly.

August 28, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Sub-paragraph d of Section 27, Chapter 10, Acts of the Forty-third General Assembly, provides as follows:

"All securities which shall have been admitted to record and recorded in the register of qualified securities, as provided by the said chapter three hundred ninety-three (393) prior to the effective date of this act, shall be legally saleable unless otherwise ordered by the secretary of state under this act."

What securities, if any, which were authorized to be sold in accordance with the provisions of Chapter 393, Code of 1927, are legally saleable without qualification; that is, are any securities which were legally saleable under Chapter 393, Code of 1927, now legally saleable in accordance with the provisions of said sub-paragraph d of Section 27?

We have made an examination of the provisions of Chapter 393, Code of 1927, and we find therein only one provision providing for the recording in a register of any securities which may be sold in accordance with the provisions of said chapter. This provision is contained in Section 8556 and is applicable only to stocks held by bona fide owners.

We find from examining the uniform securities act which was recommended by the investment bankers, and which has been adopted by a number of states, the exact provision contained in sub-paragraph d of Section 27, Acts of the Forty-third General Assembly with the exception of the designation of the chapter number.

It would, therefore, seem that sub-paragraph d has no application to the conditions and facts as they existed under Chapter 393, Code of 1927, except in connection with the sale of stock by a bona fide owner, Section 8556 providing for the recording in a register of the securities which were to be offered for sale by the bona fide owners.

With the exception noted therein, sub-paragraph d was evidently adopted without any consideration as to its application to the law as it existed under Chapter 393, and it is impossible to say that the legislature had any other intention except with respect to the registration in connection with the sale of stock of bona fide owners.

We are, therefore, of the opinion that said sub-paragraph d, Section 27, Acts of the Forty-third General Assembly, has no application to any of the securities which were authorized to be sold in accordance with the provisions of Chapter 393, except those securities owned by a bona fide owner and which were required to be registered in accordance with the provisions of Section 8556, whether such securities were sold under a permit or under a broker's license, and that all other securities sold either under a permit or under a broker's license must now qualify in accordance with the provisions of Chapter 10, Acts of the Forty-third General Assembly.

ROADS—BOARD OF EDUCATION: State Board of Education cannot build sidewalk out of appropriation for maintenance of state roads.

September 6, 1929. *Iowa State Highway Commission, Ames, Iowa:* In conference this afternoon, you requested the opinion of this department upon the following proposition:

May a sidewalk be constructed from Beech Avenue along the street to the bridge over Squaw Creek by the Iowa State College and be paid for from state funds, particularly the appropriation to the Iowa State Board of Education for maintenance of state roads provided in Chapter 287, Section 12, lines 21, 22 and 23, Acts of the Forty-third General Assembly?

We are of the opinion that the term "maintenance" to which this

appropriation is limited could not be construed as original construction of a road or of a sidewalk such as that herein contemplated.

We are of the opinion, however, that such sidewalk could be constructed and the cost thereof paid from the appropriation to Iowa State College of Agriculture and Mechanical Arts, Chapter 287, Section 47, sub-section 2, line 55, for general improvements in the amount of $75,000.

EMINENT DOMAIN: Buildings and fixtures upon property taken by eminent domain must be considered in determining the compensation to be awarded the owner in absence of agreement of statutory provisions.

September 10, 1929. *Iowa State Highway Commission, Ames, Iowa:* You have requested our opinion, in substance, as to how buildings upon real estate condemned for highway purposes should be considered by a condemnation commission in assessing damages.

The general rule is that where land is condemned for public uses, the value of buildings or other improvements and fixtures on the land must be considered in determining the owner's compensation. Buildings are a part of the realty and their value cannot be considered except in connection with realty. 20 Corpus Juris, 799.

It is also the rule that the owner of land taken in the exercise of the power of eminent domain has no right to remove permanent improvements or fixtures thereon in the absence of statute or agreement to the contrary. 20 Corpus Juris, 803.

There is no statute in this state limiting or fixing the rights of the parties to permanent fixtures upon real estate taken by eminent domain. See also Nichols on Eminent Domain, 2d Edition, page 67, 693; Lewis on Eminent Domain, 3d Edition, Section 726.

We are, therefore, of the opinion that where a tract of land is taken for highway purposes under the eminent domain statutes of this state and there are buildings erected and fixed to the real estate so as to be a part of it, the value of the buildings must be considered in determining the compensation to be awarded the owner in the absence of an express agreement with the owner to the contrary.

SCHOOLS AND SCHOOL DISTRICTS: Sub-districts formed into independent district when vote is canvassed; thereafter township board has no jurisdiction.

September 11, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting an opinion upon the following proposition:

"An independent district was formed under Section 4143 and it is now contended that the township officers will have jurisdiction until the March election. It is also contended that an election should have been held shortly after the formation of the new district."

Under the provisions of Section 4144 of the Code, the district shall be deemed formed if the majority of votes cast at the election called for the purpose of determining the question, are in favor of the proposition. Therefore, an independent district was formed when the votes were canvassed and the result ascertained.

We are of the opinion that the officers of the former school township could no longer act in or for such district and that an election should

have been called immediately to elect a board of directors for the independent district. The expense of the election should be borne by the new independent district. If that election has not been held, it should be called at once by the secretary of the township school corporation of which this district was formerly a part or by the county superintendent. Since the township secretary has failed to call the election, we are of the opinion that the county superintendent may do so and that the officers elected at that election would be the duly constituted officers of the district.

SCHOOLS AND SCHOOL DISTRICTS: Clause providing for termination of teacher's contract on 20-day notice by either party valid and enforcible.

September 11, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department on the following propositions:

1. Is the following clause "(C) that either party to this contract on 20 days' written notice to the other may terminate this contract" enforcible?
2. What procedure is necessary on the part of the board to terminate such a contract?
3. Where the contract does not specify any grade for which the teacher is employed but at the top of the contract and above a perforation across the top thereof there appears the words "fifth grade," is such a notation a portion of the contract?
4. If a teacher refuses to comply with the resolution of the board assigning her to fourth grade work, is such refusal grounds for cancelling the contract under the provisions of Section 4237? If so, what procedure is necessary.

Such a clause in the contract is valid and either party may terminate the contract under the provisions thereof. While the law provides the methods for discharging a teacher, there is nothing to prevent the parties from entering into a contract which provides an additional method for its termination.

The board should comply with the cancellation provisions and serve upon the teacher written notice that the contract will be cancelled 20 days from the service of said notice if it desires to avail itself of that provision of the contract.

It is an elementary rule of contracts, that anything extraneous and not within the body of the contract is not a part thereof. We are, therefore, of the opinion that the words "fifth grade" are not a part of the contract and are not binding upon the board. The board therefore has the authority to assign this teacher to another grade and if she refuses to comply with the order of the board, she is subject to discharge under the terms and conditions set forth in Section 4237 of the Code. If the board desires to discharge the teacher under the provisions of this section instead of availing itself of the 20-day cancellation clause, it would be necessary to have a hearing on the matter and to give the teacher notice thereof so that she could prepare and make her defense. No hearing is necessary for cancellation under the 20-day cancellation clause.

Under the provisions of Section "C" of the contract, hereinbefore quoted, the board would be required to pay the teacher until the expiration of the

20-day period following the service of the notice. Affirmed, *Miner vs. School District*, 234 N. W., 817.

INTOXICATING LIQUORS: A drug store having a liquor permit cannot serve sandwiches, coffee and pie.

September 14, 1929. *County Attorney, Clinton, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"May a drug store which holds a liquor permit serve in connection with its soda fountain sandwiches, coffee, and possibly pie?"

The statutory provisions relating to the issuance of permits to licensed pharmacists to buy, keep and sell intoxicating liquor except malt liquor for medicinal purposes are found in Chapter 100 of the Code.

In Sections 2073 (7) thereof, it is provided that an applicant for a permit must show that he is not the keeper of an eating house. Among other things, it is provided by Section 2074 thereof that such application shall be signed and sworn to by the applicant.

It is then provided in Section 2082 thereof, that no permit shall be granted unless the court shall find some competent evidence that all of the averments in the petition are true.

From these sections it will be observed that before a permit can be issued, the court must find that the applicant is not the keeper of an eating house. An "eating house" is defined by the Standard Dictionary as follows: "a house where food is served to be eaten on the premises." The same is defined by Webster's Dictionary as follows: "a house where cooked provisions are sold to be eaten, etc., on the premises." The same has been judicially defined as "any place where food or refreshments of any kind not including spirits, wines, ale, beer or other malt liquors are provided for casual visitors and sold for the consumption thereof." Black's law dictionary, second edition, page 410.

However, our court has held that the mere sale of soda water and ice cream in a drug store does not constitute an eating house. In re Henery, 124 Iowa, 358.

We are, therefore, of the opinion that the sale of sandwiches, coffee and pie in connection with soda fountain trade would constitute the owner a "keeper of an eating house" within the meaning of the statute.

We are further of the opinion that the violation or change of the status of the business after granting the permit, would constitute grounds for the revocation thereof, upon a proper showing to the court under the provisions of Section 2120 of this said chapter.

SCHOOLS AND SCHOOL DISTRICTS: Standard magazines may be included in the term "library books" under the provisions of Sections 4322-4324.

September 16, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting an opinion upon the following proposition:

"Would a county board have authority, under Sections 4322-4324, to expend a portion of or all of the library fund for magazines?"

If such magazines were placed upon the list of approved library books by the State Board of Education Examiners, we are of the opinion that

the library fund described in the above sections could be used for their purchase. We therefore hold that the term "library books" is broad enough to include standard magazines having the approval of the State Board.

SCHOOLS AND SCHOOL DISTRICTS: Member of school board not entitled to mileage when attending meeting of the board.

September 21, 1929. *County Attorney, Newton, Iowa:* This will acknowledge receipt of your letter requesting an opinion from this department upon the following proposition:

"May a school director charge and receive mileage for attending meetings of the school board?"

It is the established rule that a municipality has only such power as is granted to it. Under Section 4239-a3 of the Code, it is specifically provided that no member shall receive commission. Nowhere is there any provision allowing mileage in such cases. We are, therefore, of the opinion that members of the school board cannot charge, receive or be paid mileage for attending the regular or special meetings or sessions of the board.

DEPARTMENT OF AGRICULTURE—BOVINE TUBERCULOSIS: Owner not entitled to indemnity where animal dies before slaughter.

September 21, 1929. *Department of Agriculture:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following proposition:

"Can the state pay indemnity in accordance with Section 2671, Code of Iowa, 1927, as amended by the Forty-third General Assembly, on an animal that reacts to the tuberculin test applied under state supervision, said animal being properly tagged and branded as is required by Regulation 12, Section 1, of the Rules and Regulations of the Iowa Department of Agriculture, if said reactor dies from any cause before being slaughtered in accordance with Section 2671, Code of Iowa, 1927."

It is a condition precedent before indemnity can be paid by the state, that the salvage be paid to the owner. Therefore, if there is no slaughter, there can be no salvage and the condition precedent does not exist. This would be true of the funds available in the county as well as from the appropriation made by the state for these purposes.

TAXATION—TAX SALE: Where eight years or more have elapsed after a tax sale and no action taken to secure a deed within eight years, county treasurer and auditor should cancel the sale from their records.

September 17, 1929. *Auditor of State:* This will acknowledge receipt of your request which is as follows:

"Where real estate was sold at tax sale in 1917, publication of notice of expiration of right of redemption made in 1920; but no further action taken by holder of tax sale certificate until September, 1929, or twelve years after tax sale; can the treasurer now issue tax deed, at this time, or was sale automatically cancelled after eight years?"

We call your attention to Section 7271, which section recites as follows:

"After eight years have elapsed from the time of any tax sale, and no action has been taken by the holder of a certificate to obtain a deed, it shall be the duty of the county auditor and county treasurer to cancel such sales from their tax sale index and tax sale register."

In addition thereto we call attention to the opinion of Mr. Justice Beck in the case of *Ockendon vs. Barnes*, 43 Iowa, 615, wherein Mr. Justice Beck held that where land was sold for taxes in 1861 and a deed for the same could have been issued in 1864 and where nearly eleven years elapsed after the time of the execution of the deed, that the presumption exists that a purchaser holding a certificate has abandoned his rights to the deed, that a party dealing with the owner of the land may presume such abandonment; that the deed will not be called for by the purchaser, and the purchaser at a tax sale could not afterwards take a deed and defeat the title of the party purchasing from the owner.

In view of the above cited case and the provisions of Section 7271, we are of the opinion that, under the facts, as related by you, the treasurer and county auditor should cancel the sale from their tax index and tax sale register.

BOARD OF HEALTH: The word "itinerant" more definitely defined.

September 17, 1929. *Department of Health:* This will acknowledge receipt of your request to define more definitely the word "itinerant" in connection with the practice acts under Title 8 of the Code of 1927.

We quote Section 2511:

" 'Itinerant physician,' 'itinerant osteopath,' 'itinerant chiropractor,' or 'itinerant optometrist' as used in the following sections of this title shall mean any person engaged in the practice of medicine and surgery, 'osteopathy,' 'osteopathy and surgery,' chiropractic, or optometry, as defined in the chapter relative to the practice of said professions who, by himself, agent, or employee goes from place to place, or from house to house, or by circulars, letters, or advertisements, solicits persons to meet him for professional treatment at places other than his office maintained at the place of his residence."

In view of the above quoted section we believe that there is a line of demarcation between the practitioner who is occasionally called away from the place of his residence in order to treat a patient and that practitioner who has a stated and definite route or who has advertised either through publication or by word of mouth that he will, at stated times, be at a certain place in order to treat all of those who desire his services.

We do not believe that it makes any difference whether the party who goes to surrounding towns at stated intervals to sell his services to any one desiring them is operating either for himself or working for some one else. In either case we believe that this party would be classified as an itinerant.

It is our opinion that the legislature intended to class an an itinerant those who made a practice of going to other communities at stated and definite times for the purpose of practicing in that community, but did not intend that one who was called occasionally to another community should be so classed.

TAXATION—ESTATES: Under Section 11970, Code, 1927, delinquent personal taxes are entitled to preference as claims of the second class.

September 21, 1929. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Are delinquent personal taxes of a decedent, filed as a claim in said estate, regarded as a preferred claim or a general claim?

We refer you to Section 11970, Chapter 507, Code of Iowa, 1927. It will be noted from reading said section that debts entitled to preference, under the laws of the United States, are fees to be paid after the funeral expenses, expenses of last sickness, and the widow's allowance; next public lands and taxes. It would, therefore, follow that delinquent personal taxes against an estate of a deceased are a preferred claim and payable in the order specified in Section 11970.

BOARD OF ACCOUNTANCY—STATE EMPLOYEES—CERTIFICATE: State employees engaged in accounting work under Chapter 59, Acts of the Forty-third General Assembly, are entitled to a certificate to practice as a public accountant.

September 21, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Can anyone doing accounting work for the State of Iowa in the various departments come under the provisions of the accountancy act, Chapter 59, Acts of the Forty-third General Assembly, as a practitioner of public accounting, if application is made before September 30, 1929, accompanied with the required fee ($10.00), and if the above provision is met shall the Board of Accountancy be required to issue certificate before December 31, 1929, to those making application?"

We are of the opinion that, under Chapter 59, Acts of the Forty-third General Assembly, all state employees engaged in accounting work before July 4, 1929, are entitled to be registered as public accountants in accordance with the provisions of Section 12 of said Chapter 59, Acts of the Forty-third General Assembly, and that upon the filing of the application before September 30, 1929, accompanied with the proper fee, that the board of accountancy must register said applicant and issue a certificate therefor.

ROADS AND HIGHWAYS—ANTICIPATION OF SECONDARY ROAD FUND: Under the provisions of Chapter 20, Laws of the Forty-third General Assembly, thirty-five per cent of the secondary road construction fund must be used for the improvement of local county roads, and fifty per cent of the construction fund may be anticipated and all of it used on county trunk roads.

September 24, 1929. *Iowa State Highway Commission, Ames, Iowa:* We acknowledge receipt of your request for an opinion on the following proposition:

"When a county anticipates the secondary road construction fund, as provided in Sections 49 to 57, inclusive, of Chapter 20, Laws of the Forty-third General Assembly, does the county have to expend thirty-five per cent of the funds derived from said anticipatory warrants in the improvement of county local roads, or may a county spend all of said revenue derived from said anticipatory warrants in the improvement of county trunk roads?"

Section 10 of Chapter 20, Laws of the Forty-third General Assembly, reads as follows:

"Pledge to local roads. Thirty-five per cent (35%) of the yearly secondary road construction fund is hereby pledged to the improvement of, and shall be expended on, those local county roads which the board finds are of the greatest utility to the people of the various townships."

Sections 49 to 57, inclusive, of said chapter, authorize the anticipation of the secondary road construction fund during any stated period of from

one to two years, and in substance provides that not exceeding fifty per cent of the estimated funds which will accrue to the secondary road construction fund during such period may be anticipated. Nothing is contained in the statutes in reference to the anticipation of the construction fund requiring that the funds anticipated shall be used in any proportion upon either the county local roads or county trunk roads.

Under the provisions of Section 10, supra, it is mandatory, however, that at least thirty-five per cent of the income in the secondary road construction fund be used for the improvement of county local roads. This may be taken from the funds anticipated or from the remaining fifty per cent of the secondary road construction fund. The entire proceeds of the anticipatory warrants may, under the statute, be expended upon the county trunk road system; in which event the entire payment of principal and interest of said anticipatory warrants must come from that percentage of the secondary road construction fund set aside to the county trunk road system, and thirty-five per cent of the estimated fifty per cent of the yearly secondary road construction fund must be expended on the county local roads.

CORPORATIONS—RENEWALS—SECRETARY OF STATE: Secretary of state may issue a charter for renewal where satisfactory evidence has been presented that the provisions of the statute and the rights of the minority stockholders have been properly safeguarded.

September 25, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A corporation, acting under the authority of Section 8365 and the following sections of the code, held a meeting and passed upon the question of whether or not the corporate period should be extended. The majority of the stockholders of said corporation voted in favor of the renewal of the corporate period. A good many of the stockholders who voted against the renewal are non-residents of the state and it is impossible at this time to secure an agreement as to the actual value of the stock. The majority stockholders have offered and are willing to purchase the stock of the minority stockholders at its actual value. The majority stockholders have presented the certificate of renewal and articles of incorporation to the Secretary of State requesting that a charter be issued.

The question on which we desire an opinion is, under what conditions, if any, may the Secretary of State issue a charter for said corporation renewing its corporate period before the majority stockholders have consummated the purchase of the stock of the stockholders who voted against the renewal?

Section 8365, Code of 1927, provides as follows:

"Renewal—conditions. In either case they may be renewed from time to time for the same or shorter periods, within three months before or after the time for the termination thereof, if a majority of the votes cast at any regular election, or special election called for that purpose, be in favor of such renewal, and if those voting for such renewal will purchase at its real value the stock voted against such renewal."

It will be noted from reading the above section that the purchase of the stock of the stockholders voting against the renewal by the stockholders who voted in favor of the renewal is a condition precedent to the right to renew the corporate period. In other words, the majority stockholders who vote in favor of the renewal of the corporate period cannot

compel the minority stockholders who vote against the renewal to continue as stockholders in said corporation. This being the case the question then is, is there any way by which the condition precedent, that is, the purchase of the stock of the stockholders voting against the renewal, can be complied with when, on account of conditions over which the stockholders have no control, the real or actual value of the stock of the minority stockholders cannot be ascertained and determined before the time specified in Section 8365, Code of 1927, for the completion of the renewal expires.

We are of the opinion that the conditions of the statute in such a case could be complied with and properly so upon the delivery to the stockholders, who voted against the renewal, or to their agents a bond by the majority stockholders running to and for the benefit of the stockholders who have voted against the renewal, conditioned upon the agreement of the majority stockholders to purchase the stock of the minority stockholders at its real or actual value. Said value to be determined either by the agreement of the parties or by a final judgment of a court of competent jurisdiction in an action commenced for that purpose, and also conditioned upon the agreement of the majority stockholders, in the event an agreement as to the real value cannot be reached within a certain specified time, to commence an action in a court of competent jurisdiction to have said value determined; and upon the agreement, by the majority stockholders, to pay all attorney fees and taxable costs incurred by the minority stockholders who voted against the renewal in the event, and only then, that the real value as finally determined exceeds the amount offered and tendered, as by statute provided, to said minority stockholders who voted against said renewal; the penalty and conditions of said bond to be satisfactory to the Secretary of State.

The stock belonging to the majority stockholders should also be trusteed as an additional guaranty for the benefit of the minority stockholders who have voted against the renewal. We are of this opinion for the reason that when the above conditions have been complied with by the majority stockholders the stock of the minority has in fact been purchased and all that remains to be done is merely to determine the actual value.

We are, therefore, of the opinion that when the majority stockholders have presented to the Secretary of State satisfactory evidence that the above conditions have been fully complied with, that the Secretary of State may then issue a charter to said corporation.

COUNTY RECORDERS—FEES: Where fees have been collected by the county recorder, contrary to the provisions of the statute, he must pay them into the county treasury in the same manner as other fees are paid.

September 26, 1929. *County Attorney, Emmetsburg, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Our county recorder has been making a charge for the recording of marginal releases of chattel mortgages. We now find, under an opinion of your department, that he had no authority, under the statute, to make such a charge.

The question now is, what is to be done with the money so collected?

We are of the opinion that the fees collected by the county recorder for the making of marginal releases of chattel mortgages should be paid by him into the county treasury in the same manner as all other fees collected by him are paid. This, in accordance with the provisions of Section 5247, Code of Iowa, 1927.

COUNTY ATTORNEYS—FEES: County attorney is not entitled to commission on the fines assessed against a prisoner when the prisoner lays out the fine, the statute providing only for the collection of the commission in cases where the fine is collected.

September 27, 1929. *County Attorney, Wapello, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where a prisoner serves out his sentence and is given credit for $1.50 per day, is the county attorney entitled to his percentage of the fine in the same manner as though the person had paid the fine in cash?

We refer you to Section 5228, Code of 1927. From a reading of this section it will be noted that the county attorney, in addition to his salary, is allowed a percentage on all fines collected. This being the case we are, therefore, of the opinion that where a prisoner is fined and is unable to pay the same, lays the same out in jail, that this is not a collection of the fine within the meaning of the statute, and that the county attorney is not entitled to his percentage on the same.

COUNTY OFFICERS—COUNTIES: The county board may, after levies have been made and certified to the auditor, amend their budget estimate, republish and make additional levies provided the same is done at the September session of the board.

September 30, 1929. *County Attorney, Muscatine, Iowa:* Some few days ago your County Auditor, Mr. Pitchforth, and a member of your board of supervisors were in the office inquiring concerning the status of your county with respect to the county road bonds—the specific question being:

Can the county board, after it has made the levies for the year 1930, amend their budget estimate and re-publish and make an additional levy providing the same is done at the September session of said board?

We are of the opinion that the board of supervisors may amend or supplement the budget estimate made, and may re-publish and make additional levies in accordance with the amended budget. That is to say, that if the county board in making out their original budget estimate and levies, pursuant thereto, had made an error in their budget estimate with respect to the amount needed for a particular purpose, they might now amend that estimate increasing the amount needed for the particular purpose or purposes and proceeding with the new levies as they did in making the original levies. This, of course, should be done during the September session of the board.

CORPORATIONS: Under Chapter 12, Acts of the Forty-third General Assembly, there is no longer any limitation as to indebtedness which corporations may incur.

September 30, 1929. *Secretary of State:* Pursuant to your request we are rendering you an opinion on the following question:

Since the effective date of Chapter 12, Acts of the Forty-third General

Assembly, are corporations organized under the laws of this state limited as to the amount of the indebtedness which they may incur?

We are of the opinion that since the effective date of Chapter 12, Acts of the Forty-third General Assembly, the statutes with respect to the limitation of indebtedness have been so amended that corporations are not now limited as to the amount of indebtedness which they may incur. In other words, under Chapter 12, Acts of the Forty-third General Assembly, it is not necessary to specify in the articles of incorporation any limitation as to indebtedness, neither is it necessary to incorporate in the published notice any reference to the limitation of indebtedness.

ANIMALS: "Cub wolf" defined: A wolf is a "cub" until it is weaned.

September 30, 1929. *County Attorney, Glenwood, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The statute authorizes the payment of a penalty of $4.00 on each cub wolf and $10.00 on each adult wolf.

When is a wolf a cub and when does it cease to be such?

The generally accepted rule is that a young wolf is a cub until it is weaned. From the best information we are able to obtain, one of the characteristics of a cub wolf is that its hair is fuzzy and curly, whereas the hair of a wolf which has been weaned is straight.

ROADS AND HIGHWAYS—BONDS: Chapter 20, Acts of the Forty-third General Assembly no effect.

September 30, 1929. *County Attorney, Algona, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Kossuth County, under Section 403, Supplement to the Code, 1913, issued certain bonds which are still outstanding. These bonds were issued during the year of 1921 and at various intervals before said date, but none have been issued since that date, and the county has been taking care of this indebtedness under Section 5276, Code of 1927, and the following sections.

Does Chapter 20, Acts of the Forty-third General Assembly, (Bergman Bill), affect in any manner Section 5276 and the sections following in Chapter 266, Code of 1927?

If the bonds which you say your county has been taking care of in accordance with the provisions of Chapter 266, Code of 1927, are funding bonds or refunding bonds and were issued by the board of supervisors, as authorized by Chapter 266, or by Section 403, Supplement to Code of 1913, and the following sections, then the interest and principal on said bonds would be payable from the levy authorized in Chapter 266; unless, of course, the bonds refunded were similar to those referred to in Section 4753-a14, then the refunding bonds would have to be paid as provided for in that statute.

If the bonds were issued in accordance with the provisions of Chapter 266, Code of 1927, or Section 403, Supplement to Code, 1913, and the following sections, and are payable from the funds received from the tax levy authorized in Chapter 266 or in the sections following Section 403, Supplement to Code, 1913, then we are of the opinion that Chapter 20, Acts of the Forty-third General Assembly, does not in any manner affect the payment of said bonds.

DRAINAGE DISTRICT—BOARD OF SUPERVISORS: Under Section 7556, Code, 1927, the board may abandon or close a lateral drain when it is for the best interests of the public. Under Section 7561 the board has the power and right to repair the lateral drain and assess the cost of the same against the benefited property.

September 30, 1929. *County Attorney, Forest City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Some few years ago a drainage district was established in this county. The drain in part of the district was constructed out of large 36-inch tile which were layed on the level with the surface of the ground or slightly below the same. A great many of these tile have been broken by the action of the weather and by cattle breaking through the same, and the tile drain has been stopped up so that the drain will no longer serve the purpose for which it was constructed.

The question on which I desire an opinion is, whether the board of supervisors, acting for the district, has the legal right to engage workmen to go in and remove such tile as are in good condition and thus preserve the same for the benefit of the district and pay the cost of the removal either out of funds already in the hands of the drainage district or by an assessment against the drainage district.

In your letter you refer to the case of *Griebel vs. Board of Supervisors*, 202 N. W., 379. We call your attention to the fact that Section 7561, Chapter 353, Code of 1927, was enacted since that decision. Under this section the board has the right to repair a lateral and to assess the cost of the same against the property benefited by such lateral. Before the enactment of this statute the board could only assess the cost of any repairs against the property in the whole drainage district. It would, therefore, follow that now the board has the right to repair a lateral and to assess the cost against the benefited property and not against the whole district, unless the repair of the same is a benefit to the whole district.

Under Section 7556, Code of 1927, the board is granted the right to repair, re-open, straighten, lengthen, or *change the location of a drain for better service*, or they may cause the same to be closed and converted to a closed drain when *considered for the best interests of the public*. It will be noted from reading Section 7556 that the board is only given power to abandon or close a drain when it may be considered for the best interests of the public. The board, therefore, under this statute, has the power within its discretion, when it is deemed for the best interests of the public, to abandon and close a drain. The board, however, must not exercise this discretion arbitrarily.

It would, therefore, appear from the facts stated in your letter and in the question above, that your board, in the present case, would have the power to close the drain if the closing of the same was for the best interests of the public. This is probably not the case, unless, of course, the cost of repairing and re-constructing the drain already in place would be prohibitive and would be an unreasonable burden upon the property owners in the benefited district, in which case the board would, of course, have the right to abandon the drain for this would be for the best interests of the public concerned in the matter.

If, however, the engineer employed by the board has advised and

recommended that the location of the drain should be changed, and has recommended that the construction of a new drain to take care of the drainage of the land which is served by the present drain, and the cost of building the new drain in a new location would not be prohibitive, then we are of the opinion that the board would have the authority to proceed to re-locate the drain and to employ workmen to salvage such materials in the old drain as might be usable in the new drain, and would have the authority and power to pay the cost of removal of such salvage material by assessing the cost of said work against the benefited property, and if the property in the whole district is benefited they may pay the cost out of any funds they have in the drainage account.

STATE BOARD OF ASSESSMENT AND REVIEW—TAXATION: Board has power to reconvene county board of supervisors or local board of review to require adjustment of assessment on individual property.

September 30, 1929. *State Board of Assessment and Review:* This will acknowledge receipt of your request for the opinion of this department upon the following proposition:

"What power, if any, does the State Board of Assessment and Review have under the provisions of Chapter 205, Acts of the Forty-third General Assembly, to require a local board of review to equalize the assessment on properties? If the State Board of Assessment and Review possess such power, what procedure is necessary in order to exercise it?"

The question of assessment and taxation of property and the procedure to be followed in making the same is purely one of legislative policy. Prior to the passage of Chapter 205, by the Forty-third General Assembly, the power of equalization of assessments rested with the local board of review. That it was the intention of the legislature in passing said Chapter 205 to increase the powers formerly held by the executive council is definitely expressed in Section 17, by the following provision:

"In addition to the powers and duties transferred to the State Board of Assessment and Review, said board shall have and assume the following powers and duties."

Following the above introduction, the legislature granted the following powers to your board:

"1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors *and all other officers or boards of assessment* and levy in the performance of their official duties, in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied thereon *be made relatively just and uniform* in substantial compliance with law."

"9. To require any county board of equalization at any time after its adjournment to reconvene and to make such orders as the State Board of Assessment and Review shall determine are just and necessary; to direct and order the county board of equalization to raise or lower the valuation of property, real or personal, in any township, town, city or taxing district, to order and direct any county board of equalization to raise or lower the valuation of any class or classes of property in any township, town, city or taxing district, and generally to make any order or direction to any county board of equalization as to the valuation of any property, or any class of property in any township, town, city, county or taxing district, which in the judgment of the board may seem just and necessary to the end that all property shall be valued and assessed in the manner and according to the real intent of the law."

In addition to these powers, Section 20 of the act provides as follows:

"Sec. 20. Actions. The board may bring actions of mandamus or injunction or any other proper actions in the district court or before any judge thereof, to compel the performance of any order made by said board or to require any board of equalization or any other officer or person to perform any duty required by this act. Said board shall select the district court in the county which is most accessible to the subject matter, and the defendant or defendants in any such action; but no removal of the question to any other county shall be had by any defendant in consequence of his not being a resident of the county where the action is brought or because the subject matter shall not be located in the county in which said action may be brought."

It is provided in sub-section 1 above quoted that your board shall have and exercise general supervision over the administration of the assessment and tax laws of the state, the boards of supervisors, and all other officers or boards of assessment and levy in the performance of their official duties in all matters relating to assessment and taxation. The legislative purpose and intent as expressed in the latter part of said section and as enacted by the legislature is to secure relatively just and uniform assessment and taxation of property. This power is broad and all inclusive; is plenary and original in the sense that no appeal is necessary to give it jurisdiction; and was granted for the express purpose of making all assessments on property and taxes levied thereon relatively uniform and just.

To effect this legislative purpose your board is given authority to conduct hearings, compel the appearance of witnesses and the production of records, books, papers and documents relating to any matter before the board, to investigate the work and methods of boards of review and other public officers in the assessment, equalization and taxation of all kinds of property, and to compel the performance of any order made by it or to require any board of review or any other officer or person to perform any duty necessary to accomplish the purpose of the legislature.

We are, therefore, of the opinion that your board has the power to investigate the assessments of any property for the purposes of taxation and the acts of any board of review in making such assessments and if, after such investigation, your board finds that any property has not been valued and assessed by the local board of review in such manner and for such amount that its assessment and the taxes levied thereon, are relatively just and uniform with other property, to order the local board of review to place a valuation thereon and assess the said property at such an amount as may be necessary in order that said assessment may be just and uniform. It may compel the performance of this duty by the local board of review under the provisions of Section 20 of the act. If the order involves an increase of assessment, the local board must follow the provisions of Section 7131 of the Code. If an appeal was taken either by the owner or by another taxpayer from the local board of review to the county board of review, your board has the same power over its action under the provisions of Section 17, sub-section 9, hereinbefore quoted.

MUNICIPAL COURT — BAILIFF — FEES — PARK COMMISSIONERS — CONTRACTS: Municipal court bailiff must account for fees received for the service of three and thirty-day notices in actions of forcible entry and retainer. (2) Park commissioners and officers of a city or town are, under Section 5673, Code of 1927, prohibited from making contracts with

the park commission to sell real estate or any other thing. (3) Park commissioners cannot anticipate the revenue derived from levies authorized in Section 5792. The only authority for anticipation of tax levies is contained in Section 5795. (Sections 10671, 5191, 5673, 5792, 5795 and 5794, Code, 1927.)

September 30, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

"1. Can a municipal court bailiff serve three and thirty-day notices on forcible entry cases, outside of office hours, doing the same as agent for attorneys, and retain the fees?

"2. Can a member of the board of park commissioners sell land to a park commission, without profit, entering into a contract whereby the park board is to pay $6,001.93 purchase price, plus 6% interest payable from July 1, 1929, the grantor assuming the payment of a $2,500.00 mortgage?

"3. Can the board of park commissioners anticipate the revenue derived from the levy made under Section 5792, Code of 1927, in payment of interest and purchase price of the land above mentioned, over a term of years?"

1.

Under Section 10671, Code of 1927, the bailiff of a municipal court is entitled to collect such fees for the service of notices as is applicable to fees of the district court. This would mean that he may collect for the service of notices the same fees as are provided for the sheriff in Section 5191, Code of 1927. It is also his duty to serve all notices filed with him for service.

We are, therefore, of the opinion that the municipal court bailiff cannot retain fees collected by him for the service of three and thirty-day notices in forcible entry cases, whether he serves said notices outside of his usual office hours or not. He must account for the fees in the same manner as is required in connection with the service of all other notices.

2.

We call your attention to Section 5673, Code of 1927. This section prohibits any officer in any city or town from being directly or indirectly interested in a contract or job of work, etc. Park commissioners are officers of a city or town and we are, therefore, of the opinion that Section 5673, Code of 1927, prohibits a member of a park commission from making contracts with the park commission to sell real estate or any other thing, because of the fact that said member is interested directly.

3.

We find no statute which would authorize park commissioners to anticipate the revenue derived from the levy authorized in Section 5792, Code of 1927. The only authority for the anticipation of the taxes to be collected for the use of the park commission is found in Section 5795, and this is authority only to anticipate the additional tax levy authorized by a vote of the people as provided for in Sections 5793 and 5794, of the Code of Iowa, 1927.

BOARD OF SUPERVISORS—DRAINAGE DISTRICT—DEFICIENCY: Board of supervisors of county, acting as a drainage board, has the power, under the statutes, to make additional assessments to pay deficiency.

September 30, 1929. *County Attorney, Northwood, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The board of supervisors of this county, acting as a drainage board, issued bonds in a certain drainage district of this county levying assessments against the property within the district. The last of these bonds were paid in 1927. It appears that there was a deficiency of some three hundred dollars ($300.00), that is, there was not enough money received from the assessments to pay the maturing interest and principal of all of the bonds. The board recently levied an additional assessment on the lands in the district to cover the amount of such deficiency. Some of the property owners are raising the question that the deficiency occurred when the bonds were issued and that the statute of limitations has now run.

We are of the opinion that the statute of limitations has not run, and that the board of supervisors properly had the right, under the statutes, to make the additional levy to take care of this deficiency, and that if said board has proceeded in accordance with the statute in making such additional levy the same can be collected.

COUNTY OFFICERS—COUNTY ATTORNEY—BONDS—COMMISSION: The county attorney is not entitled to collect on forfeited bonds.

September 30, 1929. *County Attorney, Burlington, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is the county attorney, under the laws of the State of Iowa, entitled to collect a commission on forfeited bonds?

Chapter 631, Code of Iowa, 1927, applies to the forfeiture of bail bond, and we find no section in that chapter which provides for the payment of any commission to the county attorney for his services in connection with the forfeiture of a bond.

Section 5228, Code of 1927, provides in part, as follows:

"* * *. In addition to the salary above provided, he shall receive the fees as now allowed to attorneys for suits upon written instruments where judgment is obtained, *for all fines collected where he appears for the state, but not otherwise, * * * and attorney fees allowed in criminal cases.*"

The forfeiture of a bail bond is not the assessment of a fine within the meaning of the statutes of this state, and we are, therefore, of the opinion that under Section 5228, Code of 1927, or any other section of the code, the county attorney is not entitled to collect a commission on forfeited bail bonds.

COUNTY OFFICERS—COUNTIES—CLERK DISTRICT COURT: Clerk of district court has no authority, under the statutes, to fix penalty of bonds of administrators and executors, the court having this authority only.

September 30, 1929. *County Attorney, Sac City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Does the clerk of the district court have authority to fix the penalty of bonds of administrators and executors, etc?

For answer to your question we refer you to Section 11887, Code of 1927, wherein it will be noted that the penalty of a bond of an executor or ad-

ministrator, where one is required by the statute, is fixed by the court and approved by the clerk.

We are, therefore, of the opinion that the court only has power to fix the penalty of the bond of an executor or administrator and that the clerk has power to approve the bond, that is, the sureties on the same.

COUNTY ATTORNEY—COUNTY OFFICERS—MULCT TAX: County attorney only entitled to fees as contained in Section 1616, Code, 1927, in mulct tax cases, and only under the same conditions as therein contained.

September 30, 1929. *County Attorney, Jefferson, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where a mulct tax is assessed is the county attorney entitled to the usual ten per cent as is the case in connection with fines?

We refer you to Section 2052, Chapter 98, Code of 1927. From a reading of this section it will be noted that the mulct tax is imposed in the same manner and with the same consequences as governs the imposition of a tax in an injunction proceedings against places used for lewdness, assignation, or prostitution. The section governing this is Section 1616, Code of 1927.

We are of the opinion that the county attorney is only entitled, in mulct tax cases, to such fees or commissions as are provided for in Section 1616, and only under the same conditions as are therein contained.

BOARD OF HEALTH: Work in all instances must be done under the personal direction of a licensed embalmer.

September 30, 1929. *Department of Health:* This will acknowledge receipt of your request, which request included the following questions:

1. Must all members of an undertaking firm be licensed?
2. Can unlicensed persons operate a funeral home, the embalming being done by a licensed operator?
3. Where the owner of a funeral home is unlicensed but employs a licensed embalmer, is this legal?
4. An incorporated burial association employing a licensed embalmer.
5. A corporation incorporated for the purpose of undertaking composed of licensed and unlicensed parties.

I.

Where a firm advertises as licensed embalmers, each member of the firm should be licensed. If, however, the firm is advertising only as the operators of a funeral home, it would not be necessary that all members be licensed, provided that the embalming and funeral services furnished were directed by the licensed embalmer.

II.

In reply to your second question, an unlicensed person may operate an establishment for the distribution and sale of caskets, vaults and other receptacles and may furnish the usual funeral service, provided the service rendered is under the personal direction of a licensed embalmer.

III.

The third question asked is answered by the ruling on the second question.

IV.

An incorporated burial association may operate as such under the present law, selling caskets, vaults and funeral services, provided the funeral service is directly under the personal supervision of a licensed embalmer.

V.

A corporation incorporated for the purpose of distributing and selling caskets and vaults and funeral services may be composed of both licensed and unlicensed embalmers, the only requirement being that the funeral services and embalming be done under the personal supervision and direction of a licensed embalmer.

While it was, undoubtedly, the intention of the framers of the new law on the practice of embalming to prohibit the sale of funeral services by any other than a licensed embalmer, the exception found in paragraph 2 of Section 3 of Chapter 69, Laws of the Forty-third General Assembly are such as will permit any person, firm, association or corporation to distribute and sell caskets, vaults and even embalming and funeral service, provided that the embalming and funeral service are *furnished under the personal direction of a licensed embalmer.*

TAXATION: Burial associations, although co-operative should have their property listed for taxation.

September 30, 1929. *County Attorney, Rock Rapids, Iowa:* This will acknowledge receipt of your letter in which you ask the following question:

Should the personal property and real estate of a co-operative burial association be taxed?

We fail to find any exception and exemption under the statute, which would relieve this association from the regular taxation on their personal property and real estate, and in view of the rule that taxation is the rule, it would be our opinion that the property of this association should be listed for taxation.

HIGHWAYS: Under the provisions of Chapter 20, Laws of the Forty-third General Assembly, materials for newly constructed culverts on secondary roads should be paid for from secondary road construction fund, and for repairs on culverts already constructed from the maintenance fund.

October 3, 1929. *Iowa State Highway Commission, Ames, Iowa:* We acknowledge receipt of your favor in which you inquire in substance whether or not material used in the construction of new culverts or bridges should be paid from the secondary road maintenance fund or the secondary road construction fund.

Sections 10 and 11, Chapter 20, Laws of the Forty-third General Assembly, pledge the secondary road construction fund to certain uses. Paragraph 1 of Section 11 reads as follows:

"To the payment of the cost of constructing the roads embraced in the existing county trunk road system."

Paragraph 6 of the section referred to reads as follows:

"To the payment of the cost of constructing local county roads and expenditures pertaining thereto, but only when the construction work on

the county trunk roads has been fully completed, and when the board deems it inadvisable to make additions to said trunk roads."

The cost of construction of new culverts would clearly be authorized from the secondary road construction fund under the provisions of the statutes above quoted. You call attention, however, to the provisions of paragraph 2, Section 15, Chapter 20, Laws of the Forty-third General Assembly, which is a pledge of the secondary road maintenance fund. The paragraph you refer to reads as follows:

"To the payment of the cost of bridge repairs, culvert material, machinery, tools and other equipment."

This pledge is of the maintenance fund and refers to maintaining roads, bridges or culverts that have already been constructed.

We are, therefore, of the opinion that material for culverts to be newly constructed on secondary roads should be paid for from the construction fund, and that material used for culverts already constructed but which is needed in their repair or maintenance should be paid from the maintenance fund.

COUNTY HOSPITALS—EMPLOYERS' LIABILITY INSURANCE—INDIGENT PATIENTS: (I) Premiums for liability insurance should be paid by hospital trustees. (II) Expense of indigent patients not to be paid from poor fund.

October 10, 1929. *County Attorney, Fairfield, Iowa:* This will acknowledge receipt of your request of October 3, 1929, consisting of two parts, which is as follows:

"Is it not the duty of the county hospital trustees to pay from funds coming into their hands as such, the premium on employers' liability insurance policies carried on the employees of the hospital? Is this not a part of the operation of said hospital? The insurance agent has billed the board of supervisors for this premium.

Is it not the duty of the county hospital to take care of indigent patients that are properly sent to them and accepted by the trustees? In this county the board of supervisors have been paying hospital bills for indigent patients from the pauper fund. This has been costing the county several thousand dollars every year and has made a heavy drain on that fund. It seems to the board that under the reading of the statute that it is the duty of the county hospital and its trustees to provide bed and board for indigent patients without expecting reimbursement from the county poor fund therefor. Are they not right in this?"

It is the opinion of this department that the trustees of the county hospital should pay the premiums on the employers' liability insurance policies carried on the employees of the hospital.

In answer to your second question we refer you to the opinions of the Attorney General for 1928, at page 215, wherein it is held that the county hospital cannot collect from the poor fund for the care of indigent patients.

WEIGHTS AND MEASURES—CONFLICT BETWEEN FEDERAL AND STATE STATUTES: Where federal constitution gives congress right to legislate on a measure, state statute in conflict must give way.

October 10, 1929. *Department of Agriculture:* This will acknowledge receipt of your letter of October 8, 1929, which is as follows:

"Section 3234 of the Code reads as follows:

"'*Sales of dry commodities to be by weight.* All dry commodities unless

bought or sold in package or wrapped form shall be bought or sold only by the standard weight or measure herein established, or by numerical count, unless the parties otherwise agree in writing, except as provided in the four following sections.'"

"Section 3236 of the Code reads as follows:

"'*Bushel measured by avoirdupois weight.* When any of the commodities enumerated in this section shall be sold by the bushel or fractional part thereof, except when sold in a United States standard container or as provided in the two following sections, the measure shall be determined by avoirdupois weight and shall be computed as follows: * * *.'"

"On November 28, 1928, the Bureau of Agricultural Economics issued the following:

"'Growers who use baskets which are illegal under the Standard Container Act of 1928 should dispose of such baskets prior to November 1, 1929, the Bureau of Agricultural Economics has announced in connection with regulations covering administration of the act.

This act applies to baskets in both intra-state and inter-state commerce, and growers are advised by the bureau to regulate their purchases so that all non-standard baskets will be disposed of before November 1, 1929.

The act, in the opinion of the solicitor for the Department of Agriculture, makes inoperative all state laws fixing weights per bushel for fruits and vegetables when such commodities are sold in the basket affected by the law. This means that when fruits and vegetables are sold in hampers, round stave and straight side baskets, and splint or market baskets no state requirement as to weight may be enforced.

The Standard Container act of 1928 fixes standards for hampers, round stave baskets and splint baskets for fruits and vegetables, and for other purposes. The legislation requires that "no manufacturer shall manufacture hampers, round stave baskets, or splint baskets for fruits and vegetables unless the dimension specifications for such (containers) shall have been submitted to and approved by the Secretary of Agriculture."

Copies of the regulation under the act may be obtained from the bureau of agricultural economics, Washington, D. C.'"

"On October 2, 1929, the Bureau of Agricultural Economics issued the following:

"'The Standard Container Act of 1928 is a weights and measures law and is effective in *intrastate* as well as *interstate* commerce. It supersedes any state laws in conflict with it. Under the act, it becomes unlawful on November 1, 1929, to manufacture for sale or shipment, to offer for sale, to sell, to offer for shipment, or to ship hampers, round stave baskets, or splint baskets for fruits or vegetables, either filled or unfilled, or parts of such hampers, round stave baskets or splint baskets that do not comply with this act. Any illegal containers made, sold, offered for sale, or shipped are liable to seizure and condemnation. Non-standard hampers and baskets, among which are the 10-quart, 14-quart, and ⅞-bushel sizes, may not be used for fruits or vegetables after November 1. Straight-side, or tub, baskets are classed as hampers or round stave baskets, depending on the method of construction.

The foregoing statement has been issued by the Bureau of Agricultural Economics, which is charged with administration of the act, in view of an announcement by an eastern state that the 14-quart peach basket can be used in that state provided the weight of the contents is plainly stamped on the basket. Bureau officials declare that no individual state has the right to make rulings which will allow the use of this or any other basket outlawed by the Standard Container Act. This act is not based upon the interstate commerce clause of the Constitution but upon the power vested in congress "to coin money, regulate the value thereof and of foreign coin, and to fix the standard of weights and measures." Copies of the act, giving a list of legal containers, may be obtained from the Bureau of Agricultural Economics, Washington, D. C."

"I am also enclosing the rules and regulations of the Secretary of Agriculture under the United States Standard Container Act of 1928.

Does this act of the Bureau of Agricultural Economics affect in any way Section 3234 or Section 3236? In other words, does it mean that apples must be sold by measure, or does it meant that they can be sold by weight of 48 pounds, or by a standard U. S. measure? Also they say it is impossible to get 48 pounds of apples into a U. S. bushel, as U. S. standard bushel of apples will not weigh 48 pounds."

We have incorporated in this opinion your entire letter in view of the importance of this opinion, and in order that the same may be fully understood, and we also desire to quote Article 1, Section 8, Constitution of the United States, which is as follows:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; * * *."

It has long been the opinion of the Supreme Court of the United States that the powers granted by the people of the states to the federal government and embodied in the Constitution are supreme within their scope and operation, and that the government may exercise these powers in its appropriate departments free, and unobstructed by any state legislation or authority within the limitations set by the Constitution. The government is sovereign and independent and any interference by any of the state governments, tending to the interruption of the full and legitimate exercise of the powers granted, is in conflict with that clause of the Constitution and the laws of the United States passed in pursuance thereof "the supreme law of the land."

And as was said by the Supreme Court of the United States in the case of *Western Union Telegraph Company vs. Kansas*, 216 U. S., page 1:

"The fundamental and vital right of the states to regulate their strictly domestic affairs must always be exerted in subordination to the granted or enumerated powers of the federal government and not in hostility to rights secured by the supreme law of the land."

And as was again said in the case of *United States vs. Hill*, 248 U. S., page 420:

"When congress exerts its authority in a matter within its control, state laws must give way in view of the regulation of the subject matter by superior power conferred by the Constitution."

And under the old case of *New York vs. Miln*, 11 Peters, 102, 9 L. Ed., 648, it is said:

"While a state is acting within the legitimate scope of its powers as to the end to be obtained and may use whatsoever means are appropriate to that end, although they may be so nearly the same, as scarcely to be distinguishable from those adopted by Congress; but in the event of collision the law of the state must yield to the law of Congress, if the latter is passed upon a subject within this sphere of its power."

We are of the opinion that where Sections 3234 and 3236 of the Code of 1927 conflict with the act to fix standards for hampers, round

stave, baskets and splint baskets for fruits and vegetables passed by the seventieth Congress and approved May 21, 1928, that the federal regulation would, of necessity, have to prevail.

SCHOOLS AND SCHOOL DISTRICTS: Under Sections 4386-87, Code, 1927, school boards in country schools are authorized to levy an amount equal to $80 for each child of school age in the district and if this amount does not equal $1,000 they may levy that amount which may be used for paying the expense of operating the school, and in addition to such amount they may levy the cost of the expense of tuition of all pupils who attend high school outside of the district.

October 10, 1929. *Auditor of State:* This will acknowledge receipt of your request for an opinion on the following question:

"Do the limitations of 4387 of $1,000 per school apply to the provision of Section 4386, (3) where there are pupils from a district attending high school at the expense of the district under the provisions of Section 4275?"

The statutory provision under consideration provides as follows:

"4386. School taxes. The board of each school corporation shall at its regular meeting in July, or at a special meeting called between the time for the regular meeting and the third Monday in August, estimate the amount required for the general fund. The amount so estimated shall not exceed the following sum for each person of school age:

"* * * * * *

"3. In all other school corporations, eighty dollars; provided that corporations not maintaining an approved high school and which have tuition pupils attending high school in other districts may levy such an additional amount above the said eighty dollars as will be necessary to pay the cast of tuition for such pupils."

This statute was enacted by the Fortieth General Assembly, extra sessions 1 and 2. Prior to that enactment, the law as it existed was as follows:

"The board * * * may estimate the amount required for the general fund not exceeding $80 for each pupil of school age but each school corporation may estimate not to exceed $1,000 for each school thereof." Section 2806, Code of 1897; Chapter 386, 37th G. A.; Chapter 116, 38th G. A.; Chapter 93, 39th G. A.

The bill as introduced in the Fortieth General Assembly, Extra Session, House File 110, provided as follows:

"Section 1, Par. 3. In all other school corporations $80."

This was later amended and finally adopted as a conference report, adopted by the house on April 4, 1924, and reported in the House Journal at page 1329-1332 and adopted in the senate on April 7, 1924, and reported in Senate Journal, page 1227. In this conference report the following provision was added to Paragraph 3 of Section 1 of the bill:

"Provided that corporations not maintaining an approved high school and which have tuition pupils attending high school in other districts, may levy such an additional amount above the said $80 as will be necessary to pay the cost of tuition for such pupils."

The section was then adopted as it now appears in the Code as Section 4386.

Section 2 of the bill, as enacted, became Section 4387 of the Code. From this legislative history, it will be noted that prior to the revision by the Fortieth General Assembly, Extra Session, the school board had the power to levy $80 per person of school age in the district, but if

that did not amount to $1,000, the board could estimate an amount up to $1,000 for each school in the corporation. The provision added by the Fortieth Extra General Assembly, gave the board authority to estimate an amount sufficient to pay the tuition charges against the district under the provision of Section 4275. The limitation of $1,000 for each school in the corporation goes down through a series of legislative enactments from the Code of 1897 for the purpose of conducting the schools in the corporations.

We are of the opinion that the provision authorizing the board to estimate an additional amount for the purpose of paying the tuition of pupils attending high school where the district maintains no high school, is in addition to the amount required for operating the school in the corporation and that the limitation of $1,000 does not apply to both. We believe that it was the intent of the legislature, and therefore the law, that each school corporation may estimate an amount equal to $80 per person of school age in the corporation and if such amount does not equal $1,000 it may estimate $1,000; and that in addition thereto, it may estimate a sufficient amount to pay the tuition charges against the district for pupils attending high school under the provisions of Section 4275 of the Code.

COUNTY OFFICERS—COMPENSATION: In counties having two district courts the deputy in charge of the court located outside of the county seat is entitled to receive compensation in accordance with the provisions of Sec. 5236, Code, 1927.

October 11, 1929. *County Attorney, Council Bluffs, Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question.

What compensation is the deputy clerk in charge of the clerk's office at Avoca entitled to receive under the statutes of this state?

Section 5231, Code of 1927, provides in part as follows:

"* * * In any county in which the district court is held in two places, the deputy having charge of the office where said court is held outside the county seat, shall receive one-half the amount of the salary of the clerk."

Section 5236, Code of 1927, provides as follows:

"In any county having two county seats and where the district court is held in two places, the first deputy county auditor, county treasurer, county clerk, and county recorder, or the deputy in charge of such office, shall receive sixty-five per cent of the amount of the salary of his principal."

It will be noted that Sections 5231 and 5236, Code of 1927, were both passed by the Fortieth General Assembly and contained in Chapter 250 of said general assembly; Section 5231 appearing as Section 12 of said chapter, and Section 5236 appearing as Section 15-a of the same chapter.

We find from an examination of the House Journal of the Fortieth General Assembly, that House File No. 137 was originally amended, the amendment being designated as 15-a; said amendment being offered by Representative Potts of Lee County and providing as follows:

"In any county where the district court is held in two places, and where the deputies are in charge of the offices, each deputy shall receive sixty-five per cent of the amount of the salary of his principal."

We next find from the Senate Journal that House File No. 137 was substituted for Senate File No. 137, and that Section 15-a of the House File No. 137 as amended, was amended by striking out Section 15-a of the House File as amended by the amendment offered by Mr. Potts of Lee County, and the following substituted in lieu thereof:

"In any county having two county seats and where the district court is held in two places, the first deputy county auditor, county treasurer, county clerk, and county recorder, or the deputy in charge of such office, shall receive sixty-five per cent of the amount of the salary of his principal."

House File No. 137 was then adopted by both the Senate and the House without any change in this provision, and is contained in Chapter 250 of the Acts of the Fortieth General Assembly.

It would, therefore, appear that it was the intention of the legislature, in counties where the district court was held in two places, that the deputy clerk in charge of the office should receive sixty-five per cent (65%) of the salary of his principal, and that it was also the intention of the legislature that the same should be true in counties having two county seats. This is so or the last amendment, above referred to, would not have been offered and adopted. It also follows that when the last amendment was made the legislature overlooked the fact that there was a provision in House File No. 137, Paragraph 4 of Section 12, covering the same matter, and it thus necessarily follows that the later amendment contained in Section 15-a would govern, and that the provision contained in Paragraph 4, Section 12, now Section 5231, Code of 1927, would have no force and effect.

We are, therefore, of the opinion that in a county which has two county seats or where the district court is held in two places, the deputy clerk in charge of the office is entitled to receive compensation in accordance with the provisions of Section 5236, Code of 1927.

TAXATION—REFUNDS—BOARD OF SUPERVISORS: Where the assessor has failed to make the assessment in accordance with the information given by the taxpayer, and where the taxpayer has appealed to the board of assessment and review, and the correction is ordered made, the board of supervisors may properly order a refund of any taxes paid under protest by reason of erroneous assessment.

October 12, 1929. *County Attorney, Manchester, Iowa:* We acknowledge receipt of your letter of recent date requesting the opinion of this department on the following question:

A taxpayer in this county was assessed by the assessor, as monies and credits, in the sum of $4,000.00. The assessor, however, failed to give the taxpayer, who requested the same, a credit for the same amount on account of indebtedness which would be a proper deduction. Objections were made by the taxpayer before the board of review and their attention was again called to the fact that the assessor had not given the taxpayer the proper deduction, and that the assessor was directed to make the correction.

The assessor failed to do so. The taxpayer has paid tax on the full $4,000.00 under protest and now makes application for refund under and in accordance with the provisions of Section 7235, Code 1927.

The question is, has the board of supervisors authority to make this refund?

We are of the opinion that the board of supervisors has authority, under Section 7235, Code 1927, to make the refund.

SCHOOLS AND SCHOOL DISTRICTS: Where a school is closed for lack of attendance, board must furnish transportation for kindergarten as well as grade pupils.

October 14, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following proposition:

"Where a school is closed for lack of attendance and the board has arranged to provide school facilities in the adjoining school district where kindergarten is a requisite for admission to the first grade, must the board furnish transportation for the half day session kindergarten pupils?"

We are of the opinion that where a board closes the school and provides for the education of its children in an adjoining district, it must comply with all of the requirements of that district. This would require the attendance of the kindergarten period. Since the board must furnish transportation in such cases, we are of the opinion that it must furnish transportation to the kindergarten pupils at the hours when they are required for attendance at school or when the attendance period ends whether the attendance period is in the forenoon or in the afternoon.

BOARD OF EDUCATION—BUILDING MATERIALS: The fact that a member of the board of education is a stockholder in a corporation with whom the board takes a contract would not be violative of Section 13324, of Code of Iowa 1927.

October 14, 1929. *Iowa State Board of Education:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Would a member of the Iowa State Board of Education have the legal right to sell or furnish the building material, or any product, to a dealer who would then sell the said building material, or product, to a person or firm who had been awarded a contract by the Iowa State Board of Education for the construction of a building or improvement at one of the state educational institutions?"

We call your attention to Section 13324, Code of 1927, which in part reads as follows:

"It shall be unlawful for any trustee, warden, superintendent, steward, or any other officer of any educational, penal, etc., * * * supported in whole or in part by the state, *to be interested directly or indirectly* in any contract to furnish or in furnishing provisions, material, etc., * * * to or for the institution of which he is an officer; and it shall be unlawful for any such trustee, etc., * * * *to be directly or indirectly interested* in any contract with the state to build, repair, or furnish any institution of which he may be an officer."

The question of whether or not a state officer of an educational institution or any other state institution, is interested directly or indirectly in a contract is one of fact to be determined in each particular case.

The fact that the state officer mentioned in your letter was a member of a wholesale company and happened to be the managing offcer of such company, and that said wholesale company sold material to a dealer who happened to be the dealer who sold material to the contractor who

secured his contract from the State Board of which the managing officer of the wholesale company was a member, would not in itself be a violation of Section 13324, Code of Iowa, 1927.

If, however, there was some understanding between the managing officer of the wholesale company, who was a member of the State Board which was letting the contract, and the contractor to the effect that if the contractor received the contract he would buy his material from a dealer who was handling this wholesale company's particular material, then we think the member of the State Board would have such an interest in the contract as would make said transaction a violation of Section 13324, Code of Iowa 1927, for then such member of the State Board would have an interest in the contract.

CITIES AND TOWNS—RULES OF ORDER—MAYOR: In cities and towns having a city manager plan of government the councilman designated as mayor has the same right to vote and initiate measures as does any other member of the council. Where no rules of order have been adopted the generally accepted rule is that Robert's Rule of Order shall govern.

October 14, 1929. *Lieutenant Governor, Waterloo, Iowa:* We acknowledge receipt of your letter requesting information concerning the following questions:

"1. A city operating under the city manager plan has no mayor, a member of the council is designated as mayor. In your opinion can the councilman designated as mayor make a motion to be acted on by the council?

"2. Where a council or a meeting has not adopted rules of order does the presiding officer at that meeting make the rules of order?"

1.

We are of the opinion that the member of the council who has been designated as mayor has the same right to vote and initiate measures as does any other member of the council. The fact that he is designated as mayor or chairman would not effect his right to vote.

2.

Where a city council has not by proper resolution prescribed rules of order, we are of the opinion that the generally accepted rule would be that the order of business to be followed would be that prescribed by Roberts Rules of Order. However, as you suggest in your letter, the chairman or presiding officer could dispense with the ordinary rules and proceed as he chose as long as there were no objections from the remaining members of the city council.

SCHOOLS AND SCHOOL DISTRICTS: No appeal to superintendent of public instruction from refusal to revoke certificate under Section 3892 of the Code.

October 15, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

If the county superintendent refuses to grant an order revoking the certificate of a teacher, under the provisions of Section 3893, Code of 1927, may the person who has filed information against the teacher appeal to the superintendent of public instruction?

The general section on appeals to the superintendent of public instruction being Section 4302, Code of 1927, makes applicable Section 4298, Code of 1927, which authorizes any person aggrieved by any decision or order of the board of directors to appeal to the county superintendent; such appeal being taken in the same manner.

We are of the opinion that this section does not apply for the reason that there is a specific appeal provision in Section 3895, Code of 1927, which provides as follows:

"The person aggrieved by such order shall have the right of appeal to the superintendent of public instruction within ten days from the date of such mailing, and in case of appeal the revocation shall not be effective until the same is affirmed, after full hearing, by the superintendent of public instruction. * * *"

This section authorizes an appeal by the person aggrieved by "such order," which refers to the order of revocation. Since there is no provision for an appeal for the refusal to order the revocation, we are of the opinion that the finding of the county superintendent refusing the revocation is final.

BANKS AND BANKING: Domestic or foreign corporations not entitled to use the word "bank" or "trust" in its title.

October 17, 1929. *Department of Banking:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"We would greatly appreciate an opinion from your office as to whether or not any corporation, firm, partnership or individual, foreign or domestic, operating in this state, may incorporate in its title the word 'trust', without qualifying under Chapter 416 of the Code."

We call your attention to the opinion of this department rendered you on July 20, 1929, in which it was held that all domestic corporations organized under the laws of this state which desire to use the word "trust" must qualify under Chapter 416 of the Code. In that opinion it was held that the law could not be extended to include banks operating under national charters.

With reference to foreign corporation organized under the laws of some other state of the United States, it is a well established rule that such corporations may do business in this state only by sufferance or permission. We find no provisions in the law permitting such foreign corporations to do a banking business in this state.

We do find that the statute provides as follows: (Section 9259, Code of Iowa, 1927)

"9295. Loan and trust companies. All such companies and all corporations organized under the provisions of Chapter 384, whose articles of incorporation authorize the acceptance and execution of trusts, and all corporations in whose name the word 'trust' is incorporated and forms a part, shall have a full paid capital of not less than the amount of capital of savings banks, as provided in Section 9160 and shall be subject to examination, regulation and control by the superintendent of banking, like savings and state banks, and their stockholders shall be liable to the creditors of such companies as provided in Sections 9251 to 9253, inclusive, for stockholders in savings and state banks."

We are, therefore, of the opinion that a foreign corporation, such as herein defined, cannot, under the laws of this state, be permitted to

use the term "trust" in its title. The same rule applies as to the use of the term "bank" in the title.

BOARD OF ACCOUNTANCY: A practitioner who maintains an office in his home consisting of one or more rooms maintains an office within the meaning of the definition contained in Paragraph c, Section 8, Chapter 59, Acts of the Forty-third General Assembly. Foreign accountants may register their certificates in this state if such certificates were issued as a result of an examination which in the judgment of the Iowa Board of Accountancy is equivalent to the standard set by it, or if the holders have practiced continuously for seven years. However, they must comply with all the conditions of Chapter 59, Acts of the Forty-third General Assembly. Foreign accountants may also perform temporary engagements in this state without registration of their certificates by complying with the provisions of Paragraph a, Section 22, Chapter 59, Acts of the Forty-third General Assembly.

October 17, 1929. *Iowa Board of Accountancy, Cedar Rapids, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Attention is called to Sections 7 and 8, Chapter 59, Acts of the 43rd General Assembly, in Section 8-e an "office" is defined. The question arises as to whether or not a practitioner maintaining an office in his home actually maintains an "office" within the meaning of the definition.

2. Section 12, Chapter 59, Acts of the Forty-third General Assembly provides for the registration of existing practitioners. Said section states: "all practitioners engaged in the practice of accountancy *in this state.*" Section 13 of the same chapter provides that, "All applicants, except those provided for in Section 12, must take and pass the examination provided for in Section 9 with certain exceptions." Section 13-b provides for the registration of holders of unrevoked certified public accountants' certificates issued by other states, etc. Can an accountant or firm of accountants, residing in another state, and not maintaining an office in the State of Iowa, be granted certificates to practice in Iowa except as provided for in Section 22-a, Chapter 59, Acts of the Forty-third General Assembly? Would the fact that a certified public accountant of another state registered his certificate with this board, under Section 13-b, entitle him to a certificate to practice unless he lived in this state or maintained an office here?

3. Under Section 22-a is it necessary that a certified public accountant from another state who, in connection with his professional practice in that state, is temporarily engaged in doing accountancy work in this state, file with the Board of Accountancy and with the Auditor of State, at least five days before commencing work for a client in this state, the written appointment of a registered practitioner in this state to act as agent upon whom legal service may be had in all matters which may arise from such temporary engagement; or would the appointment of a permanent agent do away with the necessity of filing in each particular case?

1.

We are of the opinion that a practitioner who maintains an office in his home, consisting of one or more rooms, maintains an "office" within the meaning of the definition contained in Paragraph e, Section 8, Chapter 59, Acts of the Forty-third General Assembly.

2.

Paragraph b, Section 13, Chapter 59, Acts of the Forty-third General Assembly, provides as follows:

"The holders of unrevoked certified public accountant certificates granted by other states or of equivalent certificates granted by the recognized authority of foreign countries may register their certificates, pro-

vided such certificates were issued as the result of an examination which, in the judgment of the board of accountancy, was equivalent to the standard set by it, or the holders thereof shall have been in continuous practice thereunder for at least seven (7) years."

We are of the opinion that, under the above paragraph, public accountants who hold certificates from other states or foreign countries, and who desire to practice accountancy in this state within the meaning of the definition contained in Section 7, may register their certificates in this state in the manner provided in Chapter 59, Acts of the Forty-third General Assembly, providing such certificates were issued as the result of an examination which, in the judgment of the Iowa Board of Accountancy, was equivalent to the standards set by it, or the holders of such certificates had practiced under the same for a continuous period of seven years and that the holders of unrevoked certified public accountants' certificates granted by another state or country under the conditions specified in Paragraph b, Section 13, Chapter 59, Acts of the 43rd General Assembly, may, after registration, practice accountancy in the State of Iowa in accordance with the provisions of said chapter.

If, however, the holder of a certified public accountant's certificate, issued by another state or foreign country, does not intend to practice accountancy in this state within the meaning of the definition contained in Section 7, Chapter 59, Acts of the 43rd General Assembly, but only intends to take temporary engagements in this state, which engagements are an incident to his professional practice in the state from which he holds his certificate, then he would not be entitled to be registered as provided for in Section 13, but it would be necessary for him to comply with the provisions of Section 22, Chapter 59, Acts of the Forty-third General Assembly.

3.

We are of the opinion that the holder of a certified public accountant's certificate granted by another state or foreign country, who desires to take temporary engagements for clients in this state, which temporary engagements are an incident to his professional practice in the state of his domicile, may do so under the provisions of Section 22, Chapter 59, Acts of the Forty-third General Assembly, by filing with the Board of Accountancy and the Auditor of State a written appointment of a registered practitioner in this state to act as agent upon whom legal service may be had in all matters which may arise from such temporary professional engagement performed for any client in this state; and that the appointment of such process agent may be made permanent by filing such a designation with the Board of Accountancy and the Auditor of State, provided, however, the person making the appointment gives the Board of Accountancy and the Auditor of State a letter at the time he commences a temporary engagement in this state, notifying them of such fact and giving them the name and address of the process agent who is named in the designation already on file, and also giving them the name and address of the client for whom such temporary engagement is to be performed.

SCHOOLS AND SCHOOL DISTRICTS: Discretionary with board whether transportation or compensation therefor will be furnished by dis-

trict where school is closed for want of pupils; amount offered must be reasonable.

October 18 1929. *County Attorney, Algona, Iowa:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following proposition:

"Must a school board in a school where the school is closed for lack of pupils, furnish transportation to pupils or can it discharge its liability by offering a reasonable amount to the parent for such transportation?"

This question involves the construction of Section 4233 of the Code.

We are of the opinion that this section expressly grants to the board a discretion as to whether it will furnish the transportation or allow the parent a reasonable sum for transportation of the children to school. The board should adopt a resolution offering this parent what it deems to be a reasonable amount and giving the parent notice thereof. The recourse of the parent is to appeal to the county superintendent upon the question whether the board has abused its discretion and whether the amount offered is a reasonable sum.

SCHOOLS AND SCHOOL DISTRICTS: Board cannot loan or lease school property to parochial school.

October 19, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter in which you request the opinion of this department upon the following proposition:

"May the board of education of a public school district loan or rent school property to a parochial school?"

There is no provision in the statute for loaning school property and as this would be an aid or assistance to a parochial school, it would be prohibited under the Constitution and the supreme court decisions of this state and the opinions of this department construing the same. The power to direct the sale, lease or other disposition of any school house or site or other property belonging to the corporation, when not in conflict with the Constitution or direct statute, is granted to the voters of the school corporation under the provisions of Section 4217, Sub-section 2 of the Code. The term "other property" would include personalty. Therefore, in the absence of authorization from the voters, the board would not have the power to lease school property including personalty belonging to the corporation to anyone.

FISH AND GAME—BAG LIMIT—PHEASANTS: The bag limit for pheasants is 3 birds per day; legal possession limit is 10 birds.

October 21, 1929. *County Attorney, Perry, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

If a man hunts on the first open day, kills the limit of three pheasants, then some of his friends send seven pheasants back with him, making a total of ten in his possession, would he be violating the law?

We call your attention to Section 27, Chapter 57, Acts of the 43rd General Assembly. It will be seen from reading this section that it shall be lawful to kill not to exceed three birds per day. It will also be seen from reading Section 28, same chapter, that three imported pheasants is the bag limit per day for any one person.

It will also be seen from reading the same section that a person may have in his possession lawfully ten imported pheasants.

We are, therefore, of the opinion that, under the provisions of Sections 27 and 28, Chapter 57, Acts of the 43rd General Assembly, a person may kill or shoot three pheasants per day and that he may have in his possession ten pheasants. This simply means that while a person is only authorized to kill three pheasants per day he may have in his possession ten birds, seven of which have been delivered to him by other hunters.

BOARD OF HEALTH: County health unit only to supervise and direct local boards of health, police power being retained by local board.

October 22, 1929. *State Department of Health:* This will acknowledge receipt of your request in which you ask the following questions:

"1. If a county board of supervisors adopt the county unit health plan and appoint a county board of health who in turn employ the personnel for the county health unit, do the county board of health and their appointees (the personnel) supersede in authority all local boards of health and their officials within the county?

"2. If after one or more years of use of the county unit plan, the supervisors cease all appropriations under the county health unit plan, what happens?

"3. Do the personnel of the county unit operating under the county board of health have all police powers delegated to local boards of health officials as at present?"

As to the first question, after a careful reading of Chapter 65, Laws of the Forty-third General Assembly and particularly the first three lines of Section 2 thereof, we are of the opinion that the county board of health would not supersede in authority the local boards of health, but would only act in conjunction therewith to guide and direct the public health activities within that county.

In reply to the second question, and in view of the answer to the first question, we believe that where all appropriations would cease, due to refusal of the board of supervisors to make available funds for this work, that the local boards of health would continue to function under the same plan, as they have been operating in the past.

Replying to the third question, we are of the opinion that under the present law, as outlined in Chapter 65 relating to county boards of health, there was no intention nor is the law so written as to place the police powers delegated to the local board of health, in the hands of the county board of health. The police powers would remain with the local boards and be available only to the county board through the local boards, except such power as will be necessary to carry out the duties imposed upon the said county board by the State Department of Health.

FISH AND GAME: A landowner may lease his premises for trapping purposes on the basis of so much for each animal trapped.

October 26, 1929. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Is it legal for a trapper to contract for trapping on a party's land, and

agree to pay him a certain amount for each animal he may catch in trapping thereon as compensation for use of premises for trapping purposes?"

We find no statute which would prohibit anyone from making such a contract.

CEMETERIES—FUNDS: The funds received from the town cemetery tax may be by the city or town council apportioned to cemeteries which are open to the public for burial purposes. Said funds may not be used to gravel a highway leading to such cemetery or cemeteries.

October 26, 1929. *Director of the Budget:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

"There are three cemeteries adjacent to a certain Iowa town, viz.: Protestant, German Lutheran, and Catholic. The town council levies a cemetery tax authorized by Section 6211(14) and the revenue received from the tax is turned over to a cemetery association to be used for maintenance of the cemeteries. The association is composed of representatives from each of the denominations named above.

"1. Is it legal to use funds raised from taxation for the upkeep of the three cemeteries in the manner stated and if so does the council decide the ratio in which the funds are to be apportioned or is the money to be apportioned to the cemeteries in the ratio decided upon by the cemetery association.

"2. May the council or the association, as the case may be, use funds of the cemetery to gravel the road connecting the town with one or more of the cemeteries. The road is approximately eight-tenths of a mile in length."

We are of the opinion that, under Section 6211, Paragraph 14, the funds received from the tax therein specified may be used for the upkeep of any cemetery owned or controlled by the city or town or owned and controlled by any private or incorporated cemetery association, township, or other municipality, even though it be situated in the adjoining county if said cemetery or cemeteries are actually utilized for burial purposes by the people of the city or town. This being true, the funds may be apportioned by the city council to the various cemeteries which are utilized by the people of the city or town for burial purposes.

We find no authority in the statutes of this state authorizing the use of cemetery funds for the purpose of graveling county or township roads, and are, therefore, of the opinion that none of said funds can be used for said purpose.

OFFICERS—COMPATIBILITY: School director not incompatible with park commissioner.

October 28, 1929. *County Attorney, Red Oak, Iowa:* In answer to your oral request by telephone on the question whether the offices of city park commissioner and school director are incompatible, you are advised that we are of the opinion that said offices are not incompatible and that the same person may hold both at the same time.

ROADS AND HIGHWAYS—CLERK—TOWNSHIPS: The date fixed in Section 60, Chapter 20, Acts of the Forty-third General Assembly, for the transfer by the township clerk of all funds on hands to the county treasurer is directory and not mandatory, and the county treasurer should turn over to the township clerk tax collections and the township

apportionment of gasoline tax to the township clerk so that there may be a proper accounting made by the township.

October 29, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"What disposition must the county treasurer make of funds belonging to the various townships of his county found to be on hand after the distribution of December tax collections and receipt of gasoline tax, as these funds cannot reach the treasurer's books until after January 1st, when the township clerks are supposed to pay all funds to county treasurer. Can the treasurer pay these funds that accumulate to the credit of the townships to the township clerks to be used by the trustees to clean up any small outstanding claims?"

Section 60, Chapter 20, Acts of the Forty-third General Assembly, provides as follows:

"Clerk to turn over funds. All township clerks shall, prior to January 1, 1930, turn over to the county treasurer all township road, drag, and drainage funds in their possession, and take duplicate receipts therefor, one of which they shall file with the county auditor who shall charge the county treasurer with the amount thereof."

We are of the opinion that the date for turning over the funds by the township clerks to the county treasurer is directory and not mandatory, and that in order to properly carry out the provisions of Chapter 20, Acts of the Forty-third General Assembly, it will be necessary that the December tax collections and the gasoline tax receipts for the townships be turned over to the township clerks, and the townships then given an opportunity to pay all obligations which have been incurred against the funds, and then turn over to the county treasurer such funds as they may have on hand.

It would be impossible to strike a balance in any other manner and, under Section 64, the legislature has expressly provided that it is not intended that Chapter 20 affect any tax which has been levied prior to July 4, 1929, for bridge, culvert, and road construction or maintenance, or for highway drainage, and that such work shall be carried on as contemplated during the year 1929.

STATE BOARD OF EDUCATION: State board of education does not have authority to pay the city of Iowa City anything for fire protection.

October 29, 1929. *Iowa State Board of Education:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Has the Iowa State Board of Education legal authority to pay Iowa City a reasonable amount for fire protection, provided the payment would be made out of the funds not appropriated by the state legislature?"

We are of the opinion that the Iowa State Board of Education does not have the legal right, under the statutes of this state, to pay Iowa City any amount for fire protection regardless of what fund they might desire to pay it out of. The University property and buildings being located within the city limits of Iowa City, it is incumbent upon the city to furnish fire protection. See Chapter 69, Forty-fourth General Assembly.

ROADS AND HIGHWAYS—SECONDARY ROADS: Since the adoption of Chapter 20, Acts of the Forty-third General Assembly, the counties

can no longer anticipate the refunds from the primary road fund as all such refunds go into and are made a part of the secondary road construction fund. (Sec. 74—Sec. 9, Paragraph 3, Chap. 20, Acts Forty-third General Assembly.)

October 29, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Can the board of supervisors issue anticipation certificates anticipating the refunds from the primary road funds for money expended by the county for right of way, bridges, etc.?"

We call your attention to Section 74, Chapter 20, Acts of the Forty-third General Assembly, which provides in part as follows:

"* * * * 'The refunds made to any county under this section shall, upon their receipt by the county, be placed to the credit of the secondary road construction fund unless *heretofore pledged.*' "

We also call your attention to Section 9, Paragraph 3, same chapter, which section provides in part as follows:

"The secondary road construction fund shall consist of:
"* * * * * *
"3. All funds received by the county from the state as refunds for bridges, culverts and rights of way on primary road, not already anticipated by the county, * * *."

We are, therefore, of the opinion that the board of supervisors cannot now issue anticipation certificates anticipating the refunds from the primary road fund for money expended by the county for rights of way, bridges, etc., for the reason that, under Chapter 20, Acts of the Forty-third General Assembly, all monies received from these sources are made a part of the secondary road construction fund, except, of course, where prior to July 4, 1929, anticipation certificates have already been issued.

ESTATES — TAXES — INSANE — SOLDIERS — HOSPITALIZATION—WIDOW'S PENSION—COUNTIES: (1) Executors and administrators of estates are not liable for any taxes assessed against the property belonging to the estate, except inheritance and estate taxes. (2) World War veterans committed to state hospital for insanity are supported by the county, notwithstanding that they might have been committed to the veterans hospital at Knoxville. (3) There is no authority for the county to collect from a widow, who has inherited property, monies advanced to her as a pension.

October 29, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

(1) An executrix of an estate has filed a final report and has been discharged as such executrix. The estate was possessed of monies and credits in the sum of about $36,000.00. The executrix failed to report these monies and credits to the assessor for taxation. Is the administrator or executor of an estate personally liable for taxes on property which he had in his possession as said administrator or executor and which he did not report for assessment and taxation?

(2) Three World War veterans have been committed by the commissioners of insanity of a county to the State Hospital for the Insane at Mt. Pleasant, Iowa. It is found, upon investigation, that these patients were not sent to the veterans' hospital at Knoxville for the reason that said hospital was filled to capacity. The question is, is the county liable for the support of these three veterans at the state hospital or is the United States government liable for their support and can the county secure a refund from the federal government?

(3) On or about the 1st of October, 1927, the district court of Appanoose County awarded a widow's pension to a widow in this county for the support of her three minor children. In January, 1928, the three minor children fell heir to some $3,600.00, and the mother to some $1,800.00. Appanoose county was unaware of the inheritance and continued to pay the widow's pension for the support of said children and it advanced the sum of $388.00 until they discovered the fact of the inheritance. Is there any provision of the statute which would enable the county to collect the amount advanced from the widow and the minors?

We find no statute in this state which would make the administrator or executor of an estate personally liable for taxes due from the estate which were not paid, or for taxes which should have been due had the property in his possession been reported for taxation. We are, however, of the opinion that the auditor or treasurer, as the case may be, depending upon the year or years for which the taxes were omitted, may, if he can trace the omitted property into the hands of the beneficiary, now assess the same as omitted property and collect the tax.

The statutes of this state provide that the county of the legal settlement of any person committed to the state hospital for the insane is the county which is liable for the support of said person or persons. The fact that the patients might have been sent to the Veterans' Hospital at Knoxville would not relieve the county.

We do not know whether or not the federal act authorizes the government to pay for the support of veterans who have been committed to state institutions. We would suggest that you make inquiry with the United States Veterans' Bureau regarding this fact.

We do not find any statute which would authorize the county to collect from a widow any monies advanced to her under the provisions of Section 3641, Code of 1927.

FRUIT TREE AND FOREST RESERVATIONS: The limitation contained in Section 2606, Code 1927, with respect to forest and fruit tree reservations is applicable to Sec. 7110, Code 1927.

October 29, 1929. *County Attorney, Clinton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 2606 of the 1927 Code provides a limit in acreage for forest reservations and fruit tree reservations. Code Section 7110 provides the assessment on forest reservations under the conditions of 2606 and then refers to the assessment on fruit tree reservations.

The question we desire answered is, whether or not under Section 7110 the acreage for a fruit tree reservation is limited by the provisions of Section 2606, or is it unlimited?

We are of the opinion that the limitation contained in Section 2606, Code of 1927, with respect to forest and fruit tree reservations is applicable to Section 7110, both as to forest and fruit tree reservations. That is, to say, the maximum of ten acres in the case of fruit tree reservations and/or not less than two in the case of forest reservations. The only affect of the last part of Section 7110 is, that the value of the land, where there are more than ten acres, shall not be increased by reason of the improvement.

COUNTIES—PRISONERS—CITIES AND TOWNS: Under Section 5772, Code, 1927, cities and towns are authorized to keep prisoners sentenced

for violation of city ordinances in the county jail, but are required to pay the county for their keep, and the county would, therefore, be authorized to collect from a city the cost of such keep.

October 29, 1929. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The city of Iowa City has been keeping all prisoners sentenced for violation of city ordinances in the county jail of Johnson County, and have never paid the county for the care and keep of these prisoners. Section 5772, Code of 1927, provides that a city may use the county jail but shall pay to the county the cost of keeping such persons.

The board of supervisors of this county has decided to file a claim against the city for the care and keep of prisoners for such period of time if the law will permit. We would like to know whether or not such a claim is an open account.

We have examined the statutes and are of the opinion that the claim which the county has against the city for the care and keep of the prisoners would be one in open account, and that the statute of limitations applying to open accounts would apply to such claim.

HOSPITALIZATION—INDIGENT PERSONS—COMMITMENT OF INFANTS: Under Section 4005, Chapter 199, Code 1927, the juvenile court of the county where the indigent person resides has the power and authority to commit a patient against whom a complaint has been filed, and said court would, therefore, have authority to commit an infant born of a committed patient.

October 29, 1929. *Iowa State Board of Education:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

May infants born to committed patients at the state hospital at Iowa City be committed to said hospital under the provisions of Section 4005, Code of 1927, by the court of the county in which the state hospital is located, notwithstanding the fact that the mother has a legal settlement in a county other than the county where the hospital is located?

Section 4005, Chapter 199, Code of 1927, provides as follows:

"Complaint. Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is suffering from some malady or deformity that can probably be improved or cured by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with his support are able to pay therefor."

It will be noted from reading this section that any adult resident of the state may file a complaint in the office of the clerk of any juvenile court against a legal resident of the state who is residing in the county where the complaint is filed. It is not required that the patient, against whom the complaint is filed, be a legal resident of or have a legal settlement in the county where the complaint is filed. The only requirement being that said patient be in the county at the time the complaint is filed.

It will also be noted that, under Sections 4027-28, Chapter 199, Code of 1927, that the expense of the committed patient at the hospital is to be paid out of the appropriation made by the legislature for that purpose. The Forty-third General Assembly, in Chapter 287, under Para-

graph 6 of Section 47, did for the biennium beginning July 1, 1929, and ending June 30, 1931, appropriate the sum of two million dollars for the purpose of carrying out the provisions of Chapter 199, Code of 1927. It would, therefore, follow that the expenses of caring for any patient who might be committed in accordance with the provisions of Chapter 199 are not paid by the county of the legal settlement of the committed patient, but are paid out of a specific appropriation.

We are, therefore, of the opinion that, under Section 4005, Chapter 199, Code of 1927, the juvenile court of the county in which the complaint is filed has the power and authority to commit a patient against whom a complaint has been filed for treatment at the state hospital, notwithstanding the fact that the patient is not a legal resident of that county; the only requirement being that said patient be a legal resident of the state and be residing in the county at the time the complaint was filed. This being true, the juvenile court of the county in which the the state hospital is located would have the power to commit an infant born to a committed mother, provided, of course, the complaint was filed as provided for in Chapter 199, Code of 1927. See Chapter 82, Forty-fourth General Assembly.

PSYCHOPATHIC HOSPITAL: The cost of repairs to the psychopathic hospital at Iowa City are payable out of the appropriation to the State University of Iowa under the heading of "physical plant operation." (Sec. 3955, Code 1927.)

October 29, 1929. *Iowa State Board of Education:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

It is necessary that certain repairs be made on the State Psychopathic Hospital. The question has arisen as to whether or not, there being no special appropriation for this purpose, that the cost of such repairs may be paid out of the appropriation made by the Forty-third General Assembly for physical plant operation, this being an appropriation made for the State University of Iowa.

We call your attention to Section 3955, Code of 1927. It will be seen from reading this section that the State Psychopathic Hospital is connected with the College of Medicine of the State University and is, therefore, as much a part of the university as is the State Medical College.

This being true, we are, therefore, of the opinion that the State Board of Education has the same right to make repairs on said State Psychopathic Hospital as it does on any other building connected with the State University of Iowa, and that the cost of said repairs may be properly paid out of the appropriation made for the State University of Iowa under the heading of "physical plant operation."

ROADS AND HIGHWAYS—COUNTY ENGINEER—SALARIES: Under Chapter 20, Acts of the Forty-third General Assembly, the salary of a county engineer and his assistants are payable either out of the county general fund or out of the secondary road construction fund and/or the secondary road maintenance fund.

October 29, 1929. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The salary of the county engineer and his assistants are, under the

Bergman Bill, Chapter 20, Acts of the Forty-third General Assembly, payable either out of the county general fund or out of the secondary road construction fund or from the secondary road maintenance fund, or from any or all of said funds.

In this county the county general fund is practically exhausted and there will not be any money in said fund sufficient to take care of the county engineer and his assistants for the remainder of the year 1929.

Can the secondary road construction fund now be used to pay the salary of said county engineer and his assistants?

We are of the opinion that if the county has any funds in the secondary road construction fund or the secondary road maintenance fund they may use the same to pay the salary of the county engineer and his assistants for the year of 1929, that is, such salary as might accrue since July 4, 1929.

ROADS AND HIGHWAYS—TOWNSHIPS—ASSESSMENT DISTRICT: Since the adoption of Chapter 20, Acts of Forty-third General Assembly, board of supervisors, under the authority granted in Chapter 241, Code 1927, may establish a road assessment district for the improvement of the secondary roads, provided the cost of the same is paid three-fourths by the county and one-fourth by the benefited property.

October 29, 1929. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Can the county establish a road assessment district for the improvement of secondary roads such as is provided in 4746 of the Code of 1927 and upon the establishment of such a district proceed with the improvement and the manner of payment for the improvement as provided in the succeeding sections or does the Bergman Law repeal these sections?

We call your attention to that part of Section 4748, Code of 1927, as is set out herein:

"* * * Upon the filing of said plans and specifications, and upon receiving the agreement of the township or townships to pay their portion of the improvement of township roads, if any, the board shall, in accordance with their order relative to the class or classes of improvements, proceed to advertise for bids, etc. * * *

"Where petitions for the improvement of township roads shall be signed by a majority of the owners of the lands within the proposed district who are residents of the county, and who represent at least fifty per cent of the lands within the proposed district, the board of supervisors may proceed as hereinbefore provided without receiving the agreement of the trustees of said township or townships."

Section 4750, Code of 1927, provides in part as follows:

"The total cost of improving a county road in said secondary system within said district, by oiling, graveling, or other suitable surfacing, shall be apportioned and paid in the proportion of seventy-five per cent from the county road fund and twenty-five per cent from assessments on benefited lands, or may, by agreement between the board of supervisors and all of the trustees of the township in which the road is located when the petition requests such method of payment, be paid as provided in the next succeeding section."

It will be noted from reading the sections herein above set out that when the board of supervisors has received a petition, the petition specified in Section 4746, they may proceed to establish a road assessment district and pay the cost of improving the same by oiling, gravelling, or hard surfacing in one of the two following manners:

(1) Seventy-five per cent of the cost from the county road fund and twenty-five per cent from the assessments on benefited lands;

(2) Or, by agreement between the board of supervisors and all of the trustees of the township in which the road is located when the petition requests such method of payment, they may pay for the cost of the same: twenty-five per cent from the county road fund; fifty per cent from the township road fund, and twenty-five per cent from special assessments on benefited lands.

We call your attention to Section 88, Chapter 20, Acts of the Forty-third General Assembly. It will be noted from reading this section that Chapter 244, Code of 1927, was repealed. By the repeal of this chapter all township road levies were repealed. There are, therefore, no longer any township road funds for use as contemplated in Chapter 241, Code of 1927.

We are, therefore, of the opinion that the board of supervisors cannot now, since the effective date of Chapter 20, Acts of the Forty-third General Assembly, establish a road assessment district for the improvement of secondary roads as provided in Section 4746, Code of 1927, and the following sections and pay part of the costs out of the township road funds, as there are no longer any such funds. The board of supervisors, however, in our opinion, could establish a road assessment district for the improvement of secondary roads in the manner provided in Section 4746, Code of 1927, and the following sections, provided the costs of improving the same were to be paid by the county and by the benefited lands within the assessment district as provided for in Section 4750, Code of 1927.

ROADS AND HIGHWAYS—SECONDARY ROADS—TOWNSHIP ROAD EQUIPMENT: Under Chapter 20, Acts of the Forty-third General Assembly, a board of supervisors may pay the cost of the construction and maintenance work due the various townships by reason of credit given for road equipment, etc., taken over out of the secondary road construction and/or maintenance fund.

October 29, 1929. *County Attorney, Iowa City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 59, Chapter 20, Acts of the Forty-third General Assembly, provides that all townships not later than December 31, 1929, shall turn over to the board of supervisors all road machinery, tools, equipment, etc., and that the board of supervisors shall credit each township with the value of such equipment; said credit to be used in the township for additional construction and maintenance work.

The question about which we desire an opinion is, out of what fund is the board of supervisors authorized to pay the cost of the additional construction and maintenance work which a township may receive by reason of the credit given to it for its road equipment, etc.?

We call your attention to Section 59, Chapter 20, Acts of the Forty-third General Assembly. It will be seen from reading this section that, after December 31, 1929, the road equipment, machinery, etc., which the townships owned is to be transferred to the board of supervisors of the county in which said township or townships may be located. In other words, the county becomes the owner of such property and is required

to pay the township for the same by giving them credit for the value of such property, said credit to be paid in construction and maintenance work. The county, therefore, buys the equipment unless an arrangement is made such as is provided for in Section 35, Chapter 20, Acts of the Forty-third General Assembly.

The county, therefore, being authorized to purchase this machinery and equipment from the townships may do so and can properly pay for the same out of such fund or funds as are now expendable for road equipment and machinery purchased on behalf of the county.

Under Chapter 20, Acts of the Forty-third General Assembly, the county would be authorized to pay for any road equipment, machinery, etc., that might be necessary for county use out of the secondary road construction and/or maintenance funds. This being true we are, therefore, of the opinion that the cost of the construction and maintenance work done on township roads in payment of the credit given the township for its road equipment and machinery may be paid for out of the secondary road construction and/or maintenance funds.

SCHOOLS AND SCHOOL DISTRICTS: County superintendent cannot require board to operate a school.

October 31, 1929. *County Attorney, Boone, Iowa:* This will acknowledge receipt of your letter of recent date in regard to the power of the county superintendent to close a school, or to require it to remain open, under the provisions of Section 4231 of the Code.

It is within the discretion of the school board as to what schools will be maintained. This department has ruled that a school board may close a school and provide for the education of the children elsewhere. The provisions requiring the closing of a school are contained in Section 4231 of the Code, which require the school to be closed when the average attendance in the last preceding term was less than five pupils. Under the cited section the county superintendent may consent to maintaining or reopening a school when natural obstacles or other conditions make it clearly inadvisable that such school should be closed.

We do not deem this power on the part of the county superintendent mandatory and hold that it is not within the power of the county superintendent to require the board to operate a school, regardless of the number of pupils, if the board desires to close the school. She may act only to consent to the continuance of the school if the board desires to continue it.

The word "term" in this section has been construed by this department to mean the contract period. If the teacher is employed for a year, the year would be the term. If this school is now open and the average daily attendance for the last preceding term was less than five, and the permission of the county superintendent was not sought and granted, then the contract of the present teacher would be void, and the board may proceed at once to close the school. Otherwise, the board could not close the school at the present time without making a settlement with the teacher.

SECURITIES—"BLUE SKY" LAW—REGISTRATION OF SECURITIES: (Under Section 7 (4) (5) Chapter 10, Acts of the Forty-third General

Assembly.) Mortgaged bonds which are secured by real estate and which are not in excess of 70% of the value of the same may be registered by notification under Section 7 (4) Chapter 10, Acts of the Forty-third General Assembly, notwithstanding the fact that said bonds may also be secured by leasehold interest.

November 6, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

We hand you herewith application for registration of the securities therein described under Section 7 (4) of the Iowa Securities Act, said application consisting of form 7 and supplemental form 7 (4) and offering circular. We desire an opinion as to whether or not the securities sought to be registered are entitled to be registered by notification under Section 7 (4), Chapter 10, Acts of the 43rd General Assembly, or does the fact that the securities are secured by real estate in an amount in excess of 70 per cent of the market value of said property and also by leasehold make it necessary that such securities be qualified under Section 7 (5), or under both Sections 7 (4) and 7 (5).

In the offering circular we call your attention to the fact that there is a statement to the effect that the loan is less than a 37 per cent loan and that this figure is based upon both the real estate and the leaseholds. Should this statement be modified?

We are of the opinion that if the first mortgage sinking fund six per cent gold bonds are not in excess of seventy per cent of the market value of the real estate which secures them, that said securities may be properly registered by notification under Section 7 (4), Chapter 10, Acts of the Forty-third General Assembly. The fact that said securities are also secured by additional security in the form of leasehold interests would not, in our judgment, make it necessary that the security be also qualified under Section 7 (5), Chapter 10, Acts of the Forty-third General Assembly. In the offering circular the statement that the loan is a thirty-seven per cent loan is incorrect if the qualification is made under Section 7 (5), Chapter 10, Acts of the Forty-third General Assembly, and this statement should be corrected so that no misrepresentation will be made.

"BLUE SKY" LAW: The sale of fur-bearing animals on a conditional sales contract in conjunction with a ranching contract which provides for the payment of a fixed compensation for the ranching services is not a security within the meaning of Chapter 10, Acts of the Forty-third General Assembly.

November 6, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

We submit herewith sales agreement No. 1001 and ranching contract agreement No. 1001 of the Williams Fur Farms, Incorporated, of Deer River, Minnesota, and desire an opinion as to whether or not the Williams Fur Farms, Inc., must before transacting business in this state, qualify in accordance with the provisions of Chapter 10, Acts of the 43d General Assembly, or whether or not the sales under the form of contract submitted, of mink, are exempt from the provisions of said chapter.

We are of the opinion that the sales agreement and ranching contract submitted would not be a sale of the security within the meaning of the definition contained in Chapter 10, Acts of the Forty-third General Assembly, and that the sale of mink under said contracts would, therefore, be exempt from the provisions of Chapter 10, Acts of the Forty-third

General Assembly. If, however, these contracts are drawn for the purpose of evading the provisions of Chapter 10, Acts of the Forty-third General Assembly, and the facts are that the real contract between the owner and the purchaser is a participating or profit-sharing agreement, then of course the Williams Fur Farms, Incorporated, would have to qualify under the provisions of Chapter 10, Acts of the Forty-third General Assembly, for then they would be in fact selling a profit-sharing or participating agreement.

INSANE SUPPORT: Section 10246, Code 1927, only authorizes the county to purchase real estate at an execution sale or other sale when it is necessary to protect a lien of the county against said real estate.

November 7, 1929. *County Attorney, Estherville, Iowa:* We acknowledge receipt of your request for an opinion on the following question:

This county has paid for the support of a certain incompetent at the state hospital for the insane and filed a claim for the same in the guardianship matter, which claim has been allowed, and the guardian is now selling real estate belonging to the incompetent. It is to be sold at public auction and the question is, does the county have the right to bid at this sale in order to protect its claim against the estate of the incompetent? In other words, does the county have the right to buy real estate at such a sale to protect its claim for the support of this incompetent?

We call your attention to Section 10246, Code 1927, which reads as follows:

"When it becomes necessary, to secure the state or any county or other municipal corporation thereof from loss, to take real estate on account of a debt by bidding the same in at execution sale or otherwise, the conveyance shall vest in the grantee as complete a title as if it were a natural person."

The claim which the county has against the guardianship matter stands in the same relation as do all other claims filed in said matter. The bidding in of the farm by the county at the guardian sale would not in any manner increase the amount which the county would receive from the guardian on its claim. For example: Were the county to bid $11,000.00 and become the purchasers of the farm, the guardian would have $1,000.00 to distribute among the creditors. The county would get only their proportionate share of this amount. Therefore, so far as the county's claim is concerned, the county would not be protecting the claim by bidding in the farm. The county would only be speculating on the fact that the farm might be worth more than the mortgage plus the amount they bid upon it, and thereby upon a sale of the farm the county would make a profit, thus reducing the loss. We are of the opinion that the statute above cited does not contemplate such a purchase. In our opinion, the statute only authorizes the county to purchase real estate when it is necessary for the county to protect itself from a loss on account of a debt which is a lien upon the real estate, such as a mortgage or a judgment.

COUNTY ENGINEER: Not required to make a survey for a transmission line company making application to construct its poles along the road. He only is required to designate a line.

November 8, 1929. *County Attorney, Boone, Iowa:* We acknowledge receipt of your favor in which you inquire whether under the provisions

of Section 4838, Code, 1927, the county engineer is required to make a survey and furnish the same to the applicant for the erection of a line of poles for transmission line. The section you refer to reads as follows:

"New lines or parts of lines hereafter constructed, shall be located by the county engineer upon written application filed with the county auditor and shall thereafter be removable according to the provisions of this chapter. If there be no county engineer, the board of supervisors shall designate said location."

You will note under the provisions of this statute that the county engineer is only required to locate the line for the poles. There is nothing said in the statute about a survey. You will also note that the statute requires "written application" to be filed by the company, and in this application a statement of the line desired to be used should be made.

We are of the opinion that a designation by the county engineer of a line thirty-two feet from the center of the highway upon which the poles may be erected is a compliance by the engineer with the terms of the statute.

WIDOW'S PENSION — BOARD OF CONTROL — COUNTY ATTORNEY: Where husband is out on parole from an institution, which institution is under the direction of the Board of Control, the wife and mother is not considered a widow under the widow's pension law.

November 12, 1929. *County Attorney, Red Oak, Iowa:* This will acknowledge receipt of your letter in which you ask the following question:

"Is a mother whose husband was committed to the state hospital at Clarinda and an inmate thereof for sometime but now on parole to relatives and not confined in said institution, entitled to receive a widow's pension under the provisions of Section 3643 of the Code of 1927, which reads as follows:

" 'Who considered widow. Any mother whose husband is an inmate of any institution under the care of the board of control, shall, for the purposes of the third preceding section, be considered a widow, but only while such husband is so confined.'

"The husband has not been discharged but is on parole. Technically speaking, the husband is not an inmate of the institution at this time, and of course, is not now confined in the institution."

In reply we would say that it is the opinion of this department that where a husband is not confined in an institution under the direction of the Board of Control, but is out on parole, that the wife would not be entitled to a widow's pension, as it is presumed that where the husband is out on parole, he is capable of providing the family's necessities.

CORPORATIONS: A foreign corporation who is appointed trustee under a will of a resident decedent must qualify and give bond in the same manner as a resident trustee. The property which is transferred to the foreign trustee and held by it in a foreign state is not subject to taxation in this state. A foreign corporation which qualifies as a trustee, in a particular case, would not be doing business in this state within the meaning of the statutes pertaining to such matters. (Section 11876, Code of Iowa 1927.)

November 19, 1929. *County Attorney, Red Oak, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. By the terms of the last will and testament of a certain decedent, who died a resident of this county, a considerable portion of his estate,

which consisted mostly of securities and negotiable paper, was transferred to a foreign corporation as trustee for the benefit of certain individuals. The question has arisen as to whether or not the executors of the estate could, under the law, accept the foreign trustee's receipt and turn over the money or property transferred to it as trustee, or whether it would be necessary for the foreign trustee to post a bond as such trustee and file the same with the clerk of the court of this county and then proceed in the matter as would a resident trustee?

2. After the securities and negotiable instruments have been transferred to the foreign trustee which is a resident corporation of the State of Illinois are said securities and negotiable instruments in the hands of the trustee subject to general tax under the laws of this state?

3. Would the execution and posting of a bond and the filing of a receipt by said foreign corporation trustee with the clerk of the court of Montgomery County be construed as doing business in the State of Iowa within the meaning of the laws pertaining to such business; that is, would they have to qualify and secure a permit to do business in the State of Iowa?

1.

We are of the opinion that the foreign corporation which is appointed trustee under and in accordance with the terms of the will of a deceased resident in the State of Iowa must, in the absence of any provision to the contrary in the will, qualify and give bond in the same manner and under the same conditions as would a resident trustee.

Reference: Section 11876, Code of Iowa, 1927.

2.

We find no statute in this state which would require a foreign trustee to list in this state for taxation any property in its possession in said foreign state, the situs of the property being the underlying principle governing the right to tax property for general purposes. Said property, however, up to the time it has been transferred to said foreign trustee and while in the possession of the executors or administrators in this state would be subject to taxation here. Of course, any resident cestui que trustant would be subject to taxation in this state so far as or where interest might be concerned.

3.

We are of the opinion that the filing of a receipt, qualifying and posting of a bond with the clerk of the district court of a county of this state by a foreign trustee would not be doing business in this state within the meaning of the statutes pertaining to such matters.

FISH AND GAME—TRAPPER'S LICENSE: A tenant or owner of farm land, their wives or children are not required to have a hunting, fishing or trapping license to hunt on lands owned or occupied by them. A dealer may purchase hides from them and meet the requirements of Section 4, 1766-a3, Chapter 58, Acts of the Forty-third General Assembly, by giving the name and post-office address of the person from whom such skins or hides were purchased.

November 21, 1929. *Mr. R. M. Lampman, Grand Junction, Iowa:* We acknowledge receipt of your letters requesting an opinion of this department on the following question:

The fish and game laws do not require a trapping license from a tenant or owner of farm land. Section 4-1766-a3, Chapter 58, Acts of the Forty-third General Assembly provides that the dealer in or buyer of skins or hides

must furnish the State Fish and Game Department an inventory, under oath, stating therein the *license number* and name of the seller, etc. How can the dealer comply with this requirement when, under the statutes, the tenant or landowner is not required to have a license?

Would a license bought before July 4, 1929, by a tenant or owner fulfill the requirements in this respect?

Section 6-1720, Chapter 57, Acts of the Forty-third General Assembly specifically provides that no owners or tenants of farm lands, their wives or children shall be required to have a hunting, trapping or fishing licenses to hunt, trap or fish upon the lands owned or occupied by them. This section is a specific exemption and owners or tenants of farm lands, their wives or children do not, therefore, have to have licenses to hunt, trap or fish on lands owned or occupied by them. This being the case it would be impossible for the dealer to comply with the provisions of Section 4-1766-a3, Chapter 58, Acts of the Forty-third General Assembly, with respect to the giving of the license number when any hides or skins had been purchased by him from a tenant or landowner when such hides or skins were trapped on the land owned or occupied by them.

We are, however, of the opinion that the requirements of Section 4-1766-a3, Chapter 58, Acts of the Forty-third General Assembly, may be properly complied with by the dealers in or buyers of skins or hides which have been purchased from owners or tenants of farm lands, their wives or children, by giving the name and post-office address of the person from whom such skins or hides were purchased. The dealer should, in such cases, require a written statement from the seller to the effect that he or she is the owner or tenant of farm lands or the wife or child of such owner or tenant, and that such skins or hides were trapped by him or her on the lands owned or occupied by him or her.

With respect to your second question, this department rendered an opinion to W. E. Albert, State Game Warden, under date of May 21, 1929, which held that the holder of a license issued before July 4, 1929, had the right to hunt, fish and trap under said license until the 31st day of March, 1930, and that they would not be required to secure a new license to trap as provided for in the Acts of the Forty-third General Assembly. For your information we are enclosing herewith a copy of such opinion.

Of course, the number on the license issued before July 4, 1929, would be a fulfillment of the requirement of Section 4-1766-a3, Chapter 58, Acts of the Forty-third General Assembly.

FISH AND GAME—HUNTING LICENSE: Section 6, 1767-c2, Chapter 57, Acts of the Forty-third General Assembly prohibits the use of a shotgun among other things in the killing and taking of fur-bearing animals. There is no prohibition against the use of dogs in taking fur-bearing animals.

November 21, 1929. *County Attorney, Chariton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

Does a hunting license permit the holder thereof to take fur-bearing animals with guns or dogs?

If so, does the hunter have the right to dispose of the furs so taken or does he have to procure a trapping license before he can sell the furs taken with guns or dogs?

For answer to your first question we are enclosing herewith copies of opinions rendered by this department to W. E. Albert, under date of May 21, 1929, and Paul Smith, county attorney, Independence, under date of October 29, 1929. It will be noted that these opinions do not answer directly your question but they do answer a question which may come up, that is whether a hunting, trapping and fishing license issued prior to July 4, 1929, authorizes a person to trap thereunder.

We refer you to Section 6, Chapter 57, Acts of the Forty-third General Assembly, Sub-paragraph 1767-c2. This section prohibits any person from shooting with a shot gun or killing with a spear any beaver, mink, otter or muskrat. This would mean that a person would not be authorized, under a license, to kill the animals mentioned with a shot gun. We do not find any statute which would prohibit the killing of fur-bearing animals by a dog.

ROADS AND HIGHWAYS: The portion of the secondary road maintenance fund which is to be devoted to the maintenance of the local county roads must be determined by the board of supervisors on the basis of the needs of said roads, and must not be on an arbitrary and unreasonable basis. (Section 35, Chapter 20, Acts of the Forty-third General Assembly.)

November 21, 1929. *County Attorney, Cherokee, Iowa:* We acknowledge receipt of your request for an opinion from this department on the following question:

Section 35, Chapter 20, Acts of the 43rd General Assembly, authorizes the board of supervisors to provide that the work of maintaining the township roads in a township may be performed by the township trustees, in which event the township trustees are to retain the road equipment and the board of supervisors is to set aside from the secondary road maintenance fund the township's proportionate share of the maintenance fund for said county which is to be devoted to local county roads. It is also provided in said section that in determining this amount the board shall use as a basis the relative mileage of local county roads in the township as compared to the entire mileage of local county roads in the county.

The question we desire an opinion about is, how is the board to determine what part of the secondary road maintenance fund is to be devoted to the maintenance of local county roads?

We call your attention to that part of Section 35, Chapter 20, Acts of the Forty-third General Assembly which reads as follows:

"* * * In determining the amount thus set aside for use in any township the board shall use as a basis the relative mileage of local county roads in the township as compared to the entire mileage of local county roads in the county."

It would seem from reading the above that it was the intention of the legislature that the board of supervisors in determining a township's proportionate share of the maintenance fund take into consideration the total number of miles of township roads to be maintained throughout the county, and that they should then estimate the cost of maintaining all of the local county roads of the county and then set aside from the secondary road maintenance fund the amount necessary to maintain the local county roads of the county, and that they should then, in the case of a township which is to do its own maintenance work, set aside in the county treasury the township's proportionate share of said fund—said

share to be based upon the number of miles of local county roads within the township as compared to the number of miles of local county roads in the county.

In other words, in arriving at that part of the secondary road maintenance fund which shall be devoted to the maintenance of the township roads of the county the board cannot arbitrarily fix the amount, but must exercise a reasonable discretion and give due consideration to the necessities of the various townships. This is true, for in Section 15, Chapter 20, Acts of the Forty-third General Assembly, the secondary road maintenance fund is pledged to the payment of the cost of maintaining the secondary roads *according to their needs.*

CITIES AND TOWNS—DONATIONS.

November 22, 1929. *Auditor of State:* You have requested the opinion of this department upon the following proposition:

"Can a city council legally make donations to the G. A. R. or any patriotic organization?"

You are advised that we can find no provision of law authorizing or permitting contributions of this character, and that in the absence of any authority therefor, it is the opinion of this department that such donation cannot be made.

PUBLIC FUNDS: The proceeds of sale of bonds cannot be invested under the provisions of Section 12775-b1, Code.

November 22, 1929. *Treasurer of State:* This will acknowledge receipt of your letter requesting the opinion of the department upon the following proposition:

"Does Section 12775-b1 of the 1927 Code, authorize a municipality to invest the proceeds of a bond issue in securities, specified in said section, without diverting to the state sinking fund for public deposits, at least 2½% of the interest earned on such securities?"

We are of the opinion that the proceeds of a bond issue do not come within the meaning of Section 12775-b1 of the Code of Iowa, 1927. This is not a sinking fund set aside for a definite purpose nor would the interest go to the same fund. The statute, Section 4319 requires the treasurer to deposit all funds in his hands in a bank and provides that the interest therein shall go to the general fund. Therefore, the proceeds of a bond issue would not qualify as such a sinking fund as may be invested under this section.

ROADS AND HIGHWAYS: It is discretionary with the board of supervisors as to whether or not the township trustees shall or shall not maintain the local county roads of the township, and when this discretion is exercised it is mandatory upon the township trustees to maintain such roads. Where the board has elected to have the local county roads in a township maintained by the township trustees the township's share of the secondary road maintenance fund is set aside in the county treasury to the credit of the township, and claims must be filed with the county auditor and approved by the board of supervisors. (Section 35, Chapter 20, Acts of the Forty-third General Assembly.)

November 23, 1929. *County Attorney, Cherokee, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Under Section 35, Chapter 20, Acts of the Forty-third General Assembly, the board of supervisors is authorized to provide that the work of maintaining the local county roads of a township shall be performed by the township trustees subject to the supervision of the county highway engineer. Does this section give the boards of supervisors power and authority to require and compel a board of township trustees to maintain said roads in accordance with the provisions of said section?

2. Section 35, Chapter 20, Acts of the Forty-third General Assembly, also provides that in the event the township trustees are to maintain the roads of the township that the board shall set aside in the county treasury a sum from the secondary road maintenance fund which shall be the township's proportionate share of the maintenance funds for said county devoted to local county roads. Is this sum to be turned over to the township clerk for expenditure for maintenance purposes, or must it be expended upon the order of the board of supervisors?

1.

Section 35, Chapter 20, Acts of the Forty-third General Assembly, provides in part as follows:

"* * * The board of supervisors of any county may provide that the work of maintaining the local county roads of a township shall be performed by the township trustees, subject to the supervision of the county highway engineer. In such case the township trustees shall retain their road equipment, * * *."

We are of the opinion that, under that part of Section 35, above set out, the board of supervisors may within its discretion require a board of township trustees to carry on and perform the work of maintaining the local county roads of a township subject to the supervision of the county highway engineer. In other words, the board of township trustees has no discretion in the matter.

2.

Section 35, Chapter 20, Acts of the Forty-third General Assembly, provides in part as follows:

"* * * and the board of supervisors shall *set aside in the county treasury* a sum from the secondary road maintenance fund, which shall be said township's proportionate share of the maintenance funds for said county devoted to local county roads. * * *"

We are of the opinion that, under that part of Section 35 above set out, where the board of supervisors has provided that a board of township trustees shall carry on and do the work of maintaining the local county roads of a township that the board must set aside in the county treasury the township's share of the maintenance funds, and that all claims for maintenance work incurred by the board of township trustees for the maintenance of the local county roads of the township must be presented to the board of supervisors and allowed by it, and after allowances are then paid by auditor's warrant and out of the funds set aside in the county treasury for that purpose.

GAMBLING—LOTTERIES—PUNCH BOARDS. (Sec. 13198, Code, 1927.)

November 24, 1929. *County Attorney, Dubuque, Iowa:* This will acknowledge receipt of your request of November 2, 1929, which is as follows:

"Section 13198 of the Code of 1927 as amended by Chapter 262 of the Laws of the 43rd General Assembly, provides for the punishment of any

person who keeps or permits in his place a punch board which is operated for money or other thing of value.

"I would kindly ask to be advised by your office whether or not a punch board so regulated that each time a number is punched on the board, the person punching it receives a United States postal card and may also receive a box of candy on the same number or punch, is to be considered such a punch board as comes within the violation of this section."

In reply, we would say that under the holdings of the Supreme Court of this state, and the facts, as related by you, the punch board in question would come within the prohibitions of Section 13198 of the Code of 1927.

TAXATION—REAL ESTATE—TAX LIENS—CANCELLATION OF TAX: Unless carried forward, tax ceases to be a lien, and a personal tax may be cancelled at any time after same becomes due. (Sections 7193, 6950, 6951, Code, 1927.)

November 25, 1929. *County Attorney, Charles City, Iowa:* This will acknowledge receipt of your letter in which you ask the following questions:

"Section 7193 of the 1927 Code of Iowa provides that unless *delinquent* real estate tax is each year entered upon the tax list opposite each parcel of real estate on which the tax remains unpaid for any previous year it shall cease to be a lien. Is it your opinion that a suspended tax ceases to be a lien unless so carried forward?

"Section 6950 provides for the suspension of taxes and Section 6951 provides for cancellation and remission of taxes even though taxes have previously been suspended. Is it the opinion of your department that a personal property tax, which has never been suspended, may be remitted or cancelled two or three years after the same becomes due where said tax has never been suspended. In other words could a tax, payable in 1927 be cancelled in the year 1929 or could said tax for 1927 have been cancelled only in the year in which it was due? If I read Section 6951 correctly taxes may be cancelled any time after they become due."

I.

It is our opinion that a suspended tax, under the present statutes, ceases to be a lien unless carried forward on the tax books.

II.

We believe that a personal property tax may be remitted or cancelled at any time after the same becomes due, provided that the facts in the case fall within the provisions of the statute, i. e., inability of the owner to pay or destruction of the property.

SOLDIERS — VETERANS OF FOREIGN WARS — MEMORIAL BUILDINGS: Memorial buildings, under the provisions of Chapter 33, Code, 1927, are subject to use by any and all ex-service organizations. (Chap. 33, Code, 1927.)

November 25, 1929. *County Attorney, Cedar Rapids, Iowa:* This will acknowledge receipt of your letter relative to the use of a memorial building in Cedar Rapids, Iowa, your inquiry being as follows:

"We have received an inquiry from the Cedar Rapids Post No. 788 of the Veterans of Foreign Wars asking for an opinion as to their rights in the memorial building which has been built by the city of Cedar Rapids, Iowa.

"For your information, Cedar Rapids floated a bond issue and built a memorial building under the provisions of Chapter 33 of the Code of 1927,

which building is used for all of the city offices and as a coliseum and memorial building.

"We assume that the rights of these service men would be determined by a construction of said chapter and that quarters should be furnished to them as far as practicable under all the circumstances, and that such matters are determined solely by the commissioners who are selected in the manner provided for by statute."

In reply we would say that under the provisions of Chapter 33, Code of 1927, it was evidently the intention of the legislature that the memorial building should be used and be subject to use by all ex-service men and women, and it was not contemplated that this building should be subject to operation or use by any particular organization, but that all ex-service organizations should have the use of the building when practicable and under such reasonable rules and regulations as the commissioners might prescribe.

FISH AND GAME.

November 25, 1929. *County Attorney, Rockwell City, Iowa:* This will acknowledge your telephonic request for an opinion relative to the .410 Stevens shot gun or pistol, which is being used by hunters in your community.

We are of the opinion that these firearms would be classified under the fish and game laws as shot guns inasmuch as they are weapons using a shot shell.

BOARD OF EDUCATION: Where patient was transferred from an institution under the jurisdiction of the Board of Control to a state hospital, hospital authorities have authority to restrain patient. (Sec. 4030, Code, 1927, Sec. 3973, Code, 1927.)

November 25, 1929. *Iowa State Board of Education:* This will acknowledge receipt of your request of November 14, 1929, which is as follows:

" * * *

"I shall appreciate your official opinion regarding the following question: When the Board of Control of State Insitutions sends a patient to the Perkins Hospital under the provisions of Section 4030 of the Code, 1927, the said patient not having been committed by the court, is the State Psychopathic Hospital authorized to receive and hold such a patient under the provision of Section 3973 of the Code, 1927, contrary to the patient's wishes?"

Where an inmate of an institution, under the State Board of Control and under the authority granted by Section 4030, Code of 1927, is transferred to the hospital at the State University, the patient would still be under the restraint of the Board of Control, and this would apply even though the patient was later transferred from the State Hospital to the State Psychopathic Hospital. Therefore, the authorities at the psychopathic hospital would be authorized to receive and hold such a patient even though contrary to the patient's personal wishes; it being understood, of course, that the patient is at the psychopathic hospital for observation and treatment, and this hospitalization only for the necessary length of time.

TOWNSHIP TRUSTEES — CEMETERIES — CEMETERY TAX — CONTRACTS WITH TRUSTEES: (1) Township trustees may levy tax on

incorporated town within the township. (2) Township trustees should not contract with township board. (Secs. 13317, 5566, 5564, 5565, Code, 1927.)

November 25, 1929. *County Attorney, Britt, Iowa:* This will acknowledge receipt of your request of November 13, 1929, which is as follows:

"Mr. Harker, one of the trustees of Britt, was in to see me today relative to the necessity for public letting by trustees, of contracts, the one in question being a contract for caretaking of a cemetery. The contract is by the year in the sum of $900.00 and was let privately, over his protests by the other two members of the board of trustees, i. e., township trustees.

"Have you ruled upon the power of township trustees to levy a tax upon an incorporated town, within the township, in the light of the recent law providing that the inhabitants of the town may not vote for township trustees?

"In interpreting Section 13317 could you hold that a township clerk would be ineligible to contract with his trustees to take care of the township cemetery?

"Under Section 5566 can the joinder there authorized be compelled by one of the bodies, i. e., the town council in this case, or must both bodies by majority join?"

In reply to your first question we are of the opinion that it was not necessary to contract for the caretaking of a cemetery, but that the board of trustees of the cemetery could, if they so desired, hire some individual to do this work, so that this question does not fall within the provisions of public contracts.

As to your second question, we are of the opinion that it is answered by Section 5564, which provides that township trustees may levy a tax upon an incorporated town within the township, provided that the cemetery operated by the township trustees is used by the inhabitants of the incorporated town.

Replying to your last question, we do not believe that either the town council or the township trustees could force a joinder under the provisions of Section 5565, but that this action would have to be taken with the express approval of both parties.

I refer you to the opinion of the attorney general for the year 1928, page 296, in which it was held that a clerk of the township should not contract for either labor or material, of which he was an official. See also the cases of *James vs. Hamburg*, 174 Iowa, 301; and *Peet vs. Leinbaugh*, 180 Iowa, 940.

TRADEMARKS: The numeral 5 may be registered as a trademark within this state.

November 25, 1929. *Secretary of State:* This will acknowledge receipt of your letter of November 12, 1929, in which you submit the following question:

"This department is in receipt of an application for trademark registration in behalf of 'Chanel, Incorporated' of New York.

"Section 9867 of Chapter 430 of the Code of Iowa reads as follows: 'Said label, trademark or form of advertisement shall be of a distinctive character * * * .'

"The essential features of the trademark to be registered by the above named company consists only of the word and figure 'No. 5' and is used in connection with perfumes and toilet waters.

"I am enclosing herewith correspondence had with their attorneys,

Briesen & Schrenk, and would ask your ruling as to whether or not this trademark may be registered under the Iowa law."

We are of the opinion that the word "No. 5" is such that your office would be entirely within its rights in permitting the same to be trademarked, and as a basis therefor, we refer you to the several lines of Section 9867 which you have quoted, with the additional words, "and not of the identical form or in any near resemblance to any label, trademark, etc." We believe that the word "distinctive" as used in this sentence means different, so that the intention of the legislature was that the words "distinctive character and not of identical form" does not act as a prohibition other than a prohibition against two trademarks of similar form and character.

TAXATION—POLL TAX—TOWNSHIPS—TOWNSHIP CLERK: No provision for compensating township clerk for collecting poll tax. (Secs. 4788 and 4814, Code.)

November 25, 1929. *County Attorney, Storm Lake, Iowa:* This will acknowledge receipt of your request of October 14, 1929, in which you submit the following question:

"The clerk of Maple Valley township, Buena Vista County, was in the office a few days ago, and made some inquiries relative to poll tax.

"He has been assigned the job of collecting poll tax in his township, and has spent considerable of his own time in this work. He wants to know if he is entitled to compensation for his work. I do not find anything in the statute on this matter, but I told him that I thought that the trustees could arrange to pay him on a reasonable basis for this service.

"Kindly advise me of your ideas on this matter and if the trustees have this right."

There is no provision for the township clerk receiving compensation for the collection of poll tax, as the statute provides, under the provisions of Section 4788, for the collection of this tax by the road superintendent; and in the event the same is not collected, the procedure is as outlined in Section 4814 and subsequent sections.

SOLDIERS—SOLDIERS' RELIEF: Relief is not pension, but only temporary relief. (Sec. 5385, Code.)

November 25, 1929. *County Attorney, Sac City, Iowa:* This department is in receipt of a letter from Dr. P. E. Treman, in which Dr. Treman asks the meaning of the word "relief," as used in Section 5385, Code of 1927.

In view of the fact that this department is prohibited from giving written opinions to other than county attorneys and state officials, we are writing this opinion to you in the belief that the interpretation of this word is of considerable importance throughout the state in the work of relieving soldiers, sailors and marines.

It is the opinion of this department that the word "relief," as found in Section 5385 of the Code of 1927, was primarily intended to mean temporary relief from distress of soldiers, sailors and marines, nurses and their wives, widows and minor children, and that the same was not intended to act as a pension fund, but only to assist from financial distress that might be temporary. By using the word "temporary" we do not

mean to confine it to one act, but to use it in the reasonable sense of the word, and which would cover any reasonable length of time, our thought being, however, that the word "relief" does not go so far as to mean a permanent pension.

CITIES AND TOWNS—MUNICIPAL COURT—COUNTIES—COURT REPORTERS: Opinion covers fees and method of handling same as to distribution between city and county. (Secs. 10671, 10670-b1, 10685, Code, 1927.)

November 25, 1929. *Auditor of State:* This will acknowledge receipt of your request of October 3, 1929, which is as follows:

"1—Are one-half the legal fees in civil cases which are collected by the clerk of the municipal court payable into the county treasury?

County officials contend that because the county pays one-half the salary of the judge, clerk and bailiff, that one-half of the civil fees such as filing, docketing, judgment, satisfaction, dismissal, taxing costs, etc., should be paid to the county.

2—Are witness fees in state cases tried in the municipal court, payable from the county treasury?

3—Are witness fees and jurors' fees in civil cases payable from current funds of the municipal court? If not from what source or fund are they payable?

4—The statute makes provision for the payment of court reporter fees. In certain cases one-half such fees shall be paid by the city and one-half by the county. What if any such fees in certain cases, are paid wholly by the city or county?

5—In the event of a transcripted case from the municipal court to the district court—are the municipal court fees so transcripted payable back into the court of original filing and trial upon payment of all costs to the clerk of the district court?

6—Is the bailiff accountable to the treasurer for all fees for service of processes placed in his hands?

In some instances the attorney will pay service fees at the time the process is placed in the bailiff's hands. In other instances the service fee is not paid at time of service, however process is served and costs taxed at the time of docketing. Unless the costs of the case are paid, the city never receives the service fees for bailiff's services."

I.

In reply to your first interrogation we would say that this question is taken care of by Section 10671, which provides that all fees, costs and expenses are to be turned over to the city treasurer, and there is no provision that one-half should be paid to the county treasurer.

II.

In reply to your second question, this is taken care of by Section 10670-b1, which provides that the witness fees and mileage in class "C" cases shall be paid from the county treasury, class "C" cases being defined under the provisions of Section 10666.

III.

Witness fees in civil cases are made a part of the costs, and are payable by the party against whom the costs are assessed. However, jurors' fees are payable from the current funds of the municipal court, as they are paid by the day and not by the case.

IV.

The question relative to court reporter fees falls within the provisions

of Section 10685, and it is our opinion that a court reporter in the municipal court should have his fees paid one-half by the city and one-half by the county, taking into consideration the provisions that in class "A" cases reporter fees should be taxed as part of the costs. This, however, has no bearing on the source from which the reporter is to receive his fees. In class "B" cases there is no provision for a court reporter unless demanded, and his fees guaranteed by litigant desiring his services, so that there is no case in which the reporter fees are paid in whole, either by the city or county.

V.

This question, under the provisions of the statute, must be answered in the affirmative.

VI.

In reply to this question the bailiff is accountable to the city treasurer for all fees coming into his hands, except for mileage and his actual expenses incurred in the serving of a process.

TAXATION—AGRICULTURAL LANDS—CITIES AND TOWNS: Agricultural lands comprising tracts of ten acres or more, located within cities which control their own bridge levies are subject to a maximum levy of five (5) mills for city and town road purposes and are, therefore, subject to the city or town bridge levy and road levy not exceeding five (5) mills.

November 25, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Are agricultural lands in tracts of more than ten acres located within cities and towns controlling their own bridge levies exempt from county bridge and road levies, or are they liable for road and bridge levies the same as agricultural lands located within a city or town?

Section 6210, Code of 1927, provides in part as follows:

" * * * No land included within the limits of any city or town which shall not have been laid off into lots of ten acres or less, or which shall not subsequently be divided into parcels of ten acres or less * * * and which shall also in good faith be occupied and used for agricultural or horticultural purposes, shall be taxable for any city or town purpose, except that said lands and all personal property necessary to the use and cultivation of said agricultural or horticultural lands shall be liable to taxation for city and town *road purposes*, at not exceeding *five mills*.

Section 6209, Code of 1927, authorizes cities of certain classes to make bridge levies.

Section 5875, Code of 1927, authorizes cities of certain classes under certain conditions to control their own bridge levies.

Under Sub-paragraph 4, Section 4635, Code of 1927, cities which control their own bridge levies are exempted from the county bridge levy.

We are, therefore, of the opinion that agricultural lands comprising tracts of ten acres or more, located within cities or towns which control their own bridge levies, are subject to a maximum levy of five mills for city and town road purposes.

We are also of the opinion that a city bridge levy is a levy for a city or town road purpose, and that agricultural lands, comprising tracts of ten acres or more located in cities or towns which control their own

bridge levies are subject to said city bridge levy within the limitation set out in the preceding paragraph.

In addition to the levy for city and town road purposes, which include city bridge levies, such agricultural lands are also subject to all of the county levies, unless, of course, they are exempted therefrom.

In cities and towns which do not control their own bridge levies, agricultural lands comprising tracts of ten acres or more are subject to all of the county levies, unless of course, there is a specific exemption.

It must be borne in mind also that agricultural lands comprising tracts of ten acres or more, located within cities and towns, are subject to assessment for special benefits, such as assessment for sewer, paving, etc.

PUBLIC OFFICERS: A judge of a superior court may also act as an inheritance tax appraiser, there being no incompatibility in the two offices.

November 26, 1929. *Hon. Thomas B. Powell, Cedar Rapids, Iowa:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

May a superior court judge also act as an inheritance tax appraiser?

We do not find any statute which would prohibit a superior court judge from being an inheritance tax appraiser. There therefore being no statute, the question resolves itself into the question of whether or not the two offices are incompatible. We are of the opinion that they are not, and that a superior court judge may also act as an inheritance tax appraiser.

ROADS AND HIGHWAYS: Under Chapter 20, Acts of the Forty-third General Assembly, the board of supervisors may purchase road equipment and machinery and pay for the same out of either the maintenance or construction fund, depending upon whether or not said machinery is for construction or maintenance purposes.

November 27, 1929. *County Attorney, Maquoketa, Iowa:* We acknowledge receipt of your letter requesting an opinion on the following questions:

1. After January 1, 1930, this county will be in need of additional road machinery to properly carry forth the program of secondary road construction and maintenance as set forth in the new secondary road law, Chapter 20, Acts of the Forty-third General Assembly. Should such expenditure be made from the construction or maintenance fund, and can the machinery purchased be used for construction and maintenance purposes on the county trunk roads and local county roads?
2. Can the board of supervisors purchase road machinery at a cost in excess of $1,500.00, without first advertising the same and letting the contract at a public letting?

1.

We are of the opinion that under Chapter 20, Acts of the Forty-third General Assembly, the board of supervisors of a county are authorized to purchase road equipment and machinery and to pay for the same out of the secondary road construction or maintenance funds, as created by Chapter 20, Acts of the Forty-third General Assembly.

2.

We do not find any statute which would require the board of super-

visors before purchasing road machinery to cost in excess of $1,500.00, to advertise and let the contract at a public letting. Section 43, Acts of the Forty-third General Assembly, does not apply, in our opinion, to such a purchase.

FISH AND GAME: There is no authority in the statutes for making a refund to anyone for any license fees paid, whether the fees be paid for a trapping, hunting or fishing license.

November 27, 1929. *Fish and Game Department:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is there any provision in the laws of this state whereby a person who has purchased two hunting and trapping licenses may secure a refund on one of the licenses so issued?

For answer to your question we beg to advise that we do not find any statute which would authorize such a refund.

ROADS AND HIGHWAYS: The county's share of the cost of improvement of the roads in a township road assessment district is payable out of the township's share of the thirty-five per cent (35%) of the secondary road construction fund. (Sec. 4746, Code.)

November 27, 1929. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where the board of supervisors of a county establish a township road assessment district, in accordance with the provisions of Section 4746, Code of 1927, and the following sections, and provide that the cost of such improvement shall be paid 75% by the county and 25% by the benefited property, what county fund is available for the payment of the county's share of the cost of the improvement?

We are of the opinion that the county's share of the cost of the improvement of the secondary roads in an assessment district, which has been established in accordance with Section 4746, Code of 1927, is payable out of the township's share of the thirty-five per cent (35%) of the secondary road construction fund which is pledged to the improvement of and must be expended on the local county roads.

CORPORATIONS—INSURANCE—RENEWAL: All corporations organized under the laws of this state must renew their corporate existence in the manner provided for in Section 8365, Code of 1927, and the sections following; the method prescribed by statute being exclusive.

November 27, 1929. *Commissioner of Insurance:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A state mutual association organized and incorporated under the provisions of Chapter 384, with a corporate period of twenty years, and authorized to transact insurance business in the manner prescribed by Chapter 406, Code of 1927, has permitted its charter to expire without availing itself of the privilege of renewing its corporate period.

The records in the Secretary of State's office show that the corporate period of this corporation expired on or about the 17th day of January, 1929. Nothing as yet has been done to consummate a renewal.

Is there any way in which this corporation may now renew its corporate period?

Section 8365, Code of 1927, and the sections following, prescribe the method which a corporation must follow if it desires to renew its corporate period. This department has held in a former opinion that the method prescribed in these sections is exclusive. Under these sections a renewal must be made, either within ninety days before or ninety days after the expiration of the corporate period.

It would appear under the facts stated that the state mutual referred to cannot comply with the conditions of the statute. We are, therefore, of the opinion that there is no way, under the laws of the State of Iowa, for this state mutual association to renew its corporate period. We suggest however, that a corporation which is so situated might have another state mutual association organized in accordance with the provisions of Chapters 384 and 406, Code of 1927, and upon complying with the conditions in said chapters prescribed might properly re-insure the business of the state mutual whose corporate period has expired.

ACCOUNTANCY: Foreign C. P. A.'s who desire to take temporary engagements in this state may file a five thousand dollar ($5,000.00) bond, there being no statute which would prohibit the same.

November 27, 1929. *Iowa Board of Accountancy, Cedar Rapids, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Applicants of holders of C. P. A. certificates in other states who desire to handle temporary engagements in Iowa under Subsection (a) of Section 22, Acts of the Forty-third General Assembly, have written this office regarding the right to file a $5,000.00 bond as requested by Subsection (a) of Section 14, Chapter 59, Acts of the Forty-third General Assembly.

We do not find any statute which would prohibit the filing of such a bond, and are, therefore, of the opinion that the holders of C. P. A. certificates in other states who desire to handle temporary engagements in Iowa under subsection (a) of Section 22, Acts of the Forty-third General Assembly, may at the time of complying with Section 22, Chapter 59, Acts of the Forty-third General Assembly also file at $5,000.00 bond running to any firm, corporation or person by whom they may be employed in this state.

FISH AND GAME—OPEN SEASON: The open season fixed by the Acts of the Forty-third General Assembly is the season which would govern the rights of all licensees, whether the license was issued before or after July 4, 1929.

November 27, 1929. *County Attorney, Independence, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Does the open season as fixed by the Acts of the Forty-third General Assembly govern with respect to the rights of a holder of a license issued prior to July 4, 1929, or is the holder of such license governed by the open season as fixed by the law as contained in the Code of Iowa, 1927?

We are of the opinion that the open season, as fixed by the Acts of the Forty-third General Assembly, is the season which would govern the rights of all licenses, whether they were issued before or after July 4, 1929.

TAXATION—BANKS—CAPITAL STOCK: Banks are not permitted to deduct any amount of depreciation from their real estate and personal property in arriving at the assessable value of their capital stock, for under Section 7002, Code of 1927, they are required to deduct the amount of their capital actually invested in real estate.

November 27, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following request:

"In arriving at the assessable value of the capital stock of a bank, is it permissible for a bank to deduct an amount as depreciation from its real estate and personal property?"

We are of the opinion that it is not permissible for a bank to deduct any amount as depreciation from its real estate and personal property in arriving at the assessable value of its capital stock.

Under Section 7002, Code of 1927, banks are required to deduct the amount of their capital *actually invested* in real estate owned by them, and in the shares of stock of corporations owning only the real estate on or in which the bank or trust company is located. Said section does not authorize the deduction of the actual value of the real estate but authorizes only the deduction of the amount of capital invested in the real estate.

FISH AND GAME—FUR-BEARING ANIMALS—FIREARMS: Section 26, 1767-c2, Chapter 57, Acts of the Forty-third General Assembly, prohibits the killing of fur-bearing animals with a shot-gun. This would not prevent the use of any other firearm.

November 29, 1929. *State Game Warden:* We acknowledge receipt of your request for an opinion on the following question:

Section 26, Sub-paragraph 1767-c2, Chapter 57, Acts of the Forty-third General Assembly, provides as follows: "No person shall shoot with shot gun or spear any beaver, mink, otter or muskrat, or have in his possession any of said animals or the carcasses, skins or parts thereof that have been killed with shot gun or speared."

The question has arisen as to whether or not a person may shoot the animals named in the above section with any other firearm than a shot gun.

We are of the opinion that "shot gun" as used in the above section does not include any firearm other than a shot gun, and we find no statute which would prohibit the use of any other firearm than a shot gun in killing the animals named in said section.

ROADS AND HIGHWAYS: Under Section 7470, Code of 1927, the county is required to pay one-fourth (¼) of the benefits received by the highway from a drainage district and the township is required to pay three-fourths (¾). Where the county has paid the whole amount of the tax assessed against the county and the township, out of township funds there is an error and the township fund should be credited with the over-payment, and the county funds debited.

November 29, 1929. *County Attorney, Emmetsburg, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Several of the townships in this county have recently filed claims with the county auditor covering a period of ten to fifteen years for one-fourth (¼) of the cost apportioned to the county for the benefits received by a highway which runs through a drainage district. The question we

desire an opinion on is, does the statute of limitations run against such a claim?

Section 7470, Code of 1927, provides that the county shall pay one-fourth (¼) of the benefits and the township trustees three-fourths (¾). The commissioner in making the appraisement is to make a report showing the county's share and the township's share. The statute then requires that the assessment against the highway for the benefits received from the drainage district shall be paid, one-fourth (¼) out of the county drainage fund or county road fund and three-fourths (¾) out of the township funds.

It would, therefore, follow that when the assessment was paid it should have been paid in that manner, and if the county in paying the assessment has paid the total assessment out of township funds then there has been an error and the township funds should be credited with the county's share.

The statute of limitations does not enter into the transaction at all; it is simply a case of where there has been a misappropriation of township funds, and the township should now be credited with the amount which should have been properly paid out of the county road or county drainage fund.

ELECTIONS: In cities having permanent registration, the commissioner of registration appoints two of the clerks of election in each voting precinct, instead of the board of supervisors.

December 2, 1929. *Secretary of State:* You have requested the opinion of this department upon the following proposition:

"Section 733, Code of 1927, provides 'the membership of election boards shall be made up by the board of supervisors'.

Section 1, Chapter 37, Forty-third General Assembly, provides 'the commissioner of registration shall appoint the two clerks of election'.

I would like to very much to receive an interpretation of just what the above quoted sections mean."

Your question involves what seems to be a conflict in the law as to who shall appoint two of the clerks of election.

Section 1, Chapter 37, of the Acts of the Forty-third General Assembly, is an amendment to, and is part of the permanent registration law known as Chapter 39-b1 of the Code of 1927. This provision of the law amends Section 718-b4 of the Code, relative to the duties of the commissioner of registration. It will be noted that the new law makes a departure from the long established method of the registration of voters and creates a method whereby registration is automatically kept up to date. Under the system established it is necessary that persons experienced and instructed in the method of handling the permanent registration records, shall be in charge of said records at the voting places on election days. In view of that necessity, the Forty-third General Assembly, in its wisdom, provided that two of the clerks of election in each precinct, shall be appointed by the commissioner of registration, which clerks shall have charge of the election register.

This being the latest provision of law upon the subject, and in apparent conflict with the provisions of the general law as contained in Section 733 of the Code, it prevails over the general provision, and in

cities where permanent registration has been adopted, the commissioner of registration will appoint two of the election clerks.

In every other voting place, the general provisions of the law apply.

BOARD OF EDUCATION—PENSIONS: State Board of Education has no authority to pension professors and instructors of the institutions under its jurisdiction.

December 3, 1929. *Director of the Budget:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is the State Board of Education authorized under the statutes of this state to pension professors and instructors in the various institutions under their control?

We find no statute in this state which would authorize the State Board of Education to pension any professor, instructor or any other employee of any of the institutions under their control. This would be a matter for the determination of the legislature and not one within the discretion of the board.

BOARD OF AUDIT—EUGENICS BOARD: The expenditures provided for in Sections 2-a to 4, inclusive, and Section 18, are properly payable out of the money transferred by the retrenchment and reform committee for the use of the Eugenics Board by retrenchment and reform order No. 4.

December 3, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Retrenchment and Reform Committee of the legislature provided by retrenchment and reform order No. 4, for transferring $2,500.00 from the contingent fund—Chapter 287, Section 49, Acts of the Forty-third General Assembly—to the Eugenics Board.

At the board of audit meeting held on November 19th the question arose as to just what claims this $2,500.00 was to take care of.

We call your attention to Section 15, Chapter 66, Acts of the Forty-third General Assembly, which is the chapter which applies to the Eugenics Board. From that section it will be noted that the expense of the court procedure, including compensation of the attorney for defendant, is to be paid by the state. This expense would be a court expense and there being no other provision for the payment of the same it would be paid under the appropriation made by Section 289, Chapter 18, Code of 1927, as limited by the provisions of Section 14-a, Chapter 287, Acts of the Forty-third General Assembly. It would, therefore, not be necessary for a transfer by the Retrenchment and Reform Committee to take care of this court expense.

Section 17 of the same chapter makes a specific appropriation to take care of the cost of appeal in such cases. Said appropriation being in the following language:

" * * * If the defendant be represented by an attorney appointed by the court, and, in the opinion of the court, is financially unable to meet his part of the expense of an appeal, the defendant's actual and necessary expense of such appeal and prosecution thereof to final decree by the supreme court shall be paid by the state upon order of said district court, same to be paid out of the general funds of the state not otherwise appropriated."

This language, in our opinion, also constitutes a specific appropriation to take care of this particular expense, and there would, therefore, be no need for transfer above referred to.

Section 20 of the same chapter provides that the compensation of the physicians or surgeons, who are not employees of the state, shall be paid from any funds in the state treasury not otherwise appropriated. This, in our opinion, is a specific appropriation, and there would, therefore, be no need for the transfer above referred to.

In Section 18 of the same chapter there is a provision that the members of the board shall receive their actual traveling expenses and the actual or necessary expenses incident to the investigation of said board, either on original case or appeal therefrom. There does not seem to be any appropriation in Chapter 66 to take care of this expense and we are, therefore, of the opinion that claims for this expense might properly be paid out of the transfer made by the retrenchment and reform order No. 4.

In Section 2-a to Section 4, inclusive, of the same chapter are provisions for the service of notice for hearings before the board and for the subpoena of witnesses by the board. We find no appropriation to take care of this expense and we are, therefore, of the opinion that any claim which has been incurred under the provisions of these sections would be properly paid out of retrenchment and reform order No. 4.

FISH AND GAME DEPARTMENT: Unforeseen contingency may be paid out of the fund provided by Section 1717, Code.

December 9, 1929. *State Game Warden:* You have requested the opinion of this department upon the following proposition:

"Due to a contingency which has arisen in this department because of additional duties provided by the Forty-third General Assembly, the volume of which it was impossible to foresee, and which had to be taken care of immediately, it has been necessary to employ additional clerical help to get the work out.

We believe Section 1717 providing for the payment of contingent expenses will authorize this and ask your early opinion concerning the matter."

You are advised that it is the opinion of this department that the language of Section 1717 of the Code is sufficiently broad to cover the contingency which you describe, and that it would be proper to pay the expenses made necessary by such contingency from your state fish and game protection fund.

ITINERANT VENDOR—DRUGS: Itinerant vendor defined to mean one who goes from place to place or house to house, selling drugs that he has with him or which are located within the state and later delivered, only exception being where conflict arises with interstate commerce. (Sec. 3148, Code, 1927.)

December 13, 1929. *State Board of Pharmacy Examiners:* This will acknowledge receipt of your request relative to the interpretation to be placed upon Section 3148, Code of 1927, which is as follows:

" 'Itinerant vendor of drugs' shall mean any person who, by himself, agent, or employee goes from place to place, or from house to house, and sells, offers or exposes for sale any drug as defined in this chapter."

We call your attention to the fact that the definition points out the acts to be taken into consideration, which are, "sells, offers, or exposes for sale any drug". In the definition there is nothing said relative to delivery, so that any one who goes from place to place, or from house to house, who either sells or offers to sell, or exposes for sale any drug becomes an itinerant vendor, and is required to secure a license to continue this practice. This, then, places within the definition those who go from house to house, or from place to place, and who make sales of drugs and deliver them at the same time. It also places within the definition those who go from place to place or from house to house and sell or offer to sell, or expose for sale any drugs for which they will make future delivery; with, however, the one exception that under the provisions of the Federal Constitution the states are prohibited from placing a license tax upon those engaged in interstate commerce. Therefore, if a vendor went from house to house, or from place to place, and took orders for the delivery of merchandise located in another state he would not be required to procure a license. This rule is well established in a long line of cases handed down by the Supreme Court of the United States; the latest of which, perhaps, is the case of *Real Silk Hosiery vs. City of Portland*, 268 U. S., 325, wherein Mr. Justice McReynolds said:

"The negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made is interstate commerce."

So that where vendors sell and deliver at the same time or sell with the thought of future delivery of goods located within this state, they should be required to secure an itinerant vendor's license.

It is our opinion that Section 3148 covers the sale of drugs by itinerant vendors in all cases, except those which fall within the rule provided by the case of *Real Silk Hosiery vs. City of Portland*, that is, where an exemption is made by the interference of interstate commerce.

SCHOOLS AND SCHOOL DISTRICTS: Electors may direct the sale, lease or other disposition of any school house, school site or other property belonging to the corporation.

December 20, 1929. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"The Glidden independent school district owns a block of city property which it no longer needs. The community seems to want to turn this over to the city. Does the school board have authority to do this without a vote of the electors? If not, can the board submit a proposition to the electors to sell this property to the city? If this were done would it be necessary to fix a definite price—a dollar, for example—or would it be necessary for the board to have the property appraised before being sold to the city?"

This question is covered by Section 4217 of the Code which provides in part as follows:

"The voters assembled at the annual meeting or election shall have power to * * *

2. Direct the sale, lease or other disposition of any school house or site or other property belonging to the corporation and the application to be made of the proceeds thereof."

Under this section, we are of the opinion that the school property in question could be disposed of to the city upon such terms as the electors might direct upon a proposition submitted to them at the annual election.

ROADS AND HIGHWAYS—TRANSFERS: Transfers may be made from the secondary road maintenance fund to the county road, county road building or county bridge fund to take care of a shortage in any of these funds which have been occasioned by maintenance work, and a transfer may be made from the secondary road construction fund to any of the above funds to take care of construction expenses which cause a shortage in said funds.

December 26, 1929. *Director of Budget:* It has been called to our attention that the county road and bridge funds in a number of the counties are overdrawn and that the counties are now requesting permission from you to make transfers in order to clear up the deficit in these particular funds which go out of existence on or about January 1, 1930.

In order that there may be uniformity throughout the state and that the proper funds will be properly protected, we are writing you suggesting that the following procedure be followed:

If the shortages in the county road and county bridge funds are occasioned by expenditures on account of both maintenance and construction, first the amount which is construction and the amount which is maintenance should be ascertained, then a temporary transfer may be made from such county fund as has such a balance as will stand a transfer to the secondary road construction and the secondary road maintenance funds depending upon the amount necessary to pay off the construction claims which have caused an overdraft in the county road and/or county bridge funds, and a temporary transfer to the secondary road maintenance fund in an amount sufficient to pay off the shortage in the county road and/or county bridge fund. Then a permanent transfer should be made from the secondary road construction and the secondary road maintenance fund. Then, after January first, when funds are available in the secondary road construction and/or maintenance funds the money which has been temporarily transferred to the respective funds should be re-transferred back to the fund from which it came.

It should always be borne in mind, when request is made for a transfer to take care of the shortage in the present existing county road and/or bridge funds, that it is necessary first for the county board to determine what amount of the shortage is construction and what amount is maintenance. After this has been determined the temporary transfers to the new secondary road construction and secondary road maintenance funds may be properly made, and then a permanent transfer from the respective funds to the county road or county bridge funds which are short.

SHERIFFS—PRISONERS: No action would lie on behalf of a prisoner or his assignee to recover from the sheriff who had used the prisoner as a trustie in working at janitor work, or in a reasonable amount of painting, and work of that character.

December 27, 1929. *County Attorney, Eagle Grove, Iowa:* This will acknowledge receipt of your letter of December 13th, in which you set out a large number of facts relative to the work done by a former pris-

oner of your county on a house about to be occupied by Mr. Fred Johnson who was the sheriff of Wright County. We will not attempt to incorporate your entire letter, but only the three questions you submit, which are:

"I would therefore like the opinion of your office, first as to whether or not a man committed to a county jail under an order of commitment not providing for hard labor, performing work as a trustie could recover from the sheriff or county for such work. Second, whether or not under the circumstances I would be precluded from prosecuting this claim because of having advised the present sheriff that I could see no reason why prisoners could not be used to work as trusties. Third, is there any distinction between having a prisoner while acting as a trustie prepare meals and do other janitor work for which the sheriff is paid or for him to paint some furniture and the walls in a room in a house which the sheriff expected to occupy."

In answer to your first question we would say that we do not believe that a trustie could recover from the sheriff of the county for such work.

In answer to your second question we believe that it would not be proper, under the circumstances you relate in regard to your connection to this matter, to expect you to prosecute this action should demand be made.

In answer to your third question we can see no distinction between a prisoner doing janitor work around the court house or jail and that of painting some furniture and walls in a house which the sheriff expects to occupy.

It is, therefore, the opinion of this department that the questions, which you submit, have been answered correctly by you, and that no action would lie on behalf of this prisoner or his assignee to recover from the former sheriff.

BOARDS OF HEALTH: Where citizens of the state had been sent to Iowa City for treatment for social diseases and returned to their home counties, these patients should be taken in charge by the local board of health, and see that the proper treatment is continued to be administered, the expense of which can be certified to the board of supervisors and paid from the poor fund provided. (Secs. 2287 and 2276, Code.)

December 27, 1929. *State Department of Health:* This will acknowledge receipt of your request of December 12, 1929, which is as follows:

"It frequently happens that citizens of the state who have been certified to the University Hospital at Iowa City as indigents and who, after having received a certain amount yet not complete treatment, are later sent back home. We have in mind especially cases of venereal disease (syphilis and gonorrhea) which, after having received treatment for a certain length of time at the University Hospital, are sent home, since adequate treatment, especially in cases of syphilis, covers a period of years.

"I should like to receive your opinion as to what local authority has the duty or responsibility of continuing further necessary treatment of such indigents after they have been discharged by the University Hospital but who are in need of further treatment."

We are of the opinion that the proper method of procedure such as you outline should be somewhat as follows: The hospital at Iowa City at the time the patient is sent back to his home county should notify the local board of health who, in turn, should see that the local health officer is notified of the situation. The local officer and hospital should co-operate

in seeing that the patient should receive necessary treatment. The local board of health has, under the provisions of Section 2287, power to take this patient in charge and see that the proper treatment is administered. The expense necessitated by this treatment should be certified to the board of supervisors who should pay the same from the poor fund, as provided under Section 2276. This, of course, would be any expense that would necessarily arise from the treatment of the patient in his home county by the local health officers.

We might further suggest that it is the duty of the local board of health to attend to cases of this character, and it should be the duty of the hospital at Iowa City to see that the local board of health is notified that they are returning a patient afflicted with the disease mentioned.

CEMETERIES—TOWNSHIP TRUSTEES—TAX: Cemetery tax to be deposited by township clerk under direction of trustees. Mayor of town has no authority to hold this money.

December 28, 1929. *County Attorney, Britt, Iowa:* This will acknowledge receipt of your request of December 9th, which is as follows:

"Where cemetery levy is made by township trustees, to cover property situated in an incorporated town within the limits of the township, as contemplated in Section 5563, kindly advise how the county treasurer should handle these funds, i. e., the funds collected in the town, should he send these funds to the mayor of the town or to the township clerk and trustees. If sent to the mayor and he refuses to turn the funds to the trustees, what action should be or can be invoked to compel the delivery of the funds?"

The cemetery funds should be taken care of as provided in Section 5547, which provides that the township clerk shall receive, collect, and deposit, under the direction of the township trustees, all such funds. In the event the funds were sent to the mayor by mistake and he refused to turn same over to the township trustees, they would be entitled to maintain an action of mandamus.

PRISONERS—PENAL INSTITUTIONS: Where an absconded parolee later found by the Board of Parole and for whom it was necessary to furnish certain medical expense, the board would be authorized to pay such necessary expense.

December 28, 1929. *Board of Parole:* This will acknowledge receipt of your request of December 16th, in which you ask the following question:

Where an inmate of the reformatory at Anamosa was paroled and placed at employment, and who later absconded and was not found until he was injured while stealing an automobile, and which injuries necessitated expense for treatment and guarding him while in the hospital, would the board be liable for payment of these expenses?

In reply we would say that, while there is no specific statute covering this particular question, we are of the opinion that inasmuch as the parolee is under the care and direction of the Board of Parole during this time and he was returned to the reformatory as soon as he was able to be removed from the hospital, we believe that the board would be authorized to pay the necessary expense.

REAL ESTATE COMMISSIONER—FISCAL YEAR—RETRENCHMENT AND REFORM TRANSFER: The fiscal year of the real estate commissioner is from July 1st to June 30th. The money transferred by the

retrenchment and reform committee for the use of the real estate commissioner should be returned when and at such time as funds are available with which to pay the same. (Chap. 215, Acts Forty-third General Assembly.)

December 28, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Forty-third General Assembly, under the provisions of Chapter 215, provided for the licensing of real estate brokers and dealers in Iowa. In Section 4 of said chapter we find the following language:

"No expenditures shall be made in excess of the license fees and receipts under the provisions of this act during any fiscal year of its operation."

We desire an opinion on the following questions:

Is the fiscal year from January 1st to January 1st, and if so what disposition shall be made of receipts and expenditures to January 1, 1930?

The legislative retrenchment and reform committee transferred temporarily the sum of $4,000.00 to be used by the real estate commissioner in carrying out the provisions of Chapter 215, Acts of the Forty-third General Assembly, providing in the order that said sum should be returned to the retrenchment and reform committee's funds when revenue was available in the real estate commissioner's fund. When should the real estate commissioner return this fund?

We are of the opinion that the fiscal year, so far as it is applicable to Chapter 215, Acts of the Forty-third General Assembly, is from July first to June 30th, and that your fiscal year would end and terminate on June 30, 1930.

The real estate commissioner should return the $4,000.00, transferred by the retrenchment and reform committee for his use, when and at such time as he may have funds, by virtue of the receipts of his office, sufficient to do so.

REAL ESTATE COMMISSIONER — LICENSES — CHICAGO JOINT STOCK LAND BANK: A company engaged in mortgage loan business in this state who has regular employees who handle the collection of interest and principal on the loans and manage and sell such real estate as may be acquired by the corporation, is not required to secure a license under the provisions of Chapter 215, Acts of the Forty-third General Assembly.

December 28, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Chicago Joint Stock Land Bank is a corporation engaged in the business of making loans secured by real estate mortgages, and in connection with their business they acquire title to some of the real estate by virtue of the foreclosure of mortgages. The company has employed regularly a number of men, whose business it is to collect the interest and payments due from the company's loans on real estate and to generally look after the business of the company in the state of Iowa; and in connection with these duties these employees negotiate sales of such real estate as the company may acquire title to. These men are paid a substantial regular salary and in addition, when one of them negotiates a sale of real estate, he is paid an additional commission. Is it necessary, under the provisions of Chapter 215, Acts of the Forty-third General Assembly, that the Chicago Joint Stock Land Bank be licensed as a broker and its employees licensed as salesmen?

We are of the opinion that, under Section 2, Chapter 215, Acts of the

Forty-third General Assembly, the Chicago Joint Stock Land Bank and all companies operating on a similar basis would not be required to comply with the provisions of said chapter, and that it would, therefore, not be necessary for said company nor its salesmen to secure licenses under the same, as said companies would be selling their own real estate through their regular employees.

REAL ESTATE COMMISSIONER—LICENSES: A company which is a financial correspondent for an insurance company, and who handles the making of loans for said company on a commission basis, and handles the sale of any real estate owned by the insurance company on a commission basis, must secure a broker's license under the provisions of Chapter 215, Acts of the Forty-third General Assembly.

December 28, 1929. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The George M. Van Evera & Company are the financial correspondents for the Union Central Life Insurance Company in this state and as such correspondents handle the making of all loans on real estate, and in connection with its duties as loan agent for said insurance company negotiates sales of such real estate as the insurance company may acquire by virtue of a mortgage loan. Is the George M. Van Evera & Company subject to the provisions of Chapter 215, Acts of the Forty-third General Assembly, and must they secure a broker's license in accordance with the provisions of said chapter?

We assume, for the purpose of this opinion, that the George M. Van Evera & Company, as financial correspondent for the Union Central Life Insurance Company, makes loans for said company on a commission basis, and manages, leases and handles real estate for said company on the sam basis.

Assuming facts as above stated, we are of the opinion that the George M. Van Evera & Company are subject to the provisions of Chapter 215, Acts of the Forty-third General Assembly, and must secure a license as a broker under the provisions thereof.

FISH AND GAME—FUR DEALERS: A fur dealer who operates a tanning business, who has representatives on the road soliciting hides for tanning purposes must secure permits for traveling representatives.

December 30, 1929. *State Game Warden:* We acknowledge receipt of your request for an opinion of this department on the following question:

Whether a dealer who is in the tanning business and his solicitors on the road who solicit hides for tanning is a dealer within the meaning of Section 4, Chapter 58, Acts of the Forty-third General Assembly, and must have a license for his traveling representatives.

It will be noted from reading Sub-paragraph 1766-a 5, Section 4, Chapter 58, Acts of the Forty-third General Assembly, that every dealer or buyer of skins or hides of fur-bearing animals must obtain a license from the State Fish and Game Department. It will also be noted that the term "dealer" or "buyer," as used in that section, means any person, partnership or corporation who maintains an established place of business for buying or "dealing in" skins of any animals named in the act.

We are, therefore, of the opinion that a person or company who is engaged in the business of tanning hides for others is a dealer within

the meaning of the definition contained in Sub-paragraph 1766-5, Section 4, Chapter 59, Acts of the Forty-third General Assembly, and must have licenses for their traveling representatives.

CORPORATIONS — BUILDING AND LOAN — LIQUIDATION: Section 9365, Code of 1927, provides for plan of liquidation of building and loan associations.

December 30, 1929. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In the event of a failure in a building and loan association are the assets of the corporation first to be applied to the payment of the indebtedness of the corporation and then distributed among the stockholders in proportion to their holdings?

We refer you to Section 9365, Code of 1927. This section provides a plan for the liquidation of building and loan associations and specifies just how such liquidation is to be made. It will be noted from reading the section above referred to that the debts of the association are to be first paid and then the balance is to be pro-rated among the various members in accordance with their respective interests.

TAXATION—POLL TAX—ROADS AND HIGHWAYS: The poll tax provided for in Sections 57-a1 to 58 inclusive, Chapter 20, Forty-third General Assembly, does not bear interest and penalty.

January 14, 1930. *Auditor of State:* We acknowledge receipt of your letter of January 11, 1930, requesting an opinion of this department on the following question:

"Under the new road law (Bergman Bill), referring to poll tax and its collection. When does penalty attach (if any) in the event such poll tax is allowed to become delinquent?"

We refer you to Section 57-a1 to Section 58, inclusive, Chapter 20 Acts of the Forty-third General Assembly. It will be found from examining these sections that there is no provision in the law for the collection of interest and penalty on delinquent road poll tax.

We are, therefore, of the opinion that such tax does not bear the same penalty and interest as is provided in case of general taxes and special assessments.

COUNTY HOSPITALS — OSTEOPATHS — CHIROPRACTORS: Osteopaths and chiropractors are entitled to same consideration in county public hospitals as regular practitioners of medicine. (Chapter 269, Sections 2181, 5364, Code, 1927.)

January 14, 1930. *Commissioner of Health:* This will acknowledge receipt of your request of January 10, 1930, which is as follows:

"The question having been raised by various county hospitals and medical societies, I am writing to request an opinion as to whether or not the trustees of a county public hospital (as provided for under Chapter 269 of the Iowa Code) have the power to exclude osteopaths and chiropractors from the hospital.

"One of the medical societies has just raised the question again and has cited an opinion from your office under date of June 26, 1928, relating to 'Osteopath: Indigent persons', as applied to Section 2181 of the law providing for commitment to the State University Hospital. The question was raised as to whether or not that interpretation would apply to Section 5364."

We do not believe that the legislature, when they incorporated Section 5364 in the chapter pertaining to county public hospitals, intended to discriminate against any recognized branch of medical service, and that the hospital should, therefore, permit osteopaths and chiropractors to have the same recognition in county public hospitals as is given to doctors practicing a regular course of medicine.

ROADS AND HIGHWAYS—SECONDARY ROADS: Sixty-five per cent of the construction fund may be used for construction work on county trunk roads and may be apportioned by the supervisors for work on roads which it were contemplated to improve under the county road bond issue. (Chapter 20, Laws Forty-third General Assembly.)

January 16, 1930. *County Attorney, Fort Dodge, Iowa:* We have your letter of the fifteenth in which you submit the following question:

"Our board of supervisors have asked a question in regard to the Bergman Law and they have suggested that I write to you for an opinion on this question as you are the person most familiar with such a question arising under this law.

"Our county voted a bond issue which provided for the improvement of our trunk roads by the sale of county bonds. Somewhat later the bonds were held unsaleable and no funds were available for building said roads. Most of these roads are the most important roads in the county outside of the state roads and need building and improving at once. The question is could the supervisors take part of the sixty-five per cent trunk road construction fund and improve the roads with that money, keeping an accurate account of the amount spent on each mile, then after the legislature amends or in some way legalizes the validity of our road bond election and makes available or possible the sale of our road bonds which were voted by the people so that such bonds could be sold and the money used to pay back to the trunk road construction fund the exact amount spent on improving each unit or mile improved that was actually under the bond election."

We enclose herewith a mimeographed copy of an opinion given by this department on the secondary road law. It may be of some assistance to you.

In reference to the particular proposition you submit, we hold that the sixty-five per cent of the construction fund, under the provisions of Chapter 20, Laws of the Forty-third General Assembly, may be used for construction work on county trunk roads, and we see no objection to it being used for construction work on roads that were within the program contemplated in your county road bond issue. The roads that are to be improved in the county trunk system are to be selected by the board of supervisors, and there is nothing in the statute prohibiting the board from selecting the roads which were included in the bond program.

MOTOR VEHICLE—REFUNDS—JUNKED CARS: A requirement that claims for refunds on junked cars be filed in the office of the Secretary of State by July first of the year for which the refund is claimed would not be permissible under the statutes of the state. (Sections 4924-25, Code of 1927.)

January 21, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Would it be necessary that claims filed for refunds in accordance with Section 4924, Code of 1927, as amended by the Acts of the Forty-third General Assembly, be certified and approved by the county treasurer and

filed in the office of the Secretary of State by July first of the year for which the refund is claimed?

We do not find anything in the statute which would require the certification and approval by the county treasurer and the filing with the office of the Secretary of State by July first of the year for which the refund is claimed, and are, therefore, of the opinion that such a requirement would not be proper under the statute.

Section 4925, Code of 1927, however, gives the department power to require proper and satisfactory proof and the decision of the department with respect to the same would be final.

ROADS AND HIGHWAYS—TOWNSHIP CLERK: Under Chapter 20, Acts of the Forty-third General Assembly, Chapter 244, Code of 1927, was repealed and the township clerk has no duties to perform in connection with the handling of road funds and is, therefore, not entitled to compensation for such services.

January 21, 1930. *County Attorney, Cresco, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under Chapter 20, Acts of the Forty-third General Assembly, is the township clerk, where the county board requires the township trustees to take care of the maintenance of the local county roads, entitled to compensation as was provided for in Section 4810, Chapter 244, Code of 1927?

You are referred to Section 35, Chapter 20, Acts of the Forty-third General Assembly. It will be noted from reading that section that when the board of supervisors of a county provides for the maintenance of the local county roads by the township trustees that the township's share of the secondary road maintenance fund is set aside in the county treasury, and then, of course, all claims for maintenance work will have to be filed with the county auditor and allowed by the board of supervisors and paid by the county warrants.

The township clerk would, therefore, have nothing to do with the expenditures of the money. We are, therefore, of the opinion that since Chapter 244, Code of 1927, was repealed by Chapter 20, Acts of the Forty-third General Assembly, and since there is no provision in said chapter authorizing compensation to be paid to the township clerk for any services which he might perform, and since, so far as the local county roads are concerned, he has no duties to perform that there is no authority for paying the township clerk anything for his services in connection with road work.

PERMANENT SCHOOL FUND—CITIES AND TOWNS: Cities held liable for fines and forfeitures collected by clerk of municipal court and by him embezzled. Code, Section 10671.

January 22, 1930. *County Attorney, Marshalltown, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"Is the city of Marshalltown liable to Marshall county and to the school fund for the state fines embezzled by the clerk of the municipal court during the time when he was clerk of that court?"

The statute applicable to this question, being a portion of Section 10671, Code of Iowa, 1927, provides as follows:

"Fees, costs and expenses. If no provision is made in the laws applicable to the district court for fees, costs and expenses, they shall be the same as in justice of the peace courts. The bailiff may retain the amounts allowed to him by law for mileage and necessary actual expenses in addition to his salary. All other fees, fines, forfeitures, costs, and expenses shall be turned over to the city treasurer by the officer collecting the same on or before the tenth day of each succeeding month, and the city treasurer shall forwith pay to the county treasurer, for the benefit of the school fund, the portion of the fines and forfeitures collected for the violation of state laws."

From this it will be seen that it is the duty of the clerk of the municipal court, being the officer who collected the fines and forfeitures, to account to the city treasurer on or before the tenth of the succeeding month and it then becomes the duty of the city treasurer to forward to the county treasurer for the benefit of the school fund, the portion of the fines and forfeitures collected for the violation of state laws.

After extended search, we find no case directly in point but refer you to the case of *State vs. City of Milwaukee*, 158 Wis., 564; 149 N. W. 579, Annotated Cases, 1916-A page 110.

This case holds that the state (which is the custodian of school funds in that state) is entitled to recover from the city and the county funds which were collected as fines and wrongfully applied or appropriated by the city or county. Inasmuch as it is the duty of the city to account to the county for the use and benefit of the school fund, for all fines collected, we are of the opinion that the city is liable to the county, as custodian of the school fund, for the fines which were collected by the city clerk and thereafter by him embezzled. We reach this conclusion in view of the above statute which makes it the duty of the clerk of the municipal court to collect these fines or forfeitures after which collection they become the funds of the city upon which is impressed the duty of accounting to the county for them.

COUNTIES—COUNTY OFFICERS—FUNDS: Counties not permitted to anticipate and issue warrants for funds in being by virtue of an authorized levy, unless it is such a fund as is within the exceptions contained in Section 5259, Code of 1927.

January 22, 1930. *County Attorney, Bedford, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Our county treasurer informs us that the general fund of the county was overdrawn around nine thousand dollars ($9,000.00) at the end of the year 1929.

Is the treasurer authorized, under the law, to issue warrants against the general fund when he has no cash in this fund?

We call your attention to Section 5259, Chapter 265, Code of 1927. If the purpose for which the warrant is issued is one which comes within the exceptions contained in Section 5259 the county auditor might properly issue a warrant even though there were no funds in the county treasury in the particular fund with which to pay it. However, if the expenditure for which the warrant is issued is not one which comes within the exceptions contained in Section 5259, then the provisions of Section 5258 (Tuck Law) would apply, and no county officer would have any authority to issue any warrant or cash the same contrary to the

provisions thereof. Of course, since January first this year, the warrants may now be issued in anticipation of the collectable revenues for this year; this in accordance with the provisions of Section 5258.

We call your attention also to Section 21, Chapter 20, Acts of the Forty-third General Assembly. It will be noted from reading this section that the compensation of the county engineer and his assistants are payable from the county general fund, secondary road construction fund, or from the secondary road maintenance fund or from any one or all of said funds.

ROADS AND HIGHWAYS—MAINTENANCE—TOWNSHIP TRUSTEES: Where the plan of maintaining the local county roads by the township trustees, as provided for in Section 35, Chapter 20, Acts of the Forty-third General Assembly, is adopted by a county board of supervisors the township trustees have nothing to do with the repair, construction and maintenance of bridges and culverts on the local county roads.

January 22, 1930. *County Attorney, Carroll, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The board of supervisors of this county desire to leave the work of maintaining the local county roads to the township trustees. They desire, however, to have this work done only on the roads themselves and wish to retain the work of maintaining bridges and culverts on local county roads.

Can this be done under Chapter 20, Acts of the Forty-third General Assembly?

We are of the opinion that where a county board of supervisors adopts the plan provided for in Section 35, Chapter 20, Acts of the Forty-third General Assembly, and provides for the maintenance of the local county roads by the township trustees that said section only contemplates the maintenance of the local county roads and does not contemplate the maintenance and repair of bridges and culverts on said roads.

The work of maintaining, repairing, and constructing bridges on all roads of the county is the work of the board of supervisors and, in our opinion, cannot be delegated to the township trustees under the provisions of Section 35, Chapter 20, Acts of the Forty-third General Assembly.

ROADS AND HIGHWAYS — BOARD OF APPROVAL — CITIES AND TOWNS: Cities and towns whose city limits are the limits of the township are not entitled to representation on the board of approval as provided for by Section 34, Chapter 20, Acts of the Forty-third General Assembly; there being no local county roads within such city or town.

January 22, 1930. *County Attorney, Carroll, Iowa:* We acknowledge receipt of your letter under date of January 3, 1930, requesting an opinion of this department on the following question:

Are cities and towns whose city limits are also the limits of a township entitled to representation on the board of approval provided for by Section 34, Chapter 20, Acts of the Forty-third General Assembly?

It will be seen from reading Section 34, Chapter 20, Acts of the Forty-third General Assembly, that the board of approval is a board of approval for the proposed program for local county roads and for that purpose only. Inasmuch as there are no local county roads in a city or town whose limits are the limits of a township, we are of the opinion

that such a city or town would not be entitled to representation on the board of approval provided for in Section 34, Chapter 20, Acts of the Forty-third General Assembly.

TAXATION—SCAVENGER SALE: Taxes received from the scavenger sale should be apportioned by the treasurer in the same manner as unavailable taxes are apportioned in accordance with the provisions of Section 7256, Code of 1927.

January 22, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"When real estate is sold at scavenger sale for both regular taxes and special assessments, how should the proceeds be distributed? Should the regular taxes be taken first and the remainder, if any, placed to specials, or should said proceeds be distributed to all funds pro rata?"

We do not find any statute which specifies just how the apportionment should be made.

We do find, however, in Section 7256, Chapter 347, Code of 1927, the procedure that the treasurer shall follow in connection with unavailable taxes. The procedure therein designated is that the treasurer shall apportion the excess of the taxes over and above the amount for which the property was sold among the funds to which it belongs, and we are of the opinion that the amount received at a scavenger tax sale should be apportioned by the treasurer in the same manner as are the unavailable taxes.

FISH AND GAME—FURS: One who secures possession and title to furs by virtue of an attachment may legally dispose of the same providing said furs were lawfully possessed by the debtor.

January 22, 1930. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"A grocery firm has levied an attachment on furs in the possession of the one who was indebted to it and now desires to know whether or not they can legally dispose of said furs."

We are of the opinion that anyone who secures title and possession to furs through attachment may legally dispose of the same if the one from whom they secured the same by the attachment proceedings had said furs legally in his or her possession.

REAL ESTATE—LICENSES—AUCTIONEER: Under Chapter 215, Acts of the Forty-third General Assembly, it is necessary for an auctioneer who sells any real estate, other than his own, at public auction to secure a license.

January 22, 1930. *County Attorney, Humboldt, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is it necessary for an auctioneer who occasionally sells a piece of real estate at public auction to qualify and secure a license under and in accordance with Chapter 215, Acts of the Forty-third General Assembly?

We are of the opinion that under said chapter it would be necessary for an auctioneer, before he sells or offers for sale at public auction any real estate not his own, to qualify and secure a license in accordance

with the provisions of Chapter 215, Acts of the Forty-third General Assembly.

SCHOOLS—INSURANCE (GROUP)—TEACHERS: School board does not have authority, either express or implied or necessary to carry out the objects or purposes of the school corporation, to pay premiums for insurance for teachers.

January 22, 1930. *Superintendent of Public Instruction:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Has a school board authority to pay the premium on group insurance for its teaching staff?

We find no statute which would authorize a school board to pay a premium on group life insurance for anyone employed by it. It is a well known rule that municipal corporations can possess and exercise the following powers and no others:

1. Those granted in express words.
2. Those necessarily implied or necessarily incident to the powers expressly granted.
3. Those absolutely essential to the declared objects and purposes of the corporation.

We are, therefore, of the opinion that a school board does not have the power to pay the premium on group life insurance for any of its employees, the authority not being expressly granted, necessarily implied nor essential to the carrying out of the declared objects and purposes of a school corporation.

We are also enclosing herewith copies of opinions, one rendered your department under date of October 27, 1924, and the other to the budget director under date of April 19, 1927. These opinions will, no doubt, answer other questions which will now arise with respect to group life insurance.

ROADS AND HIGHWAYS — MAINTENANCE — BOARD OF SUPERVISORS: It is mandatory upon the board of supervisors to grade, drain, bridge or culvert or maintain any road or street which is a continuation of the county trunk highway system or local county road system if said road or street is within one of the three classes defined in Section 48, Chapter 20, Acts of the Forty-third General Assembly.

January 22, 1930. *County Attorney, Chariton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Does Section 48, Chapter 20, Acts of the Forty-third make it compulsory upon the board of supervisors to grade, drain, bridge, gravel or maintain any road or street which is a continuation of the county trunk highway system or local county road system, which road or street falls within any of the three classes set out in said section?

We are of the opinion that under said section it is mandatory on the board of supervisors to grade, drain, bridge, gravel or maintain any road or street which is a continuation of the county trunk system, or continuation of a county local road which is built to grade and surface, or about to be built to grade and surface, and which is within one of the three classes designated in said Section 48.

ROADS AND HIGHWAYS—TOWNSHIP CLERKS: Since the adoption of Chapter 20, Acts of the Forty-third General Assembly, township clerks have no duties to perform with respect to the handling of road funds and are no longer required to post a bond for the same.

January 22, 1930. *County Attorney, Clinton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is it necessary, since the adoption of Chapter 20, Acts of the Forty-third General Assembly, for a township clerk to furnish a bond in any amount?

We call your attention to the fact that since the adoption of Chapter 20, Acts of the Forty-third General Assembly, Chapter 244 of the Code of 1927 was repealed and by the repeal of this chapter the requirement that the township clerk furnish a bond in connection with his handling of the road funds was thereby repealed. Under the said act the township clerk has nothing to do with any of the road funds, and he is not, therefore, now required to post a bond in connection with his handling of such funds as he no longer has anything to do with such funds. A township clerk, however, is required in a number of places in the Code of 1927 to post bonds in connection with other matters. For example: Section 5580, Chapter 285, Code of 1927, requires that the township clerk post a bond where the township has voted a tax for the construction of town halls.

COUNTY OFFICERS—BOARD OF SUPERVISORS—CLAIMS: It is permissible for the county treasurer to pay petit jurors, grand jurors, and witness' fees on the certificate of the clerk of the district court and to then attach these certificates and file a claim to the board of supervisors. In making up the copy of proceedings of the board for publication the claims of each claimant must be itemized.

January 23, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

(1) It is the custom in several counties that the county treasurer pay petit jurors, grand jurors, and witness' fees upon the certificate of the clerk of the district court; the treasurer holding these certificates until such time as there is an accumulation, then attaching these certificates to a claim and presenting same to the board of supervisors and receiving one warrant for the total amount of the certificates.

Is this permissible?

(2) The county auditor in making up copy of the board proceedings for publication, enters the above mentioned claim as per exhibit attached. Is this correct or should the names of jurors and witnesses be published the same as other claims?

We find nothing in the statute which would prohibit the handling of these court expenses in the manner suggested in your statement of facts. It would, however, be necessary that the provisions of Section 5123, Code of 1927, be complied with.

We are of the opinion that the county auditor in making up the copy of the proceedings for publication must enter the name of each claimant who received money from the county, the purpose of the publication of the proceedings of the board being to apprise the public of just who received money from the county treasury and the amounts received.

BOARD OF PAROLE—REWARDS: Board or warden has no power to offer reward for apprehension of a court parolee who has violated his parole.

January 24, 1930. *Board of Parole:* We have your letter of January 22nd requesting the opinion of this department upon the following proposition:

"The board of parole requests your opinion on the following question, to-wit: whether the warden of either the penitentiary or men's reformatory has authority to authorize the Board of Parole to offer a reward for the apprehension of a prisoner paroled to it by the court, under Section 3801 of the Code of Iowa, 1927, and wherein the parolee has absconded."

Section 3801 of the Code, to which you have referred, provides that when a parole is granted by a court under authority of Section 3800 of the Code, the court may order the person committed to the custody, care, and supervision of the Board of Parole. It is then provided that the Board of Parole shall have and exercise over said parolee all of the power possessed by the board over persons paroled by it, and all expenses involved shall be paid from the appropriations made to the board.

Section 3770 of the Code provides that:

"If a convict escapes from the penitentiary or the men's reformatory, the warden shall take all proper measures for his apprehension; and for that purpose he may offer a reward, not exceeding fifty dollars, to be paid by the state, for the apprehension and delivery of such convict."

It will be observed that the foregoing provision is limited specifically to a convict who escapes from the penitentiary or the men's reformatory. A person paroled by the court before commitment and placed under the board of parole, is not in the same situation as is a convict in the penitentiary or reformatory.

It is the opinion of this department that the provisions of Section 3770 of the Code are not broad enough to extend over and apply to a court parolee placed under the care and custody of the Board of Parole.

MOTOR VEHICLES: Trackless trolley motor vehicle within meaning of Section 1, Chapter 122, Acts of the Forty-third General Assembly.

January 27, 1930. *Secretary of State:* This will acknowledge receipt of your letter requesting the opinion of this department upon the question whether a trackless trolley should be licensed under the provisions of the motor vehicle law.

This will be determined by the definition for motor vehicles as defined by the laws of Iowa. That definition is found in Section 1, Chapter 122, Acts of the Forty-third General Assembly and provides as follows:

Section 1. The term 'motor vehicle' shall include all vehicles propelled by any power other than muscular power except traction engines, road rollers, cranes, corn shellers, wood saws, sprayers, disc sharpeners, and other articles of husbandry of a like or similar nature, and such vehicles as are run only upon tracks or rails."

From reading this section, it is clear that the trackless trolley, since it is not propelled by muscular power, and is not run upon tracks or rails and does not come within any of the other exceptions, would be a motor vehicle within the meaning of that statute.

COUNTY HEALTH UNIT—GENERAL FUNDS: The words, "county funds legally available," would necessarily, as used in Section 4, Chap-

ter 65, Acts of the Forty-third General Assembly, be construed to mean county general funds.

January 27, 1930. *Department of Health:* This will acknowledge receipt of your request in which you submit the following question:

"Section 4 of Chapter 65, Laws of the Forty-third General Assembly, speaks of 'county funds legally available' as money to be used for the payment of the expense incurred by the county health unit."

It was, undoubtedly, the intention of the legislature, and it is our opinion, that the words, "county funds legally available", can and do refer only to the general funds of the county, and we believe that the board of supervisors would, without question, be authorized to use money from the general fund for this purpose. While the words, "general funds", were not included in Section 4 of Chapter 65, Laws of the Forty-third General Assembly, nevertheless, it is the only fund which would be available for this purpose, and I might say that the legislature has, prior to this time, seen fit to use the county general fund along similar lines.

FISH AND GAME—FURS: Trapper, under Section 3, Chapter 58, Acts of the Forty-third General Assembly, required within 10 days after the closed season to file an inventory with the State Fish and Game Department. Failure to do this would make trappers subject to prosecution. Fur dealer who buys a hide from a trapper in the ten days after the closed season may be prosecuted if it can be proven that he knew that said hides were illegally possessed by the one from whom purchased.

January 27, 1930. *County Attorney, New Hampton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A resident of this county, who is a licensed fur buyer, has been charged with buying furs out of season and with failing to report a known violation of the fish and game laws. The facts in connection with the case are: an opossum fur was taken during the open season in November. The season closed December first and as I read the law the trapper has until December 10th to dispose of the fur. He sold the fur to Mr. Feine, the fur dealer, on December 17th; Mr. Feine, on his report for December, reported the purchase of this particular hide, the date of the purchase and the party purchased from. The trapper was arrested and fined.

Will you give us your opinion concerning the law surrounding the facts in this case?

Section 3, Chapter 58, Acts of the Forty-third General Assembly, so far as material, provides as follows:

"Every person who traps, kills or ensnares any of the animals named and described in this act, shall within ten (10) days following the close of the open season on said animals as herein provided, file with the state fish and game department of the state, an inventory, under oath, naming or describing each of said animals trapped, killed or ensnared by him during said open season."

It would appear that under that part of Section 3, Chapter 58, Acts of the Forty-third General Assembly, set out above, that every person who has furs in his possession, which were trapped, killed, etc., by him during the open season must within ten (10) days after its close file with the State Fish and Game Department an inventory giving the information required, and if this is not done said person would be violating the law and would be subject to punishment in accordance with Section 1789, Chapter 86, Code of 1927.

Section 4, paragraph 1766-a4, Chapter 58, Acts of the Forty-third General Assembly, provides as follows:

"It shall be the duty of each dealer or buyer of any of the skins or hides of the animals named and described in this act, 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 possessed or taken by said person."

Under the above section, if the fur dealer has good reason to believe that any furs which are sold or attempted to be sold him are illegally possessed or have been illegally taken, by the person who offers to sell them or sells them to him, to report this fact to the State Fish and Game Department, and if it can be proven that said fur dealer had good reason to believe and had knowledge of these facts he probably could be prosecuted under Section 1789, Chapter 86, Code of Iowa 1927.

MOTOR CARRIERS—TRUCK: Cooperative creamery haulers not within the meaning of Chapter 129, Acts of the Forty-third General Assembly. Person who hauls incidentally to his own personal use of truck not within meaning of statute; person who holds himself out at all times to engagements in a trucking business, is using his truck principally for hire.

January 28, 1930. *County Attorney, Storm Lake, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the question whether the operator of a truck under conditions set out would be required to secure the permit prescribed by Chapter 129, Acts of the Forty-third General Assembly.

1. This man works for the cooperative creamery company hauling cream from farm to creamery and receives commission for such hauling. He collects nothing else en route. In the summer time he buys ice at Storm Lake and hauls it to Albert City, and there retails it himself.

2. This operator is a retired farmer, living in town, and has no regular occupation. He does odd jobs about town and uses his truck to haul his own cream and live stock to market and in addition, hauls for his friends and neighbors but makes no regular business for such hauling. Last year he hauled 163 loads for other people and received the total sum of $200.25 for such work.

3. This operator lives in town and does odd jobs of work about town. He owns a Ford truck and is open for engagements at all times for trucking cream and live stock to town. He does not attempt to haul freight to other cities or make long hauls.

We shall answer your questions in the order submitted.

1. This man is not engaged in the use of his truck for hire within the meaning of the statute as he is not holding himself out to the public generally for hire and is following a fixed route. He would, therefore, not be required to have the permit provided by this chapter.

2. This is a closer question. While this man is using his truck for his own use, he is, of course, not operating for hire. This case would be determined by the fact whether or not he hauls for his neighbors incidentally or whether he holds himself out generally to the public to haul or operate his truck for hire. If he holds himself out generally and hauls for anyone who calls upon him, he should secure the permit. If he merely hauls for such neighbors as he sees fit to haul for, he would not

be required to have a permit. This rule would also apply to any person operating a truck in this manner.

3. This operator would be governed by the rule above set out, that is, whether he holds himself out at all times for engagements. If so, he should procure the license. If not, he would come under the rule expressed in division two hereof.

MOTOR VEHICLES—LICENSE: Drivers of laundry trucks who also solicit accounts are subject to chauffeur's license.

January 29, 1930. *Secretary of State:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"Does the statute require drivers of laundry trucks or delivery wagons, who are paid partially by salary and partially by commissions, and who solicit laundry accounts and pick up and deliver laundry bundles to procure chauffeur's license under the provisions of Section 4863 of the Code; or are such drivers within the exemptions in that statute upon the grounds that they are agents of the laundry company or salesmen, or in fact represent the owner who would be exempt while he is actually driving or operating his own motor vehicle?"

The statute in question, Section 4863 (6), Code of Iowa, 1927, provides as follows:

" 'Chauffeur' shall mean any person who operates an automobile in the transportation of persons or freight and who receives any compensation for such service in wages, commission or otherwise, paid directly or indirectly, or who as owner or employee operates an automobile carrying passengers or freight for hire, including drivers of hearses, ambulances, passenger cars, trucks, light delivery, and similar conveyances; provided, however, that this definition shall not include manufacturers' agents, proprietors of garages and dealers, salesmen, mechanics, or demonstrators of automobiles, in the ordinary course of their business, nor to employees operating motor trucks for parties engaged in agricultural enterprises, nor to any individual owner actually driving and operating his own motor vehicle in the business of transferring and drayage of baggage, trucking, and cartage for hire."

From the above statute, you will observe that any person who operates an automobile in the transportation of persons or freight, and who receives any compensation for such service, wages, or otherwise, paid directly or indirectly is a chauffeur and required to procure a license. It also classifies as chauffeurs, drivers of trucks, light delivery and similar conveyances. These drivers come clearly within the provisions of this statute unless it be on account of the exemptions contained in the latter part of sub-section 6.

These drivers are not manufacturers' agents nor are they salesmen, although they incidentally take orders. Their principal business is operating their trucks for which service they receive compensation both directly and indirectly. This reduces the question to whether or not they are using a motor vehicle in the transportation of freight. We are of the opinion that the term "freight" as used in this statute applies to anything which is loaded for transportation, and in this sense embraces every article of personal property which is capable of transportation whether live stock or merchandise either bulky or compact, and without regard to the manner of transportation.

We are, therefore, of the opinion that such drivers are subject to the requirement of the statute quoted.

TAXATION—STREET IMPROVEMENTS AND SEWER ASSESSMENTS —INTEREST: Under Section 6035, Code 1927, the owner of property against which a street improvement or sewer assessment has been levied, may at any time pay the full amount of the assessment and the interest is to be figured only up to the time payment is made.

January 30, 1930. *County Attorney, Elkader, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where the owner of any property against which a street improvement or sewer assessment has been levied, makes payment in full of the balance of any assessments which may be due, is the interest to be figured up to the time of the payment or to the date when the installment would be actually due?

We call your attention to Section 6035, Code of 1927, which specifically provides that the interest shall be figured up to the time of said payment. We are of the opinion that this means at the time the owner makes the full payment.

ROADS AND HIGHWAYS—TOWNSHIP TRUSTEES: Board shall take over the title to all road equipment and pay all legal obligations of the township and then if the township trustees are to carry on the work of maintaining the local county roads the depreciation and depletion of the equipment could be charged on an annual basis as a part of the cost of construction or maintenance. (Chapter 20, Forty-third General Assembly.)

January 30, 1930. *County Attorney, Carroll, Iowa:* We beg to acknowledge receipt of your letter under date of January 22, 1930, requesting an opinion of this department on the following question:

Carroll County desires to leave the maintenance of the local county roads to the various boards of township trustees. It is found, however, that some of these townships are in debt either for road machinery or for grading or road improvements. If the board of supervisors pay the indebtedness of the townships and then leaves the title to the machinery in the township it would be impossible for the board to give the township a net credit as suggested in the Attorney General's synopsis of opinions. How should the striking of balance in such cases be handled?

We would suggest that if the board desires to leave the work of maintaining the local county roads with the township trustees that the proper manner in handling the matter would be for the board to take over the title to the road equipment of the various townships in accordance with the provisions of Chapter 20, Acts of the Forty-third General Assembly, and then to pay such legal obligations as the township may have and then turn back for use by the township the equipment which the county has taken over, and each year charge as a part of the cost of the maintenance of the local county roads the depreciation and depletion of said road equipment which has been used by the township.

CITIES AND TOWNS—PUBLICATION: Cities and towns, generally, under Section 5722, Code 1927, required to publish the proceedings of the regular or special meetings of the city council, including a list of claims, etc. Cities under commission plan of government having a population of less than 50,000 would, under Section 6581, Code 1927,

be required to publish quarterly council proceedings, including itemized statement of receipts and disbursements. Cities under special charter are not so required.

January 30, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Is it necessary for the governing bodies of cities and towns, under general form of government, to publish council proceedings as provided in Section 5722, Code of Iowa, 1927, and also is the provision applicable to cities under commission form and special charter cities?"

Section 5722, Code of Iowa, 1927, requires that the proceedings of regular or special meetings of the city or town council, including the list of the claims allowed and from what funds the same are apportioned, be published in one or more newspapers of general circulation published in said city or town, except in cities or towns where there is no newspaper such proceedings and list of claims shall be posted in three public places. This provision requires the publication of the proceedings in cities and towns generally.

Section 6581, Code of 1927, as amended by Chapter 191, Acts of the Forty-third General Assembly, requires cities under commission plan of government having a population of less than fifty thousand (50,000), to publish quarterly in one or more newspapers of general circulation, in said city, an itemized statement of the receipts and disbursements and a summary of the council proceedings immediately following each regular or special meeting. It also requires cities having a population of more than fifty thousand (50,000), which are organized on the commission plan, to publish in pamphlet form, an itemized statement of all receipts and disbursements by the city and a summary of its proceedings during the preceding month, and to furnish copies thereof to the state library, the city library, and daily newspapers of the city, and to such persons as apply for the same.

We do not find any provision in Chapter 329, Code of 1927, applicable to special charter cities which would require the publication of the council proceedings and the itemized statement of receipts and disbursements. We do find in Section 6718 of Chapter 329, Code of 1927, a provision which makes Sections 5677, 5677-a1, and 5679, Code of 1927, applicable to special charter cities. These provisions require an annual report and the publication of the same in two newspapers of general circulation in the city or town, or in one if no other is published therein, and if none is published, by posting three copies in three public places.

ELECTIONS—REGISTRARS—CLERKS: Chapter 38, Acts of the Forty-third General Assembly, merely provides that the registrars are not only to act as registrars but as clerks of election. This does not affect the provisions of Section 730, Code of 1927, but merely increases the number of clerks.

January 30, 1930. *County Attorney, Fort Madison, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Chapter 38, Acts of the Forty-third General Assembly, amends Section 690, Code of 1927, by striking out certain portions thereof and adding to it the following: "shall be at the regular polling places and the duties to

be performed by the registrars shall be that of registration and to also act as clerks of election."

Does this provision, making the registrars clerks, increase the number of clerks on the election board, as provided for in Section 730, Code of 1927, or does it merely substitute registrars for the clerks provided for in Section 730, Code of 1927?

We are of the opinion that the provisions of Chapter 38, Acts of the Forty-third General Assembly, do not in any manner change the election board provided for in Section 730 but that it simply increases the duties of the registrars and thereby increases the number of clerks.

INSURANCE: A fraternal beneficiary society domiciled in Iowa is not permitted to exchange real estate acquired under foreclosure for beneficial interest in a long time lease. (Chapter 227, Forty-third General Assembly.)

January 30, 1930. *Commissioner of Insurance:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Whether it is lawful for a fraternal beneficiary society, domiciled in Iowa, under the provisions of Section 8829, Code of 1927, as amended by Chapter 227, Acts of the Forty-third General Assembly, to exchange real estate acquired under foreclosure for the beneficial interest accruing under and by virtue of the terms of a long term lease. For instance—99 years lease with practically the full term to run.

We are of the opinion that, under the provisions of Section 8829, Code of 1927, as amended by Chapter 227, Acts of the Forty-third General Assembly, a fraternal beneficiary society is not permitted to exchange real estate the title of which was acquired under foreclosure for a leasehold interest, for the reason that the Commissioner of Insurance, under said section as amended, is only authorized to accept for deposit deeds to property which had been acquired by virtue of foreclosure proceedings, and these deeds must be accompanied by a certificate to the effect that the company has an abstract in its possession showing good and merchantable title to the property conveyed or it must be accompanied by a policy or contract guaranteeing said title.

ROADS AND HIGHWAYS: The thirty-five per cent of the secondary road construction fund, pledged to use upon local county roads, must be equally distributed among the townships. (Sections 10, 26, 34, 35, Chapter 20, Forty-third General Assembly.)

January 30, 1930. *County Attorney, Council Bluffs, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A petition has been filed by the residents of a township which includes East Omaha asking that a road assessment district be formed for the paving of the roads in said township; and that twenty-five per cent (25%) of the cost be taxed to the benefited lands and the balance be paid out of the secondary road construction fund. It is estimated that the cost of the paving in this township which the petitioners desire to be paved would be approximately fifty thousand dollars ($50,000.00).

The question is, has the board of supervisors, under the provisions of Chapter 20, Acts of the Forty-third General Assembly, the power and authority to provide for the paving of the roads in the petitioning township during the year of 1930 and to use the thirty-five per cent (35%) of the secondary road construction fund which is pledged to the use of

the local county roads, this notwithstanding the fact that the cost of this paving would take most of said local county road construction fund?

Section 10, Chapter 20, Acts of the Forty-third General Assembly, pledges thirty-five per cent (35%) of the yearly secondary road construction fund to the improvement of and to be expended on the local county roads of the various townships.

Sections 26, 34 and 35, Chapter 20, Acts of the Forty-third General Assembly, provide that the local county road program shall be approved by a board of approval composed of one representative from each township, selected by the township trustees, and the members of the board of supervisors. Each member of this board of approval has a vote upon the proposed construction program. The board of supervisors, therefore, would not have the power to adopt any particular plan of improvement for the local county roads as this is a matter for the board of approval.

Section 35 provides in part as follows:

"* * * The board of approval in planning said construction program shall distribute the improvements in such manner as will give to each township, as soon as may be, an equitable mileage of improved roads, and those townships which have heretofore improved their township roads shall not be discriminated against in this new improvement program. * * *"

We are of the opinion that, under the above statutory provision, the improvements on the local county roads must be distributed among the various townships on an equitable basis, and that an improvement program which would provide for the expenditure and use in one township of most of the thirty-five per cent (35%) of the secondary road construction fund, which is pledged to use on the local county roads, would not be an equitable distribution of this fund and would be discriminatory against the other townships of the county.

MOTOR VEHICLES—DEALERS: Motor vehicles in the possession of dealers, used car dealers, or manufacturers which have been duly registered and the license fees paid, are not to be considered as a part of the stock of merchandise of such dealer.

January 30, 1930. *Board of Assessment and Review:* A few days ago you orally requested an opinion of this department on the following questions:

(1) Section 4927, Code of 1927, provides as follows:

"Fees in lieu of taxes. The registration fees imposed by this chapter upon motor vehicles, other than those of manufacturers and dealers and used car dealers, shall be in lieu of all taxes, general or local, to which motor vehicles may be subject."

If a manufacturer, dealer or used car dealer has cars on his floor or in his possession which have been duly registered and the annual license fees paid, would said cars be considered as a part of his stock of merchandise and assessed as merchandise by the assessor?

(2) Section 4888, Code of 1927, provides as follows:

"Dealers and manufacturers—fee. Every person manufacturing or dealing in motor vehicles, including used motor vehicles, may instead of registering each motor vehicle, make an application for a general distinctive number for the motor vehicles owned or controlled by such manufacturer, dealer, or used car dealer. On the payment of a registration fee of twenty-five dollars, such application shall be registered in the office of the department."

Section 4892, Code of 1927, provides in substance for the issuance of

duplicate plates for dealers and manufacturers. Would cars which are registered by a dealer, used car dealer or manufacturer, in the manner provided for in Section 4888, Code of 1927, be considered a part of the stock in trade of said dealer, used car dealer or manufacturer for the purposes of assessment, or would the payment of the dealers license fee exempt such cars which were registered thereunder from assessment as a part of the stock in trade?

We are of the opinion that all cars owned by a dealer, used car dealer, or manufacturer, which have been regularly licensed and the license fee paid in accordance with the provisions of Sections 4869, 4904, and 4908, Code of 1927, are not to be considered as a part of the dealers, used car dealers, or manufacturers' stock in trade for the purpose of assessment; the payment of the license fee being payment of all taxes due on said property.

We are of the opinion that all cars which are licensed in accordance with the provisions of Section 4888, Code of 1927, are to be considered as a part of the stock in trade of the dealer, used car dealer, or manufacturer, for the purpose of assessment and are to be assessed in the same manner as merchandise; the payment of a dealer's license not being a tax upon the property, the dealer's license is issued in lieu of registration.

SCHOOLS AND SCHOOL DISTRICTS: Prosecution under Section 4297, Code, may be done by the school board or by its regularly appointed attendance officer.

January 30, 1930. *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 the prosecution provided for in Section 4297 of the Code, be done in each individual case by the school board, or may it be done through the regular constituted attendance officer?"

While this statute provides that its enforcement shall rest with the board of education, we are of the opinion that that is not an exclusive right and that this statute may be enforced in common with other criminal statutes. In the case of *State vs. Hueser*, 215 N. W. 643, one of the questions raised was whether or not the duty which is enjoined upon the State Board of Health to prosecute violations of the practice acts, was exclusive and whether a prosecution by the county attorney without the direction of the State Board of Health, was unauthorized. The court speaking through Mr. Justice DeGraff, said:

"Lastly it is urged by appellant that this action cannot be instituted except at the instance of the State Department of Health. There is no merit in the claim."

Even though it would be necessary for the board of education to bring the prosecution in its own name, the prosecution could be had through the regularly appointed attendance officer.

BANKS AND BANKING: National banks cannot pay interest upon a time deposit until it has been in the bank a full period of three months under the terms of the "McFadden Law." (Section 10, Chapter 30, Acts Forty-third General Assembly.)

January 31, 1930. *Mr. Ray Nyemaster, Chairman, State Banking Board, Davenport, Iowa:* You have requested the opinion of this department as

to the rate of interest which may be paid upon time deposits by a national bank under what is generally known as the "McFadden Bill."

A part of Section 16 of the so-called McFadden law reads as follows:

"* * * Such banks may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such banks may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by state banks or trust companies organized under the laws of the state wherein such national banking association is located."

You will observe that a higher rate of interest than the maximum rate authorized by law to be paid by state banks or trust companies is prohibited by this paragraph.

Section 10 of Chapter 30, Acts of the Forty-third General Assembly of the State of Iowa, reads as follows:

"No banking institution or trust company under the jurisdiction of the banking department shall pay interest on savings accounts or certificates of deposit or on any other time deposit at a rate greater than four per cent (4%) per annum, payable semi-annually. No interest in any event shall be paid upon such time deposits for any period less than three (3) months. Any savings accounts or time deposits bearing interest at a rate greater than four per cent (4%) per annum shall be considered borrowed money and shall be so reported to the superintendent of banking."

Under the provisions of Section 10, interest cannot be paid upon a time deposit unless the deposit has been in the institution for a full three months period. The McFadden law, in my opinion, in order to require the banks to conform to the same provisions as state banks, are required to conform with, must have read into it the same limitations as to time and method of computation. In other words, if a national bank should pay interest upon a deposit held in their bank for a less period than three months, it would be paying a higher rate of interest to depositors than would be paid under the state law. In other words, method of computation must be considered and, therefore, a national bank is prohibited from paying interest upon any account that is upon deposit for a period of less than three months.

SCHOOLS AND SCHOOL DISTRICTS: There is no liability upon either the district or individual members of the board if school buildings are rented and injury to person grows out of being on the premises. Section 4217(4), Code 1927.

February 1, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter inclosing copy of a letter received from H. C. Roberts, Board of Education, Sioux City, Iowa, requesting the opinion of this department upon the following proposition:

"1. In case school facilities are rented to outside individuals or organizations, may an elector enjoin the directors from granting this privilege?

2. In case of injury or death, resulting from accident in a school building during such time as it may have been rented to outside individuals or organizations, is there a liability,

(a) To the school district?

(b) To the individual directors?"

It is provided by statute, Section 4217 (4) that the electors at the

annual meeting shall have power to instruct the board that school buildings may or may not be used for meetings of public interest. Since this power is vested in the electors, any elector or tax payer could enjoin the board of directors from granting this privilege.

There would be no liability upon the school district or members of the board for any injury resulting from accidents while the building was so rented whether the authority had been granted by the electors or not.

BUREAU OF CHILD WELFARE—WARDS: See opinion. (Sections 11717, 11917, 12732, Code 1927.)

February 3, 1930. *Board of Control:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In connection with the work of Bureau of Child Welfare, wards of the state are placed out on contract in foster homes, the foster parents agreeing to pay certain stipulated wages to the child or ward.

The question has arisen as to right of preference, if any, this child has for services due in case of bankruptcy, receivership, assignment to the benefit of creditors, or in any other court proceedings.

In connection with the assignments for benefit of creditors we refer you to Section 12732, Code of 1927. It would appear from reading this section that wages due for personal services rendered an assignor for the benefit of creditors within ninety (90) days next preceding the execution of the assignment shall be paid in full.

In connection with claims for wages due for personal services rendered a deceased we refer you to Section 11971, Code of 1927, which provides that these claims are claims of the third class and that such claims for wages earned within the ninety (90) days next preceding the death of the decedent are preferred and shall be paid in full after claims of the first and second class have been paid.

In connection with claims for wages due for personal services rendered any company, corporation, firm, or person whose property has been seized by judicial process of any court, or placed in the hands of a receiver, trustee, or assignee, or which has been seized by the creditors, we refer you to Section 11717, Code of 1927, wherein it will be noted that such claims for labor earned within the last ninety (90) days next preceding the seizure of the property are preferred claims and shall be paid in full up to and not exceeding one hundred dollars ($100.00).

FIRE MARSHAL—FEES: Section 1654, Code of 1927, only authorizes the payment of fifty cents (50c) for reporting of a fire, regardless of the number of buildings burned during the fire.

February 4, 1930. *State Fire Marshal:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 1654, Code, 1927, provides that the chief of the fire department or the mayor of an incorporated town, or the township clerk who reports a fire shall receive the sum of fifty cents (50c) for each fire reported. In some cases a building in a business block catches fire and one or more of the adjoining buildings are destroyed by the same fire.

Should the officer whose duty it is to report each fire be entitled to receive the sum of fifty cents (50c) for each building which burned or fifty cents (50c) for the one fire?

We are of the opinion that the chief of a fire department or the mayor of an incorporated town or the township clerk, as the case may be, would only be entitled to receive fifty cents (50c) for reporting a fire, regardless of the number of buildings which may have been destroyed by said fire.

ROADS—POLL TAX: One who becomes twenty-one years of age before October 1st liable for road poll tax, under the provisions of Chapter 20, Acts of the Forty-third General Assembly.

February 5, 1930. *County Attorney, Fairfield, Iowa:* This will acknowledge receipt of your request of January 14, 1930, which is as follows:

"Under the provisions of the new road poll tax, as contained in Chapter 20 of the Acts of the Forty-third General Assembly, does a man becoming 21 years of age after the 1st of January become liable for the payment of this tax for the current year?"

In reply thereto we would say that in view of Chapter 20, Acts of the Forty-third General Assembly, we are of the opinion that a poll tax would be due and collectible from a man who becomes 21 years of age prior to October 1st, at which time the poll tax is delinquent.

TOWNSHIP TRUSTEES—ASSESSORS—TAXATION: No provision for appointment of an assistant assessor in event of illness of regular assessor.

February 5, 1930. *County Attorney, Iowa City, Iowa:* This will acknowledge receipt of your request of January 31, 1930, in which you ask the following question:

"Can an assistant assessor be appointed and by whom, in the event the regular assessor is ill and does not resign?"

We are of the opinion that if the assessor has reason to believe that he will not be able to perform his duties, the township trustees, upon notification by him, should appoint an assessor who should qualify the same as the former incumbent. We find no provisions for the appointment of a deputy or assistant assessor.

SCHOOLS AND SCHOOL DISTRICTS: Discretionary with board whether junior college be established even though authorized by electors; may be discontinued at discretion of the board or vote of electors.

February 12, 1930. *Geo. H. Sackett, Perry, Iowa:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"1. When a junior college has been voted by the voters of the district, does the school board necessarily have to go ahead and start the college?
2. After the college has been started, can the school board discontinue it without a vote of the people?
3. Can the voters of the district continue the college by their vote and without the action of the school board, and if so, how should the question be submitted to the voters?"

The powers of the electors are enumerated in Section 4217 of the Code. Among those powers is the power to authorize the establishment and maintenance in each district of one or more schools of a higher order than the approved high school course. In the same section in sub-section 6 thereof, the electors have the power to "authorize the board to obtain

at the expense of the corporation roads for proper access to its school houses." The latter sub-section was under consideration by the court in the case of *Bogaard vs. School District*, 93 Iowa, 269, where the court in discussing this power, at page 272, said:

"Having a vote of the electors, the authority of the board is to obtain 'such highways as such board may deem necessary.' It still remains discretionary with the board whether to obtain a highway notwithstanding the electors have voted a tax for that purpose."

Since the otherwise control of the course of study is discretionary with the board, and since the legislature used the word "authorize" instead of the word "direct," "determine," or "instruct," we are of the opinion that the construction placed by the court upon the word "authorize" in the cited case, would apply to the word "authorize" in subsection 8, and that this power is discretionary with the board even after the authority is granted by the voters.

If the power to establish is discretionary with the board, even after the authority granted by the electors, then the power to discontinue would be discretionary with the board, and we are of the opinion that the board could discontinue the course if established.

The power of the electors is to authorize not only the "establishment" but also the "maintenance." We are therefore of the opinion that the electors have the power to rescind the authority to maintain such course. This proposition would be submitted to the voters on petition under the provisions of Section 4218 of the Code.

SHERIFFS—COMPENSATION: A sheriff killed while in the performance of a hazardous official duty comes under the provisions of Section 1422, Code, and the state must pay compensation therefor.

February 13, 1930. *County Attorney, Britt, Iowa:* You have requested the opinion of this department upon the following proposition:

The sheriff of Hancock county, while in the course of the performance of one of his official duties, to wit: attempting to apprehend a booze runner, was killed by reason of the discharge of his own pistol which dropped from his holster while upon this enterprise. You state that the sheriff, at the time, had backed his car around upon the highway and had evidently attempted to turn around when his car become stalled in the snow along the edge of the right of way, and that the sheriff got out of his car, took his shovel, and while attempting to dig out the wheels so that he could get traction, his pistol dropped from his shoulder holster and was discharged thus causing his death. You state also that the deputy sheriff was with him and stationed down the road at the time, and that the deputy sheriff verified the purpose and object of the enterprise upon which both he and the sheriff were employed.

Your question is whether the provisions of Section 1422 of the Code, relative to compensation, is applicable in view of these facts.

Section 1422 of the Code, insofar as applicable, is:

"* * * any sheriff, * * * who shall, while in line of duty or from causes arising out of or sustained while in the course of their official employment, meaning while in the act of making or attempting to make an arrest or giving pursuit, or while performing such official duties where there is peril or hazard peculiar to the work of their office, be killed outright, or become temporarily or permanently physically disabled, or if said disability result in death, shall be entitled to compensa-

tion, the same to be paid out of the general funds of the state for all such injuries or disability.

"Where death occurs, compensation shall be paid to the dependents of the officer, as in other compensation cases. Such compensation shall be the maximum allowed in compensation cases. The industrial commissioner shall have jurisdiction as in other cases."

You are advised that this department is of the opinion that, under the facts stated by you and summarized above, the sheriff in question was killed while in the course of performing his official duty as sheriff, and while performing an official duty where there was peril or hazard peculiar to the work of his office. Had he not been trying to apprehend a booze runner, he would not have been the victim of the unfortunate accident which occurred. It was necessary for him, while engaged in that enterprise, to be armed with a pistol.

Because of all of these facts, we are of the opinion that the compensation should be paid by the state as provided by the section of the law referred to.

ROADS AND HIGHWAYS: The cost of draining, grading, bridging, graveling, and maintaining any road or street which is a continuation of the county trunk system is to be paid out of the funds available for use on the roads for which said street or road is a continuation. (Sec. 48, Chap. 20, Forty-third General Assembly.)

February 20, 1930. *County Attorney, Toledo, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 48, Chapter 20, Acts of the Forty-third General Assembly, provides in substance that the board of supervisors shall grade, drain, bridge, gravel or maintain any road or street which is a continuation of the county trunk highway system, or a continuation of a local county road. Are continuations of county trunk roads within cities and towns a part of the county trunk system, and are continuations of local county roads which are within cities and towns a part of the local county road system or are there three classes of roads established by the Bergman Bill, to-wit: (1) county trunk roads; (2) local county roads; (3) continuations of county trunk and local county roads within cities and towns? If there are three classes from what portion of the secondary road construction fund are improvements on the third class payable—the 65%, the 35%, or both, or either at the option of the board?

We are of the opinion that the cost of grading, draining, bridging, graveling and maintaining any road or street which is a continuation of the county trunk system is to be paid out of the funds available for use on said roads, and that if the continuation is of a local county road the cost of the same shall be paid out of funds available for use for such purposes on local county roads.

WORKMEN'S COMPENSATION — ARBITRATION — WIDOW: The surviving spouse of the deceased is not entitled in her own right to be substituted for the deceased in an arbitration proceeding pending before the commissioner at the time of the death of the deceased; the legal representative being the one who is entitled to be substituted. The surviving spouse has, however, such an interest in the matter as to entitle her to intervene and claim such compensation as she is entitled to under the statutes. (Sections 1389, 1392, Chapter 70, Code of 1927.)

February 21, 1930. *Industrial Commissioner:* We acknowledge receipt

of your letter requesting an opinion of this department on the following questions:

December 9, 1929, there was filed with this department petition for arbitration based upon injury alleged to have occurred October 22, 1929. December 17th the case was submitted for arbitration. Argument was deferred to a date to be arranged later by the parties. In the meantime evidence taken at the arbitration hearing was transcribed, and on December 8, 1929, before argument was submitted, the death of the injured occurred. Counsel for claimant then filed amendment to petition for arbitration substituting the widow as claimant, claiming for her the compensation due her as surviving spouse and dependent and also claiming the compensation as claimed in the original petition by the deceased. The defendants resist this proposed amendment on the ground that the claim of the deceased and that of his widow are entirely different in character and, therefore, the proposed substitution cannot occur, since the widow can only recover by an application on her part for compensation as the surviving spouse and dependent.

(1) Is the surviving spouse entitled to be substituted for the deceased claimant or must she file a separate petition as claimant under the statute, she being the surviving spouse and dependent?

(2) Is the widow, in the event it is determined that the injury to the deceased was sustained in the course of his employment, and that his death was the result of such injury, entitled, under the statutes of this state, to recover the full three hundred (300) weeks compensation, no compensation having been paid the deceased, or is she only entitled to such compensation as may be due from and after the date of his death?

It is provided in Section 1389, Chapter 70, Code of 1927, that when there are no dependents all earned and accrued compensation which was not paid to the deceased up to the time of his death should be paid to his estate. It is also the general rule that, in the event of death due to the negligence of another, the estate of the decased, through his personal representative (administrator or executor) has a cause of action against the party whose negligence caused the death of the deceased, to recover such damages as the deceased might have recovered, and that the widow has a cause of action to recover damages for such injuries as were sustained by her by reason of the death of her husband. This is the generally accepted rule and there is no need for citing authorities. However, we refer you to *Frink and Company vs. Taylor*, 4 Greene (Iowa), 196. The legislature in Section 1389, recognizes the right of the deceased's estate to all earned and accrued compensation which was not paid to the deceased at the time of his death.

We are, therefore, of the opinion that the same rule would apply to cases before the Industrial Commissioner and that the widow would not be entitled to be substituted for the deceased in the matter now pending before the commissioner in arbitration to determine whether or not the deceased was injured in the course of his employment, but that the legal representative of the estate of the deceased would be the only one who would be entitled to be substituted in such matters.

The surviving spouse, widow of the deceased, should, in our opinion, file a petition of intervention in the original proceedings claiming in her own right such compensation as would under the statutes be due and payable to the surviving spouse (dependent) in cases where death is alleged to be the result of the injury; this for the reason, that the widow has such an interest as would entitle her to intervene. The

widow may, however, if she does not choose to intervene, or if the question as to whether or not the injury arose out of the course of the employment has been determined, file an application in her own right claiming such compensation as under the statutes she would be entitled to.

We are also of the opinion that were it not for Paragraph 4, Section 1392, Code of 1927, the legal representative of the deceased, in the event that it is determined that the deceased was injured in the course of his employment and was, therefore, entitled to compensation, would be entitled to collect compensation from the date of the injury in accordance with the statutes to the date of the injured's death. However, it is provided in Paragraph 4, Section 1392, as follows:

"* * * *."

"4. When weekly compensation has been paid to an injured employee prior to his death, the compensation to dependents shall run from the date to which compensation was *fully paid to such employee*, but shall not continue for more than three hundred weeks from the date of the injury.

"* * * *."

From reading that part of Section 1392, Code of 1927, above set out, it will be seen that the dependents of the deceased, in the event that death is the result of the injury for which compensation is paid, is entitled to three hundred (300) weeks' compensation from the date of the injury less only such compensation as was fully paid to the deceased employee. It would, therefore, follow that in the event the legal representative of the deceased should be substituted in the arbitration proceedings now pending before the commissioner and that it should be determined that the deceased was injured in the course of his employment and, therefore, was entitled to compensation in accordance with the provisions of Chapter 70, Code of 1927, that the legal representative would be entitled to all earned and accrued compensation not paid to the deceased up to the time of his death if the death was not the result of the injury; but that if the surviving spouse, or dependents, in her or their application for compensation as dependents, establish the fact, and it is so determined, that the death was the result of the injury, then the surviving spouse or dependents would be entitled to all of the compensation which was not paid to the deceased not exceeding three hundred (300) weeks, and the legal representative would not, in that event, be entitled to collect and receive any earned and accrued compnsation.

WARDS OF STATE: Children born to wards of state while detained in state institutions are not automatically wards of state. If no relative will take them, they should be disposed of through the juvenile court as neglected and abandoned children.

February 24, 1930. *Board of Control:* You have requested the opinion of this department upon the following proposition:

"The question has arisen concerning the status of children born to wards of the state. Do these children automatically become wards of the state, or is a commitment required the same as for all other children?"

You are advised that children born to wards of the state while confined in a state institution, do not automatically become wards of the

state. If there is no father who can take such a child, or if there are no other relatives who can take the child during the retention of the mother in the institution, then the child may be dealt with through the juvenile court as a neglected or abandoned child, and either committed to a proper home, or adopted to some responsible individual.

TAXATION—ROAD POLL TAX—EXEMPTION: Reserve officers are not entitled to exemption from road poll tax.

February 27, 1930. *Auditor of State:* This will acknowledge receipt of your request of February 25, 1930, which is as follows:

"Are reserve officers entitled to an exemption from road poll tax, either under Section 6946, or Section 461, Code of 1927, or any other section?"

It is the opinion of this department that reserve officers are not entitled to exemption from road poll tax, as Section 6946 only exempts veterans of the Civil War and Spanish-American War from road poll tax, and Section 461 refers only to members of the national guard of this state. Nowhere do we find where reserve officers are entitled to this exemption, as they are not on active duty with the United States army, and are not members of a state organization.

MOTOR VEHICLES: A semi-trailer where the truck carries a portion of the load is a motor vehicle and not a trailer within the license acts.

February 27, 1930. *Secretary of State:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"Is a so-called semi-trailer, the front end of which rests upon the truck and the rear end of which rests upon wheels in such manner that both the truck and the wheels of the semi-trailer carry part of the same load, to be licensed as a truck and a trailer or a single motor vehicle with a rating based upon the load capacity of the entire vehicle?"

A trailer is defined by statute, in Section 4863 (4) as follows:

"A 'trailer' shall be deemed to be any vehicle, which is at any time drawn upon the public highway by a motor vehicle excepting any implements of husbandry temporarily drawn, propelled, or moved upon such highway."

We are of the opinion that the vehicle which the legislature had in mind when this definition was adopted, was a vehicle which carried a load independently of a motor vehicle and one which was merely drawn upon the highway by such vehicle. We are also of the opinion that a vehicle described as above where the load is carried partly upon the truck and partly upon the attachment, would constitute one motor vehicle and that it should be licensed upon the basis of its total carrying capacity as such.

STATE SANATORIUM—COUNTIES—COUNTY TUBERCULOSIS HOSPITALS: State sanatoriums should first provide for patients from those counties which do not have a tuberculosis sanatorium.

February 28, 1930. *Board of Control:* This will acknowledge receipt of your request on the following question:

Must the State Sanatorium at Oakdale accept patients from counties who already have county tuberculosis sanatoriums?

In reply thereto we desire to quote Section 3386 and paragraph 6 of Section 5360, which are as follows:

"The state sanatorium shall be devoted solely to the care and treatment of pulmonary tuberculosis, both in its incipient and advanced stages, of residents of this state." (Section 3386.)

"* * * 6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodations and means for the care of persons afflicted with tuberculosis." (Paragraph 6, Section 5360.)

In view of these sections, as well as the other provisions of both Chapters 169 and 269, we are of the opinion that the superintendent at Oakdale would not be required to accept patients from those counties which are already supporting tuberculosis sanatoriums, unless there was ample room found at the state sanatorium, and, of course, no waiting list.

We believe that it was the thought of the legislature in permitting counties to conduct their own sanatoriums that it might be possible, in some instances, for the county to handle their own patients more economically than could be done by sending them to the state sanatorium. We hold that the counties, which have not provided for their tubercular patients, should be given, if possible, a preference over those counties which have their own tuberculosis sanatoriums.

INHERITANCE TAX—APPRAISERS: Inheritance tax appraisers have authority, under the statute, to appraise property in counties other than the county of their residence. Inheritance tax appraisers do not have authority to appraise real estate located without the state, as the same is not subject to taxation under the laws of this state. (Sec. 7334, Code 1927.)

February 28, 1930. *County Attorney, Clarinda, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

(1) Do inheritance tax appraisers of this county have any jurisdiction to appraise real estate in other counties than the one of their residence?

(2) How should rent notes, which are not due at the time of the death of the deceased and for sometime thereafter, be appraised?

(3) Do inheritance tax appraisers of this county have any jurisdiction to appraise real estate in some other state?

Section 7334, Code of 1927, answers your first question.

Rent notes which are not due at the time of the death of the deceased should be appraised at their present value.

Real Estate located without the State of Iowa belonging to a decedent of this state is not subject to inheritance tax under the laws of this state. It might be, however, that it would be necessary to determine the value of this real estate in order to determine the proportion of the debts of this decedent which should be charged to the property located in Iowa. If this were the case we find no provision in the statute which would prohibit the inheritance tax appraisers of the county from making such appraisement.

EXPENSES—INSANE: Under Section 3590, Code 1927, the expenses attending the arrest, care, investigation and commitment of a person to the State Hospital for the Insane is to be paid by the committing county, which county in turn is to be reimbursed by the county of the legal settlement; and under Section 3583, Code 1927, the superintendent of the State Hospital is to charge to the county of the legal settle-

ment not only the costs which have been advanced by the committing county but for the cost of said patient's support at said institution.

February 28, 1930. *Board of Control:* Pursuant to your request we are rendering you an opinion on the following question:

Is there any conflict between the provisions of Sections 3583 and 3590 of the Code of Iowa, 1927?

Section 3583, Code of Iowa, 1927, provides as follows:

"Certification of settlement. If such legal settlement is found to be in another county of this state, the commission shall, as soon as said determination is made, certify such finding to the superintendent of the hospital to which said patient is committed, and thereupon said superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of such patient, to the county so certified until said settlement shall be otherwise determined as hereinafter provided."

Section 3590, Code of Iowa, provides as follows:

"Preliminary payment of costs. 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 will be noted from reading Section 3590, Code of Iowa, 1927, above set out, that said section only applies to legal costs and expenses attending the *arrest, care, investigation, and commitment* of a person to the State Hospital for the Insane, and provides for their payment by the county of commitment and then for the re-imbursement to that county by the county of legal settlement. This section only applies to the preliminary costs and expenses. There are necessarily certain expenses and costs incurred in connection with the hearing and commitment of a patient and these costs usually are advanced. This section, therefore, simply provides that the committing county should pay any costs which are necessary to be advanced and provides that said county shall be re-imbursed by the county of the legal settlement.

Section 3583, Code of Iowa, 1927, above set out, provides that after the patient has been committed and the commissioners of insanity have certified their findings as to legal settlement to the superintendent of the hospital, that he shall charge the preliminary expenses, that is, expenses already incurred in connection with the commitment, and all future expenses, that is, expenses incurred after the patient is received in the State Hospital, to the county certified as the county of the legal settlement. There is, therefore, no inconsistency between the two sections.

The superintendent in all cases must charge the costs and expenses to the county certified as the county of the legal settlement until such time as it has been determined that said county is not the county of the legal settlement.

ROADS AND HIGHWAYS—BOARD OF SUPERVISORS—SUPPLY DEPOT: Boards of supervisors may maintain supply depots. (Sec. 43, Chap. 20, Acts of Forty-third General Assembly.)

February 28, 1930. *County Attorney, Corning, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The board of supervisors of this county maintain a supply depot for the storage of road materials, it being the policy to keep on hand at all times cement, lumber, etc., for use upon the county roads. A carload of lumber may be purchased this week to cost less than $1,500.00, and next week a carload of cement to cost less than $1,500.00, but the two purchases would exceed a total of $1,500.00.

The question arises as to whether or not, under Section 43, Chapter 20, Acts of the Forty-third General Assembly, the county may continue the maintenance of this supply depot in the manner in which they have been maintaining it.

We do not find any statute which would prohibit the county from maintaining a supply depot. Section 43, Chapter 20, Acts of the Forty-third General Assembly, is applicable to contracts for road or bridge construction work and the materials to be used in that work. If the engineer's estimate of the cost of a certain piece of construction or road work, together with the materials, exceeds $1,500.00 then it would be necessary for the county board to advertise and let said contract at a public letting or to reject the bids and let privately for a price not exceeding the lowest bid, or to build by day labor.

If the contract is let to the lowest bidder and the engineer's estimate exceeded $1,500.00 the county board would not be permitted, under Section 43, Chapter 20, Acts of the Forty-third General Assembly, to use materials from their supply depot. If, however, they proceeded in accordance with Section 43 to build by day labor they would be permitted to use the materials from their supply depot. The county board may use materials in their supply depot on small jobs on which the engineer's estimate is less than $1,500.00.

COUNTY RECORDER—FARM LEASES: Farm leases may be recorded as instruments affecting real estate. (Sec. 10066, Code of 1927.)

February 28, 1930. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Are leases on farm lands such instruments as affect the title to real estate, and, therefore, subject to recording under and in accordance with the provisions of Section 10066, of the Code?

We are of the opinion that leases on farm lands are such instruments as do affect the title to real estate and that the same, when they comply with the provisions of Section 10066, Code of 1927, may be recorded in the same manner as instruments affecting real estate.

ROADS AND HIGHWAYS: Drainage assessments against secondary roads are to be paid in accordance with the provisions of Section 76, Chapter 20, Acts of the Forty-third General Assembly.

February 28, 1930. *County Attorney, Forest City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 7485, Code of 1927, was repealed by the Acts of the Forty-third General Assembly. This section provided the method and manner in which drainage assessments should be paid by roads which were benefited by the drainage ditch. Chapter 20, Acts of the Forty-third General Assembly, Section 76, provides that such assessments against primary highways shall be paid by the State Highway Commission from the primary road fund on due certification of the amount by the county treasurer to

said Commission, and against all secondary roads from the secondary road construction fund or from the secondary road maintenance fund, or from both of said funds.

We are of the opinion that said section is the section which would now govern, and that all assessments against the secondary roads of the county would be payable out of either the secondary road construction or maintenance fund or from both.

SECURITIES DEPARTMENT—EXPENSES: Section 398, Code, does not apply to expenditures incurred in connection with an investigation and examination of the business and affairs of foreign companies. (Chapter 10, Forty-third General Assembly.)

February 28, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under Chapter 10, Acts of the Forty-third General Assembly, it becomes necessary, as a part of the duties of the Securities Department, to have examinations made with respect to the property and affairs of foreign companies, and in connection the traveling representatives of this department incur expenses going to and from and while making the investigation. Section 398, Code of 1927, provides in substance that claims for expenses in attending conventions and conferences outside of the state shall not be allowed unless the voucher is accompanied by so much of the minutes of the Executive Council, certified to by the secretary, to show that such expense was authorized by said Council.

Is this section applicable to the expenses of our traveling representatives incurred while making investigations and examinations of foreign companies?

We are of the opinion that Section 398, Code of 1927, does not apply to expenditures incurred by the Securities Department in connection with the investigation and examination of the business and affairs of foreign companies.

AUDITOR OF STATE—TOWNSHIPS: Chapter 20, Forty-third General Assembly, does not affect or change the provisions of Section 124, Code of Iowa, 1927.

February 28, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

"Would the auditor have authority under Section 124, to make an examination of the records and accounts of the township, upon the filing of a petition, properly signed by taxpayers of the township, giving reasons sufficient (in the opinion of the Auditor of State) to warrant such examination?

"Since the township clerk under Chapter 20, Forty-third General Assembly, does not receive the road funds, consequently handles a negligible amount of money, how could the cost of the examination be paid, as provided in Section 126, Code?"

The only effect that Chapter 20, Acts of the Forty-third General Assembly, had upon the duties of the township clerk and upon the business of the township was to take away the control and jurisdiction of the township roads from the township trustees and thus do away with the township road funds. The township clerk now, under the statutes, handles township cemetery funds, taxes collected from special levies for township halls, roadhouse license taxes, and a few other minor funds.

We do not believe that the taking away of the township road funds

from the townships would in any way effect the authority of the Auditor of State to make the examination of a township, under and in accordance with Sections 124 and 126, Code of 1927. If the Auditor of State found upon presentation of the petition for the examination that there were no funds with which to pay for the examination the Auditor could properly refuse to make such examination.

BUILDING AND LOAN—BONDS: Under Section 9326, Code, 1927, the board of directors or the clerk of the district court have power when it shall be deemed necessary to protect the interests of the association and its members to increase the bonds of such officers as are required by statute to give bond. This authority must not be exercised arbitrarily, but must be reasonable.

February 28, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

(1) "Who has the power to fix the bonds of the officers of building and loan associations?"

(2) "Under what circumstances is the clerk of the district court justified in demanding an increase in the amount of the bond of any officer of a building and loan association?"

Section 9323, Code of 1927, provides as follows:

"Domestic local companies—bonds. The officers of any domestic local building and loan or savings and loan association who sign or indorse checks or handle any funds or securities of said association *shall give bonds or fidelity insurance for the faithful performance of their duties in such sum as the board of directors may require;* and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors and the clerk of the district court of the county of the principal place of business of said association."

Under the above section the board of directors, and the board of directors only, of a domestic local building and loan association have the power to fix the bond of any officer of said company who signs or endorses checks or handles any funds or securities of said association.

Sections 9324, Code of 1927, provides as follows:

"Approval and custody of bonds. Said bonds shall be deposited with the said clerk, and it is hereby made the duty of the said clerk to approve said bonds and to receive the same as herein provided."

It will be noted from reading both Sections 9323, 9324, Code of 1927, above set out, that the bond of any officer of a domestic local building and loan association who signs or endorses checks or handles any funds or securities of said association is to be approved by the board of directors of said association, and the clerk of the district court of the county of the principal place of business of said association. The authority to approve a bond is not the authority to fix the amount of the bond, it is only the authority to approve the form of the bond and the sureties thereon.

Section 9326, Code of 1927, provides as follows:

"Increase in bonds. All such bonds shall be increased or additional securities required by the board of directors or by the clerk of said district court when it shall be deemed necessary to protect the interests of the association or its members."

Under this section the board of directors of a domestic local building

and loan association or the clerk of the district court of the county in which such association has its principal place of business are authorized to require that the bonds of the officers of such association, who sign or endorse checks or handle any funds or securities of said association, be increased when it shall be deemed necessary to protect the interests of the association or its members. In other words, the board of directors of an association and the clerk of the district court are given the discretion in the matter of requiring additional bonds from officers who are required to file the same. This discretion must be exercised in a reasonable manner, that is, there must be some good reason or justification for requiring an increase in the bonds. This discretion cannot be exercised arbitrarily.

The fixing of the amount of the bond of an officer or the increase of the same is primarily the duty of the board of directors as they are the ones who are familiar with the business of said association and are the ones made individually liable for loss to the association or to its members caused by reason of their failure to require a proper bond and proper sureties. The clerk of the district court, however, under Section 9326, Code of 1927, is also given power to require an increase in the bonds of the officers of such an association. This authority, however, must be exercised as above suggested.

SCHOOLS AND SCHOOL DISTRICTS: Tenant is not employee or appointee within the provisions of Chapter 215 c-1 of the Code.

February 28, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter in regard to the following proposition:

"May a renter on lands acquired by the state or federal government and removed from taxation for school purposes be considered an 'appointee' or 'employee' and entitled to have his tuition paid by the state as provided in Chapter 215-c1?"

An appointee is a person appointed by the government or appointing officer over whom the appointive power has control or jurisdiction. The same construction is true of an employee. A tenant is an individual contractor and is not in any sense an appointee or an employee.

We are, therefore, of the opinion that the state would not be chargeable with the tuition under this chapter of a tenant who resides upon land owned by the state.

TAXATION — SCAVENGER SALE — REDEMPTION: Under Section 6041, Code 1927, a city in which any lot or parcel of ground, which has been sold at tax sale is given the authority to redeem from said tax sale by paying the amount which the purchaser at said sale is entitled to receive.

March 3, 1930. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

Property is sold at scavenger tax sale. The questions we desire an opinion on, are:

(1) If the owner redeems from a scavenger tax sale, what does he have to pay—the entire tax or just the amount for which the same was sold at the sale plus penalties and interest?

(2) If the city redeems under the special improvement tax sale, what

does it have to pay, the entire tax or just the amount of sale plus penalties and interest?

For answer to your first question we are enclosing herewith copy of an opinion rendered by this department under date of January 13, 1928, to George H. Clark, Jr., county attorney, Ida Grove, Iowa.

For answer to your second question we refer you to Section 6041, Code of Iowa, 1927, which provides as follows:

"Assignment of certificate. Any holder of any special assessment certificate against a lot or parcel of ground, or any holder of a bond payable in whole or in part out of a special assessment against any lot or parcel of ground, or any city or town within which such lot or parcel of ground is situated, which lot or parcel of ground has been sold for taxes, either general or special, shall be entitled to an assignment of any certificate of tax sale of said property for any general taxes or special taxes thereon, upon tender to the holder or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption."

Under this section the city or town in which any lot or parcel of ground is located has the right to redeem from said tax sale and is only required to pay the holder of the certificate of sale the amount which he would be entitled to receive in case of redemption.

FISH AND GAME—BULLHEADS: (Game fish.) Bullheads are not "game fish" and may, therefore, be caught at any time irrespective of the season with a catch limit of 25 per person per day. (Sections 13 and 14, Chapter 57, Acts Forty-third General Assembly.)

March 3, 1930. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 13, Chapter 57, Acts of the Forty-third General Assembly, provides in part that it shall be unlawful for any person to take from the waters of the state any *game fish* in the northern zone from December 1st to May 14th with certain exceptions as to seining, and in the southern zone from November 16th to April 30th.

Section 14, Chapter 57, Acts of the Forty-third General Assembly, fixes a catch limit on bullheads of twenty-five (25) for any one person in any one day.

The question which arises is, whether or not bullheads are game fish within the meaning of the provisions of Section 13 and, therefore, are subject to the closed season provided for in paragraphs 1 and 3 of said section.

We are of the opinion that bullheads are not game fish and that there is no closed season on bullheads. There is, however, a catch limit of twenty-five (25) bullheads per person per day.

TAXATION—ASSESSMENTS—ASSESSMENT ROLL: Failure to sign assessment roll does not invalidate the assessment.

March 4, 1930. *County Attorney, Osage, Iowa:* This will acknowledge receipt of your letter in which you submit the following question:

"Does the failure of property owner to sign the assessment roll invalidate an assessment—particularly where the property owner is not available?"

We refer you to the provisions of Section 7112, which provide for action to be taken in the case of refusal. While there is a difference between refusal to sign the assessment roll, and failure to do so, we believe that it could readily be seen from the provisions of Section 7112

that in the event the property owner failed to sign, the assessor should proceed to list and assess such property according to the best information obtainable, and that the failure to sign would not invalidate the assessment. (See Chapter 245, Forty-fourth General Assembly.)

COUNTY OFFICERS—DEPUTIES: Where county officer desires to appoint a non-resident as deputy, it will be necessary for deputy to first take up and maintain a residence in Iowa in good faith prior to taking up the work.

March 4, 1930. *County Attorney, Mt. Pleasant, Iowa:* This will acknowledge receipt of your letter in which you submit the following question:

Can a county officer appoint as his or her deputy one who is a non-resident of the county or state?

While there is no specific prohibition against this, nevertheless, it is necessary for the principal to be a qualified elector of the state before he can obtain office, and in view of the fact that the deputy is frequently caalled upon to act in behalf of his principal, it would be necessary that the deputy also be a qualified elector of this state. While one might be appointed as a deputy who, at the time of the appointment, was a non-resident, it would be necessary for him to take up and maintain residence within this state before entering upon the duties of the office.

ROADS AND HIGHWAYS—PRIMARY ROAD BONDS: The proceeds from the sale of primary road bonds which are not needed for the improvement of primary roads of the county may be used to pay the interest and for redemption of primary road bonds. (Sections 4753-a11 and 4763, Code of 1927.)

March 4, 1930. *County Attorney, Northwood, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Worth county voted a bond issue for the purpose of paving primary roads. The bonds were duly issued and sold pursuant to statute. The paving project for which the bonds were primarily intended has been completed and the expense thereof has been paid out of the proceeds of the bond issue. There is a balance remaining from the proceeds of the sale of the bonds after the payment of all of the expenses of the paving program amounting to $70,000.00.

The question is, can the board of supervisors use this balance of $70,000.00 for the purpose of retiring a proportionate amount of the primary road bonds issued, and can these bonds be called at any time and retired by using the balance of the proceeds on hand?

We call your attention to Section 4753, a-11, Code of Iowa, 1927. It will be noted from reading that Section that the bonds issued under Chapter 241 may be retired at the option of the county on any interest payment date on or after five years from the date of the bond. Bonds, therefore, which have been issued in accordance with this chapter cannot be called at the option of the board until on or after five years from the date of the bond.

It will be noted from reading Section 4763, Chapter 242, Code of Iowa, 1927, that bonds issued under that chapter have fixed maturity dates not exceeding fifteen years. If said bonds are for grading, draining, bridging or paving, bonds issued under this chapter could not be called at

the option of the county board unless, of course, there is a callable provision in the bond.

As to whether or not the balance of the proceeds of the sale of primary road bonds may now be used to call and retire said primary road bonds, it would appear that this is a matter within the discretion of the county board of supervisors and that if the board desires to use these funds for the purpose of retiring primary road bonds we are of the opinion that there is nothing in the statute which would prevent them from so doing.

TAXATION—ESTATES: Trustee and permanent guardian of property is personally liable for the payment of taxes due on property in their possession. (Sec. 5968, Code of 1927.)

March 4, 1930. *County Attorney, Cedar Rapids, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under date of October 29, 1929, your department held that an executrix of an estate was not liable personally for failure to report monies and credits in her possession for taxation. Would the same rule apply to a guardian or trustee?

We refer you to Section 6958, Code of 1927. Inasmuch as a trustee or permanent guardian holds the property for the benefit of the cestui que trustants and wards respectively and for the purpose of investing and re-investing for the benefit of said parties, we are of the opinion that a permanent guardian and a trustee would be personally liable for any taxes which might be due on the property in their possession. This would be doubly true of a trustee, for the trustee holds the legal title to said property.

DRAINAGE — LATERAL TILE DRAINS — RECLASSIFICATION — BOARD OF SUPERVISORS: Tile lateral drains to be classified the same as ordinary lateral drains.

March 8, 1930. *County Attorney, Sioux City, Iowa:* This will acknowledge receipt of your request which is as follows:

"The board of supervisors have recently reclassified certain ditch districts under Section 7562 of the 1927 Code of Iowa, and our opinion has been asked concerning the meaning of the amendment to Sections 7561 and 7562, which amendments were passed by the Forty-third General Assembly and consisted only of adding the word 'tile' in certain places. Woodbury county has no tile lateral ditches and therefore under this reclassification it is difficult to understand what the legislation meant by talking about the reclassification of lateral tile drains. In other words, should there be a separate apportionment for the ordinary lateral drains, when the same are not constructed of tile?"

It is the opinion of this department that the same procedure as prior to the time of the amendment of Sections 7561 and 7562 by the Forty-third General Assembly would apply. In other words, there should be a separate apportionment for the ordinary lateral drains, as we do not believe that it was the intention of the legislature to confine the reclassification to title laterals.

LEGAL SETTLEMENT—RESIDENCE—COUNTIES: See opinion.

March 10, 1930. *County Attorney, Algona, Iowa:* We acknowledge re-

ceipt of your letter requesting an opinion of this department on the following question:

A family which is now living at Ringsted, Emmet county, lived for a great number of years in Jewell, Iowa, in Hamilton county. They left there in 1925, spending a few months in Colorado, a few in Nebraska and then moved to Dallas County, and from there to Kossuth County, and then to Ringsted in Emmet County. Notice to depart was served upon them in Dallas, Kossuth and Emmet Counties and they were, therefore, prevented from acquiring a legal settlement in any of those counties. Hamilton County refuses to acknowledge responsibility for their support claiming they have been absent from said county for five years. What county is responsible for their support?

Section 5312, Code of Iowa, 1927, provides in substance as follows: That a legal settlement once acquired continues until lost by acquiring a new one.

From the facts stated in your letter it would appear that this family would have a legal settlement in Hamilton county up until 1925. If the family moved out of the state to another state with the intention of making that their home they, no doubt, lost their legal settlement in Hamilton County, and since their return they have been prevented from acquiring a legal settlement in any other counties in which they have lived by reason of the fact that notice to depart was served as is provided for in Section 5315, Code of Iowa, 1927. If, however, the family's sojourn out of this state was only temporary, with no intention of acquiring a legal settlement in another state, then they would have a legal settlement in Hamilton County.

DAMS—FEES—LICENSE FEES—EXECUTIVE COUNCIL: Annual inspection and license fee is not collectible before construction.

March 15, 1930. *Executive Council:* We acknowledge receipt of your letter calling our attention to an opinion rendered by this department under date of March 13, 1926, construing the provisions of Section 7775, Code of Iowa, 1924. You request that we review this opinion and advise you as to whether or not the same is a correct construction of said statute.

In reply we hereby recall the opinion rendered you under date of March 13, 1926, and herewith render you an opinion on the following question:

Under Section 7775, Code of Iowa, 1927, is the annual inspection and license fee collectible before construction work has been commenced upon said dam?

Section 7775, Code of Iowa, 1927, provides for two separate and distinct fees, as follows: (1) A permit fee of one hundred dollars ($100.00). This fee is for the right to construct a dam or for the right to maintain and operate a dam already constructed in or across a stream; (2) an annual inspection and license fee of not less than twenty-five dollars ($25.00), said fee to be fixed by the Executive Council. This fee is to pay for the annual inspection and the annual licensing of said dam.

Under Section 7780, Code of Iowa, 1927, we find that provision is made for the collection of the permit fee and the annual inspection and license fee, and that said provision to collect is made dependent upon the fact that the dam has been constructed or is being operated and maintained

without having first complied with the provisions of Chapter 363, Code of 1927. In other words, before any inspection or license fee can be collected the dam must at least be in the process of construction.

We are, therefore, of the opinion that the annual inspection and license fee provided for in Section 7775, Code of Iowa, 1927, is not collectible until construction work has been commenced upon said dam. If the dam is not under construction, even though the permit for the same has been granted, there is nothing to inspect or license.

TRUCKERS—PUBLICATION—PETITION FOR CHANGE OF RATES: Board will not acquire jurisdiction over truckers in a given radius under the provisions of Chapter 129, Laws of the Forty-third General Assembly, by publication of a notice in the newspapers of that locality.

March 17, 1930. *Board of Railroad Commissioners:* Replying to your request of March 7th, which is as follows:

A petition has been filed with the commission which contemplates the fixing of a schedule of rates by this board for a territory approximately within one hundred miles of Sioux City, and it is requested that you advise the commission whether or not, in your opinion, a notice published in a newspaper in each of the counties of this zone would be adequate and legal notice to all truck operators in those counties.

We are of the opinion that the board can only legally take cognizance of those truck operators who have filed their application and who have secured a permit to operate. Those who might be operating trucks but who have not secured a permit are doing so in violation of the law, and the board would not be in a position to recognize that they were, in the eyes of the law, truckers.

And again, under the provisions of Section 2 of Chapter 129, Laws of the Forty-third General Assembly, which pertains to the power and authority of the board, the board may only fix and approve rates, charges and rules of each truck operator, after complaint has been filed in accordance with the rules established by the commission. We hold that notice should be served either personally or by registered mail upon each individual truck operator against whom complaint has been made, and that publication of a notice addressed to the public in one newspaper in each county within the zone would not give the board jurisdiction to regulate the rates for all truckers within that territory.

HIGHWAY COMMISSION—ROADS—BRIDGE AND ROAD CONSTRUCTION MATERIAL: Contracts for material for bridge construction need not be approved by the Highway Commission. Contracts for road construction work must be approved if they fall within the provisions of Section 45, Chapter 20, Laws of the Forty-third General Assembly.

March 18, 1930. *State Highway Commission, Ames, Iowa:* We acknowledge receipt of your letter in which you request an opinion on the following proposition:

"At this time of the year we are receiving a large number of county contracts covering materials used in bridge and road construction, particularly lumber and piling and corrugated and concrete culvert material. Part of the lumber and piling is purchased for maintenance work on bridges; part is used in new construction work. The culvert pipe, I believe, is used almost entirely in connection with construction work.

"There seems to be a lack of understanding as to whether or not the commission's approval is required on contracts of this kind. I would

appreciate it if you would give me an opinion outlining under what conditions, if any, the Commission's approval is required on contracts for material as above set forth."

The only provision contained in Chapter 20, Laws of the Forty-third General Assembly, relating to contracts for road and bridge construction or the materials therefor, are Sections 43 and 45.

Section 43 in substance requires that all contracts of this nature in which the engineer's estimate exceeds $1,500.00, except for surfacing materials obtained from local pits and quarries shall be advertised and let at public letting.

Section 45 provides in substance that contracts for road construction work which according to the engineer's estimate "involve a cost of two thousand dollars ($2,000.00) or more per mile, or more than five thousand dollars ($5,000.00) in the aggregate, shall be first approved by the State Highway Commission before same shall be effective as a contract."

It is to be noted that the latter section refers to "contracts for road construction work."

Section 43 specifically refers to bridge construction work and materials, and requires a public letting when the engineer's estimate exceeds fifteen hundred dollars ($1,500.00).

Section 4672, Code of 1927, in substance requires that when the contract for any one bridge or culvert, or repairs thereon exceeds two thousand dollars ($2,000.00), such contract must be approved by the Commission. There is nothing however contained in the provisions of Chapter 20, Laws of the Forty-third General Assembly, or the Code, requiring the approval of the Highway Commission of contracts for material used in bridge construction such as lumber and piling, unless such material is contracted for one bridge or culvert. In other words, the purchase by counties of large quantities of material which may be used in various places on county bridges or culverts need not be approved by the Commission unless this contract falls within the provisions of Section 4672 supra.

We wish to call your attention to the fact, however, that care should be taken that boards of supervisors do not in any manner evade the provisions of Section 43 in regard to a public letting by dividing the material necessary into small lot purchases. This department has held that the provisions of Section 43 must be carefully and strictly complied with.

COUNTIES—LEGAL SETTLEMENT—RESIDENCE: Legal settlement of children follow the residence of their father if he is their custodian. If not, that of their mother so long as they are minors.

March 18, 1929. *County Attorney, Rock Rapids, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"One Mrs. Walden was a resident of Lyon county, her husband was dead. She had three or four very young children. The children were placed in the orphans' home at Beloit, Lyon County, Iowa, and Lyon County agreed to support them. The mother moved to Sioux City, Woodbury County, and has lived there for three or four years.

"Does the residence of the children follow the mother so that Lyon County would no longer have to support the children?

"Would the residence follow the mother after any of the children became twenty-one years of age?"

Section 5311, Chapter 267, Code of Iowa, 1927, defines how a legal settlement may be acquired; so far as is material to this question said section provides as follows:

"A legal settlement in this state may be acquired as follows:
"1. Any adult person residing in this state one year without being warned to depart as provided in this chapter acquires a settlement in the county of his residence.
"2. 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 if she were unmarried. Any settlement which the wife had at the time of the marriage may at her election be resumed upon the death of her husband, or if she be divorced or abandoned by him, if both settlements were in this state.
"3. Legitimate minor children take the settlement of the father, if there be one, if not, then that of the mother.
"* * * *."

Section 5213, Code of Iowa, 1927, provides:

"A legal settlement once acquired continues until lost by acquiring a new one."

From reading that part of Section 5311, which was above set out, it would appear that the mother being an adult person and her husband being dead that she can acquire a legal settlement in the same manner and under the same conditions as if the husband were living. This being the case it would necessarily follow that if she removed to Woodbury County, Iowa, with the intention of making that her home, and that if she remained there for the period of one year without receiving notice to depart as provided for in Section 5315, Chapter 267, Code of Iowa, 1927, she would acquire a legal settlement in Woodbury County. Under Paragraph 3 of Section 5311, above referred to, all legitimate minor children take the settlement of their mother in the event there is no father.

It would, therefore, follow that if the the children, who were placed in the orphans' home at Beloit, are minors that their legal settlement would follow that of the mother.

The question of whether or not a person has a legal settlement is one of fact and must be determined in each particular case. In this case if the mother is only temporarily sojourning in Woodbury County and has no intention of making that her home, but in good faith intends to retain her residence in Lyon County, then of course her settlement is still in Lyon County. Of course as to children who have attained their majority, Paragraph 1, Section 5311, would govern, these children then being adults and their residence would not follow that of the mother it being a question of their intention and the facts surrounding their particular case.

We are, therefore, of the opinion that if the mother has actually removed to Sioux City, Woodbury County, Iowa, with the intention of making that her home and has resided there for more than one year without having been served with any notice to depart, that she now has a legal settlement in said county having acquired such a legal settlement

after residing there one year, and that all minor children would have the same residence as the mother.

CITIES AND TOWNS—CONSOLIDATED LEVY: In cities having a consolidated levy the council must pass an ordinance for the appropriation of the monies received from said consolidated levy to the various purposes for which said levy is to be used. In towns having a consolidated levy the council need only pass a resolution appropriating the money received from said levy to the various purposes for which said levy is to be used. (Sections 5717, 6217, Code of 1927.)

March 22, 1930. *Auditor of State:* We acknowledge receipt of your request for an opinion on the following question:

Section 6217, Code of 1927, authorizes cities and towns to provide for and make a consolidated levy and for the appropriation of such consolidated levy prior to April 1st, said appropriation to be for the various purposes for which the funds might be available for use.

The question has arisen as to whether or not in making this appropriation to the various purposes of the consolidated levy a city or town council must pass an appropriation ordinance.

Section 6217, Code of Iowa, 1927, in part, reads as follows:

"* * * The city or town making such consolidated levy shall, prior to the first day of April thereafter, appropriate the estimated revenue from such consolidated levy, in such ratio as the council may determine, for any purpose for which such funds might have been used, but no part thereof shall be used for any other purpose."

Paragraph 3, Section 5717, Chapter 290, Code of Iowa, 1927, provides as follows:

"3. To pass or adopt any ordinance or resolution for the appropriation or payment of money. In cities all money shall be appropriated by ordinance, but in towns it may be appropriated by resolution."

It will be noted from reading that part of Section 6217, Code of 1927, set out above, that any city or town where a consolidated levy is made, the council must, prior to April 1st, appropriate the estimated revenue from such consolidated levy to the various purposes and in the amounts for which it is to be used. It will also be noted from reading Paragraph 3, of Section 5717, set out above, that in all cities all money shall be appropriated by ordinance, but that in towns it may be appropriated by resolution.

We are, therefore, of the opinion that in cities where a consolidated tax levy has been made that the council must pass an ordinance for the appropriation of the monies received from said consolidated levy for the various purposes for which said levy is to be used; but that in towns this would not be necessary in view of the provisions of Section 5717, Code of Iowa, 1927, a resolution being all that is required in towns.

JUSTICES OF PEACE—TRIALS—MISTRIALS: Where the jury in a misdemeanor case tried in a justice court fails to agree the defendant may again be tried before a new jury in the same court for the same offense under the same rules.

March 27, 1930. *County Attorney, Spirit Lake, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where a person is tried for commission of a misdemeanor before a justice of the peace and the jury sitting in said case is discharged be-

cause they are unable to agree, may the person be tried again before the same justice or another justice of the peace?

We are of the opinion that the same rule would apply to cases before justices of the peace as does apply to cases triable in the district courts of the state, and under that rule the person may again be tried before the same judge or another judge.

BOARD OF SUPERVISORS — DRAINAGE DISTRICTS — ABANDONMENT: Board of suprvisors has the power to abandon part of an uncompleted drainage project if they find that the abandonment would be of a benefit and utility to the landowners within the drainage district. Proceedings for abandonment must be initiated in the same manner as proceedings to establish a drainage district are initiated.

March 27, 1930. *County Attorney, Maquoketa, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Green Island levee and drainage district has been established and most of the work has been completed. There is, however, yet to be completed a levee on the north side of the Maquoketa River, which levee was to be installed for the purpose of protecting lands on the north side of the Maquoketa River from over-flow. All of the landowners for which this levee was to be constructed filed a petition with the county board of supervisors, acting as a drainage board, petitioning the board to abandon the completion of this levee and petitioning the board to turn over the cost of completing the levee to them in lieu of all damages which they may sustain in the future by reason of any over-flow.

Section 1989-a11, Code Supplement 1913, authorized the change to be made in the plans after the establishment of the district. This section appeared in the Compiled Code, as Section 4850, but does not appear in the Code of 1924, nor in the Code of 1927.

(1) Is the provision of Section 1989-a11, Supplement Code 1913, still in force?

(2) Has the board a right to order the change in plans without notice other than on those parties whose land lies north of the Maquoketa River, which is the only land that will be affected by the change, and the change in increasing the assessments of any lands in the district?

(3) Does the provision of Section 7513, Code of 1927, in any way repeal the provisions of Section 1989-a11, Code Supplement 1913?

We find in the Compiled Code of 1919, Section 1989-a11, Code Supplement 1913, appearing as Section 4850. We also find that Chapter 2, Title 15, Compiled Code of 1919, was re-written and re-codified by the Fortieth Extra General Assembly as House File No. 185, and now appears as Chapter 353, Code of 1924 and 1927. It would, therefore, follow that Section 1989-a11, Code Supplement 1913, has been repealed and is not in effect as a law at this time.

The real question is, has the board of supervisors, acting as a drainage board, after a drainage district has been established and most of the improvements completed, the right to abandon part of said improvements and to refund to those property owners who would receive the direct benefit from the abandoned improvement? We are of the opinion that the board would have the power, upon petition, to abandon part of the proposed improvement if the board found that said abandonment would be of benefit or utility to the landowners within the drainage district, for the board has this discretion. However, before any abandonment could be made it would be necessary for the board to proceed in

connection with the proposal to abandon any part of the improvement in the same manner as was necessary in connection with the establishment of the drainage district. In other words, the board should have a report from the engineer recommending such abandonment and then should follow the procedure provided for in Sections 7439, 7440, and the following sections, particularly with respect to the hearing, notice of hearing, objections and claims for damages.

If, after the hearing on the question of abandonment, it is determined to abandon part of said improvement then the cost of said improvement which is to be abandoned for which assessment was made would be in the nature of an excessive levy, and that part of said assessment which has been collected should be refunded to those property owners in the district who were assessed for the cost of said improvement and the uncollected assessments should be reduced pro-rata in an amount equal to the cost of the abandoned improvement for which each landowner was assessed.

There is another question involved in the matter; that is, whether the board would have the right, under the law, to pay for prospective or anticipatory damages. We are of the opinion that they do not have this power. The prospective damages would be too speculative and impossible to determine.

Section 1989-a11, Code Supplement 1913, having been repealed by the re-writing and re-codification of Chapter 2, Title 15, Compiled Code of 1919, it follows that Section 7513, Code of 1927, has nothing to do with whether or not said statute is in force and effect at the present time.

TAXATION: The proceeds of fire insurance received on merchandise destroyed by fire in the hands of the merchant on January 1, 1930, are subject to taxation as monies and credits.

March 27, 1930. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

> There was a fire loss here on December 29, 1929; said fire destroying the stock of merchandise, together with furniture and fixtures. Said loss was covered by insurance and said property has been assessed for the year 1929, the taxes to be paid in adjustment of the loss taxable as monies and credits for the year 1930, either before or after the adjustment by the company?

You are referred to Section 7237, Code of 1927. This section authorizes the board of supervisors to remit in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, etc., if said property has not been sold for taxes or if said taxes have not been delinquent for thirty days at the time of the loss. A loss for which such remission is allowed is such as is not covered by insurance. Therefore, in the instant case the merchant would not be entitled to a refund of the taxes on his stock of merchandise, furniture, and fixtures, or such part of the loss as was covered by the insurance. Of course, if the merchant has received the proceeds of the insurance on said property and has the money in his possession or in a bank at the time the assessor lists his property it would be necessary

for him to list the same for taxation as monies and credits for the year of 1930.

If the loss had not been adjusted by the insurance company at the time the merchant listed his property for taxation it would not be necessary for him to list his claim against the insurance company for taxation.

If, however, there had been an adjustment and agreement as to the amount of the loss and all that remained to be done was the payment of the amount agreed upon, then it would be necessary for the merchant to list his claim against the insurance company for taxation as monies and credits.

TAXATION: Under the provisions of Chapter 245, Code 1927, a person not 45 years of age on the first day of January, 1929, was subject to the imposition of the poll tax provided for in said chapter.

March 27, 1930. *Auditor of State:* We acknowledge receipt of your letter under date of March 12, 1930, requesting an opinion of this department on the following question:

Was a person who attained the age of 45 in March, 1929, subject to the road poll tax provided for in Chapter 245, Code of 1927, same having been turned in for said tax in February of said year?

We are of the opinion that any person who has not reached the age of 45 on January first of the year for which said poll tax is to be collected, in accordance with the provisions of Chapter 245, Code of 1927, is subject to and must pay the tax provided for in said chapter, and the fact that said person attained the age of 45 in the month of March or any other month during the year would not relieve said person from the payment of said tax.

CORPORATIONS—SECURITIES: The fact that a corporation has qualified under Chapter 392, Code of 1927, does not relieve said corporation from qualifying in accordance with the provisions of Chapter 10, Forty-third General Assembly, if said act so requires.

March 27, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Do corporations selling or issuing securities upon the installment plan, who are subject to and have complied with the provisions of Chapter 392, Code of 1927, have to comply with the provisions of the new Iowa securities law as to sales made in accordance with the provisions of said chapter?

We are of the opinion that the fact that a corporation is subject to regulation, under the provisions of Chapter 392, Code of 1927, and has complied with said chapter by qualifying, does not relieve such corporation from the duty of complying with the provisions of Chapter 10, Acts of the Forty-third General Assembly, if said act so requires.

LEASES—REAL ESTATE—CHATTEL MORTGAGES: A lease which provides for a lien on personal property may be recorded as a chattel mortgage.

March 27, 1930. *County Attorney, Charles City, Iowa:* We acknowledge receipt of your letter and in reply thereto are herewith submitting you an opinion on the following question:

May leases on real estate, which leases provide for a lien upon the personal property, be properly recorded as chattel mortgages?

We are of the opinion that if the instrument provides for a lien on personal property belonging to the tenant, that said lease may be recorded as a chattel mortgage if the recorder is requested to do so. Said lease may also be recorded as an instrument affecting the title to real estate.

BOARDS OF SUPERVISORS: County boards of supervisors do not have power to purchase road equipment and machinery on the installment plan, payments to run over a period of years if the total purchase price of the road equipment and machinery would be in excess of the collectible revenues for the year in which said equipment was purchased. They do, however, have the power and authority to lease road equipment and machinery and pay a reasonable annual rental for the same, provided there is no legal obligation for the entire term of the lease. (Section 1, Chapter 20, Forty-third General Assembly; Section 5258, Code.)

March 27, 1930. *County Attorney, Des Moines, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Does a board of supervisors have authority, under the law, to enter into a contract for the purchase of road equipment, the purchase price of which will be in excess of the levies for the current year, said contract providing that said purchase price is to be payable in annual installments covering a period of two or three years; no installment of which will cause an expenditure in excess of the collectable revenues for the current year?
2. Has the board of supervisors authority, under the law, to enter into a lease contract for the purchase of road equipment, said lease covering a period of two or three years providing for the payment of annual rental and with an option running to the county to purchase said equipment at a specified time and apply the rental paid on the purchase price?

The board of supervisors is the business manager of the county. It has such powers as are specifically granted to it by statute and as are necessarily implied from or incident to those powers granted.

Section 1, Chapter 20, Acts of the Forty-third General Assembly, makes it the duty of the board of supervisors of a county to construct, repair and maintain the secondary road and bridge system of the county. In order to perform the duty of constructing and maintaining the secondary roads and bridges of the county it is necessary that the board have the necessary equipment and machinery with which to perform these duties. It, therefore, has the power to purchase equipment and machinery for the purpose of constructing and maintaining the secondary roads and bridges of the county.

Can it then enter into a contract on the installment basis for the purchase of said road equipment and machinery, said contract to run for a term of years?

To begin with when a board enters into a contract for the purchase of road equipment, whether said contract is payable on the installment basis or payable upon delivery, it creates an indebtedness which must be paid out of the revenues collected by virtue of tax levies.

Has the legislature authorized the board of supervisors to create an indebtedness which will cause expenditure which will exceed the collectible revenues for the year in which the contract was entered into?

An examination of the statutes with respect to the authority of the

board of supervisors to enter into contracts will disclose that the legislature has in a number of instances authorized, for certain specified purposes, the creation of an indebtedness to be paid in installments over a period of years. For example: The issuance of funding and re-funding bonds, etc. It would appear, therefore, that unless the legislature has specifically authorized the creation of an indebtedness by the board, payable in installments over a period of years, that the board does not have the power to enter into contracts which would create such an indebtedness. And then it must be borne in mind that the members of the board of supervisors are only elected for a designated term of years and that were it possible for the board to enter into contracts for the purchase of equipment, machinery and materials, etc., and to provide for the payment of said indebtedness in installments covering a period of years that it would be possible for a board to so mortgage the revenues of the county that it would be impossible for incoming members to properly administer and carry on the business of the county. The legislature has never granted this authority.

Our Supreme Court has said, in a number of cases, that to permit a board elected by the people to enter into contracts covering a period of years which would run beyond the term for which said board was elected would make it possible for a board to take the control of the county and school government out of the hands and direct control of the people, and thus defeat the very purposes and aims of the government. See *Burkhead vs. Independent School District*, 107 Iowa 29; also *Independent School District vs. Pennington*, 181 Iowa 933.

Section 5258, Code of 1927, would seem to be in line with what has been said heretofore with respect to entering into contracts which create an indebtedness. This section in part prohibits the entering into a contract which will result during the year in an expenditure from any county fund in excess of an amount equal to the collectible revenues in said fund for said year plus any unexpended balance in said fund for any previous year. This statute is commonly known as the "Tuck Law," and if it were possible for a board to enter into a contract creating an indebtedness which is payable in installments over a period of years this section would be meaningless, for it would appear that the intent and spirit of said statute is to place the county on a cash basis and to prevent the mortgaging of the future revenues of the county.

We are, therefore, of the opinion that a board of supervisors does not have the power to enter into a contract for the purchase of road equipment and machinery, which contract is payable in annual installments and covers a term of years.

As business manager of the county a board of supervisors, if it were for the best interests of the county, would, of course, have the power to rent road equipment and machinery and they might properly enter into a lease contract which would provide for the payment of an annual rental for the use of road equipment and machinery, and they might properly provide also in said lease that at their option on or after a specified date they might purchase said machinery at a specified price and credit the rentals paid on said purchase price. The annual rental paid for the use of said road equipment and machinery must be a rea-

sonable rental and one commensurate with the use of said road equipment and machinery. The payment of the annual rental must be at the option of the board, that is, there could be no obligation upon the board to pay rental annually for the full term of the lease. In other words, it must be a lease from year to year so far as the county is concerned.

CORPORATIONS—SECURITIES: The sale of stock by the owner or assignee thereof to different persons is not an exempt transaction within the meaning of Chapter 10, Forty-third General Assembly.

March 27, 1930. *County Attorney, Des Moines, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The question has arisen under division c, Section 5 of Chapter 10, of the Acts of the Forty-third General Assembly, regulating sale of securities, as to whether or not a person can have foreign stocks assigned to himself and sell these stocks among his friends in the city of Des Moines, without complying with the provisions of this chapter.

Understand that said assignee is making a series of sales to different individuals.

Paragraph c, Section 5, Chapter 10, Acts of the Forty-third General Assembly, provides in part as follows:

"Sec. 5. Exempt transactions. Except as hereinafter expressly provided, the provisions of this act shall not apply to the sale of any security in any of the following transactions. * * *

"c. An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery, not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative, and such owner or representative not being the underwriter of such security."

It will be noted from reading that part of Section 5, above set out, that only an isolated sale of a security is exempted and that repeated and successive sales or transactions by an owner of stock is not exempt.

We are, therefore, of the opinion that the sale of stocks in a foreign company by the owner or assignee thereof to a number of different persons in this state would not be exempt transactions and would, therefore, not be exempt from qualification under Chapter 10, Acts of the Forty-third General Assembly, as said sales would be repeated and successive transactions.

INSURANCE — MUTUAL ASSESSMENT ASSOCIATIONS — EMERGENCY FUND: See opinion. (Sections 9029-9041-9040, Code, 1927.)

March 27, 1930. *Commissioner of Insurance:* We acknowledge receipt of your request for an opinion of this department on the following question:

A state mutual assessment insurance association organized under the laws of this state, particularly under Chapter 406, Code of 1927, and authorized under its charter to insure against the hazards specified in division III, Paragraph 1 of Section 9029, Code of 1927, desires now to issue policies with a fixed premium in accordance with the provisions of Section 9041, Code of 1927. The question has arisen as to whether or not said association has such an emergency fund as would entitle it to issue policies with a fixed premium as provided for in Section 9041, Code of 1927.

In determining the above question it will be necessary to first determine of what does the emergency fund consist and next the average cost per $1,000.00 on all policies in force for the full term for which assessment is collected.

Section 9040, Code of 1927, provides in part as follows:

"Funds raised by such associations which because of temporarily low rate of losses are not needed to pay losses and expenses in any year, may be passed to an emergency fund to be held for payment of excess losses in a subsequent year or years; * * *."

That part of Section 9040, Code of 1927, above set out, simply means that if there is any savings by reason of low rate of losses over and above the policy fee and assessment collected by the company in accordance with Section 9037, Code of 1927, that such savings on all policies which would expire during the year may, at the end of the year, be by resolution passed into the emergency fund. Standing alone, that part of Section 9040, above set out, might lead one to believe that at the end of any particular year if the company had collected, by way of policy fees and assessments, more than was needed to pay losses and expenses that all of the excess over the expenditures could be passed into the emergency fund.

This would be true if all policies expired on December 31st of each year, but the policies of a company do not expire on any particular date but have different expiration dates and at the end of a particular year there would be policies which would not expire at the end of such year but which would run into the next year, and upon this unexpired term the company would have additional expense in connection with the policy and might have considerable losses. Therefore, if a company desired to issue a policy with a fixed premium, as is authorized by Section 9041, Code of 1927, it would be necessary for said company to first determine the amount of their emergency fund.

For example: A company at the close of business on December 31st of a year has on hands after the payment of all losses and expenses occurring during said year the sum of $300,000.00. One-half of the policies issued by it having expired during said year and the other one-half of its policies having unexpired terms with expiration dates during the next year or years, it would then be necessary, if the company desired to issue a policy with a fixed premium, for the company to determine the average cost per $1,000.00 of insurance in force per year and then pro-rate against each unexpired policy the amount that past experience has shown it would cost the company to complete the contract, that is, to pay all expenses and losses. Having determined this amount for all policies unexpired at the end of the year, then the total cost of all of the policies in force must be deducted from the $300,000.00 and the remainder would be the emergency fund as defined by Section 9040, Code of 1927.

After the amount of the emergency fund has been determined it is next necessary, under Section 9041, Code of 1927, to determine the average cost per $1,000.00 on all policies in force for the full term for which assessment is collected. This average cost would be determined on the basis of the past experience of the company and when this is determined, if the emergency fund equals $200,000.00 or more and also equals or

exceeds the total average cost per $1,000.00 on all policies in force for the full term for which assessment is collected, then said company would be authorized, under Section 9041, Code of 1927, to issue policies with a fixed premium.

In determining the emergency fund the deduction of the average cost which is necessary to complete the contracts on all unexpired policies would not include such expenses as have already been paid in connection with said unexpired policies; such as commissions to agents. In other words, production costs. However, in determining the average cost per $1,000.00 on all policies in force for the full term for which assessment is collected all costs and expenses, including production costs, must be considered in determining the average cost per $1,000.00.

In your request for this opinion you have suggested the question as to what companies operating under Chapter 406, Code of 1927, shall be considered to be operating on a basis rate and what companies shall be considered to be operating on a post loss basis.

We are of the opinion that basis rate as used in Chapter 406, Code of 1927 (Section 9042), refers to companies which issue policies with fixed premiums and whose risks consist principally of the classes mentioned in Section 9042; and that basis rate as used in said chapter is not used in its ordinary meaning. All companies operating under said chapter who do not issue policies with fixed premiums are operating upon the assessment or post loss basis and not on the basis rate.

ENGINEERING EXAMINERS—EXAMINATIONS—FEES: The renewal fee of $2.00 provided for in Section 1869-b1, Code of 1927, cannot be collected from those who successfully pass the examination until the license which is issued to them at that time expires and is renewed.

March 28, 1930. *Iowa State Board of Engineering Examiners:* We acknowledge receipt of your request for an opinion of this department on the following question:

The engineering examiners held an examination on the 20th and 21st of March, 1930, and thirty-five of the applicants passed. The question we desire answered is, is there an annual license or renewal fee due from those admitted?

The only fee provided for in Chapter 89, Code of 1927, is the examination fee of $15.00 provided for in Section 1866; the renewal fee of $2.00 provided for in Section 1869-b1, and an additional fee of $10.00 for land surveyor provided for in Section 1870, Code of 1927. The renewal fee is collectible each year after certificate for permit to practice engineering has been issued. In the case of those who passed the examination in March this year no renewal fee could be collected until January, 1931, and each year thereafter.

ELECTIONS — PERMANENT REGISTRATION — POLL BOOKS — JURORS: Jury list may be made up from the certificates in the hands of the registration clerk, and which are signed by the voter.

April 1, 1930. *Secretary of State:* This will acknowledge receipt of your request of March 27, 1930, which is as follows:

"Under Chapter 37, Section 11, Forty-third General Assembly, will it be necessary to enter names of voters in poll books provided for in Section 800, Code of 1927?

Section 8, Chapter 37, Forty-third General Assembly, requires party affiliation on registration card.

"Will it be necessary in primary election to enter names of voters in poll books provided for in Section 563, Code of 1927?

"The further question has been raised that if these names are not entered in the poll book what means will there be for making up list for jury duty?"

In reply we would say that we do not believe that it will be necessary to enter the names of voters in poll books as provided for in Section 563, nor Section 800 of the Code of 1927, for the reason that the provisions of Section 8 of the Thirty-seventh General Assembly, provides that party affiliation shall be recorded on the certificate of the registered voter.

The jury list may be made up from the certificate which the voter signs as he votes, and these certificates can be retained and be used for the purpose of making up the list of voters to be drawn for jury duty.

PLAYGROUND COMMISSION — SOAP SCULPTURE — CONTESTS — PRIZES: Soap sculpture contests, where the work is done in the homes of the contestants, does not have such connection with playground work as to authorize the payment of prizes awarded the contestants out of playground maintenance funds. (Chapter 298, Code of 1927; Section 6211, Code of 1927.)

April 4, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The playground commission of the city of Des Moines, Iowa, is sponsoring a soap sculpture contest, preliminary to the national soap sculpture competition to be held in New York City, May 1, 1930. Prizes are offered and the contestants are classified in three classes: adults, 21 and over; seniors, 15 to 21 years; juniors, 15 years or under. The sculpture work is done at the homes of the contestants.

It is proposed to pay the prizes or awards out of the playground commission funds. Are these awards or prizes properly payable out of funds provided for the operation and maintenance of public playgrounds?

Cities, under Chapter 298, Code of 1927, have the power, when authorized by a vote of the people, to provide for playgrounds and recreation centers. These playgrounds and recreation centers are maintained by the funds which are derived from the levies authorized in Paragraph 25 of Section 6211, Code of 1927, and are limited by said statute as to their use for the operation and maintenance of public playgrounds and recreation centers within the city in which such playgrounds or recreation centers have been established. It would appear from the facts stated in the question that the soap sculpture contest which was conducted recently was participated in not only by children but by adults, and that the work was done at the homes of the contestants.

Playgrounds and recreation centers are established for the purpose of furnishing a place for the juveniles of the city to secure recreation under proper supervision. The recreation afforded is not limited to physical exercise alone but might properly include mental recreation and other entertainments, such as music, reading, art, handiwork, and sculpture might properly be included.

We do not believe, however, that playground or recreation work as authorized by Chapter 298, Code of 1927, would include any of the physical exercises, entertainment, music, or art work when the same was

conducted away from said playgrounds or recreation centers. In other words, if such work were conducted at the playground or recreation center under the supervision of the playground superintendent or his or her assistants the same would be properly a part of the playground work, and the funds which are collected from tax levies for the maintenance of playgrounds and recreation centers might then properly be used to award prizes to the winners in a contest conducted by the playground commission.

We are, therefore, of the opinion that the soap sculpture contest conducted by the Playground Commission of the city of Des Moines, Iowa, was not so connected with the playground or recreation work as to authorize the payment, from the playground maintenance fund, of the prizes offered to the winners in the various classes, for the reason that adults were included in the contest and the sculpture work was done by the various contestants at their homes.

CORPORATIONS—EXECUTIVE COUNCIL—STOCK: All corporations organized under the laws of this state which exchange one class of stock for another must comply with the provisions of Section 8413, et sequi., Code.

April 7, 1930. *Executive Council of Iowa:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following questions:

"1. May a corporation organized under the laws of this state, whose articles of incorporation make no provision therefor, issue its par value stock in exchange for its outstanding par value stock of another class, acting under authority of a resolution adopted by its stockholders without the authorization of the Executive Council under Section 8413, et seq., of the Code of Iowa 1927?

"2. May a corporation organized under the laws of this state, whose existing articles of incorporation provide for the exchange or conversion of one class of par value stock for outstanding shares of another class of par value stock, make such exchange without the authorization of the Executive Council under Section 8413, et seq., of the Code of Iowa 1927?

"3. May a corporation organized under the laws of this state, whose articles of incorporation, or amendments thereto adopted under the provisions of Sections 9 and 10 of Chapter 6, Acts of the Forty-third General Assembly, provide for the issuance of non-par stock in exchange for its outstanding par value stock, make such exchange without the authorization of the Executive Council under Section 8413, et seq., of the Code of Iowa 1927?"

Section 8413, Code of 1927, provides in substance that if it is proposed to issue stock of a corporation for anything other than cash that an application must be made to the Executive Council for authority to do so.

It would, therefore, follow that where the articles of incorporation of a corporation do not provide or authorize the exchange of one class of stock for another that if it is to issue one class of stock in exchange for another that it would be necessary that the articles of incorporation be amended authorizing the same, and that such corporation comply with the provisions of Section 8413, Code of 1927, and the following sections pertaining to such matters for this would be an issuance of stock for property.

If the original articles of incorporation of a corporation provide for the exchange or conversion of one class of par value stock for outstanding

shares of another class of par value stock and where such conversion is either optional or mandatory, it would be necessary for the corporation, before any exchange could be made, to comply with the provisions of Section 8413, and the following sections of the Code of 1927 pertaining to such matters, for such exchange would be the issuance of stock for property.

Where the articles of incorporation provide originally or by amendment for the issuance of non-par stock in exchange for its outstanding par stock, such corporation cannot make such exchange without complying with the provisions of Section 8413, and the following sections of the Code of 1927 pertaining to such matters.

CITIES AND TOWNS—CLERK—APPOINTMENT: Since the repeal of Section 5633, Code of 1927, the council of a city and town may by ordinance provide for the creation of the office of city clerk and for the appointment of said city clerk by the council. (Section 5, Chapter 10, Forty-third General Assembly.)

April 10, 1930. *County Attorney, Des Moines, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under Section 5633, Code of 1927, the town council, at its first meeting after the biennial election, was given the authority to appoint a city clerk. The Forty-third General Assembly repealed Section 5633 of the Code of 1927 and enacted a new statute pertaining to the matter. Chapter 162, however, as passed by the Forty-third General Assembly, was limited in its operations to cities and towns with a population of forty thousand or over and to cities under the manager plan and under the commission plan of government. It appears, therefore, that there is no statute authorizing the council to appoint a city clerk.

Has the council, irrespective of a statute, the inherent or implied authority to appoint a city clerk?

We find, as you stated in your question, that the legislature did repeal Sections 5632-33, Code of 1927, and enacted substitutes in lieu thereof limiting, however, the provisions of said statute to cities having a population of forty thousand or over and cities operating under a city manager plan and commission plan of government.

It would, therefore, appear that there is no statutory authority for the appointment of a city clerk by the city council. We are, therefore, of the opinion that a city council has the inherent or implied authority to appoint such officers as are necessary to the carrying out and transacting the business of such city or town, and that, therefore, a city council, irrespective of statute, has the authority to appoint a city clerk.

April 12, 1930. *County Attorney, Des Moines, Iowa:* We acknowledge receipt of your request for an opinion on the following question:

In an opinion by your department, addressed to this office, under date of April 10, 1930, you held that since the enactment of Chapter 162, Acts of the Forty-third General Assembly, which purports to repeal Section 5633, Code of 1927, that the city council of a city under 40,000 had the inherent or implied power to appoint a city clerk. The question has now arisen as to whether or not the office of city clerk should be provided for by ordinance and as to just who has the appointing power.

We refer you to Sections 5640 and 5641 of the Code of Iowa, 1927. It will be noted from reading these sections that the legislature prior to

the enactment of Chapter 162, Acts of the Forty-third General Assembly, has specifically defined and set out the duties of the city clerk. This in itself could lead to but one conclusion and that is, that the legislature in adopting Chapter 162, Acts of the Forty-third General Assembly, did not intend that cities and towns should be without a city clerk or they would have repealed the sections which defined his duties as to such cities and towns.

We are of the opinion that the city council should, by ordinance, of a city or town under 40,000 population, provide for the office of city clerk and in that ordinance should provide for his appointment by the council. The appointment of a city clerk is made by the city council for the reason that that power is not by statute given to any other officer of the city or town.

The provisions of Section 5636, Code of Iowa 1927, would not apply to the office of city clerk for that section on its face shows that it applied to offices other than those named in the preceding sections.

SCHOOLS AND SCHOOL DISTRICTS—ROADS AND HIGHWAYS: Consolidated school busses subject to road limitations upon highways prescribed by Highway Commission and board of supervisors. Chapters 25-26, Forty-third General Assembly.

April 15, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"Would a consolidated school operating busses be exempt from the regulation of the Highway Commission in the matter of excluding busses of a certain weight from certain roads?"

This matter is regulated by Chapters 25 and 26, Laws of the Forty-third General Assembly. In neither of these chapters is there any exemption of any traffic. We are, therefore, of the opinion that these chapters would apply to school transportation busses in the same manner as to any other traffic on the highways.

IOWA LANDS — SPEED BOATS — JURISDICTION OVER STREAMS: Board of conservation has jurisdiction over the islands in the Des Moines River lying within the corporate limits of Des Moines, but does not have control of speed boats on the Des Moines River within the corporate limits of Des Moines, nor does it have jurisdiction over the Raccoon River within the city of Des Moines.

April 16, 1930. *Board of Conservation:* This will acknowledge receipt of your request of April 16, 1930, which is as follows:

"There are several islands in the Des Moines River lying within the corporate limits of the city of Des Moines.

"1. Under Chapter 329, Section 6823 of the 1927 Code—river front and levy improvements—does the city of Des Moines have complete control of the Des Moines River lying within its corporate limits? The question has come before the board, in regard to the leasing and renting of certain islands, and also who has the power to order the wood and brush taken off of said islands.

"2. Does the State Board of Conservation have complete control of the Raccoon River in Polk County from the Polk County boundary line through the city of Des Moines, until it empties into the Des Moines River?

"3. Does the board or the city of Des Moines have control of speed boats within its corporate limits on the Des Moines River?"

In reply we desire to quote Section 1812, Code of 1927, which is 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."

The above quoted section confers upon the Board of Conservation jurisdiction over all meandered streams and lakes of this state with, perhaps, but one exception which is found in the provisions of Section 6141, which are as follows:

"For the purpose of maintaining and protecting such works or plants from injury, and protecting the water of such waterworks from pollution, the jurisdiction of such city or town shall extend over the territory occupied by such works, and all reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants used in or necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken."

Section 6141 was placed upon the statute books for the purpose of providing protection to city operated water plants and their source of water; so that under the provisions of this section the city of Des Moines taking water as it does from the Raccoon River, would have the required jurisdiction over the Raccoon River for five miles above its plant for all purposes necessary to safe-guard its water supply.

In answer to your first question submitted we are of the opinion that the following quoted section controls:

"Sale of islands. No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the board, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter." (Section 1823, Code, 1927.)

We are therefore of the opinion that the Board of Conservation has the power of leasing and renting and controlling islands in the Des Moines River within the corporate limits of the city of Des Moines.

In reply to the second and third questions submitted by you, we refer you to Section 6597 which is applicable to special charter cities and cities governed under the commission form of government, and which section reads as follows:

"Every city specified in the preceding section shall have control of all the meandered streams within the boundaries thereof, and of the beds, banks, and waters of such streams. * * *"

We are, therefore, of the opinion that the Board of Conservation does not have jurisdiction of the Raccoon River lying within the corporate limits of the city of Des Moines, nor would the Board of Conservation have control of speed boats within the corporate limits of the city of Des Moines on the Des Moines River.

INDIANS—TAMA COUNTY—TAXATION: The real estate of Indians located in Tama County is subect to tax for various state, county,

bridge, county road, and district road purposes, as the General Assembly may by special statute provide. (Sec. 3, Chap. 110, Twenty-sixth General Assembly.)

April 17, 1930. *County Attorney, Toledo, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is the property of the Indians in Tama County subject to taxation in this state?

Chapter 110, Acts of the Twenty-sixth General Assembly, is an act tendering to the United States jurisdiction over certain Indians residing in Iowa, and over their lands and authorizing the issuance of a patent or deed to the government of certain described lands located in Tama County, Iowa, for the use and benefit of these Indian tribes, but, however, reserving to the State of Iowa certain rights and powers in and over said Indians and lands. The United States by an act of Congress approved June 10, 1896, accepted and assumed jurisdiction over those Indians in Tama County in the State of Iowa and over their lands as tendered to the United States by the act of the legislature of Iowa. Pursuant to such authority the State of Iowa, on the third day of July, 1908, issued to the government a patent signed by Albert B. Cummins, as Governor, and W. C. Hayward, as Secretary of State, which patent conveyed to the United States certain described lands in Tama County subject to the conditions specified in the act of the legislature.

Section 3, of Chapter 110, Acts of the Twenty-sixth General Assembly, reserves to the State of Iowa certain rights in and authority over the Indian tribes and their lands in Tama County. That section provides as follows:

"Nothing contained in this act shall be so construed as to prevent on any of the lands referred to in this act the service of any judicial process issued by or returnable to any court of this state or judge thereof, or to prevent such courts from exercising jurisdiction of crimes against the laws of Iowa committed thereon either by said Indians or others, or of such crimes committed by said Indians in any part of this state, or to prevent the establishment and maintenance of highways and the exercise of the right of eminent domain under the laws of this state over lands now or hereafter owned by or held in trust for said Indians, or to prevent the taxation of said lands for state, county, bridge, county road, and district road purposes, and such other purposes as the general assembly may from time to time by special statute provide."

It will be noted from reading the section last referred to and quoted that the State of Iowa reserves to itself the right to tax the lands of the Indians located in Tama County, Iowa, for the various state, county, bridge, county road, and district road purposes and such other purposes as the General Assembly may from time to time by special statute provide.

In view of this act we are, therefore, of the opinion that the lands and property of the Indians located in Tama County, Iowa, are subject to the soldiers' bonus, county general, county bond, and all secondary road taxes.

ELECTIONS — PERMANENT REGISTRATION — ABSENT VOTERS: Absent voters in cities and towns where permanent registration has been adopted, must register in accordance with the provisions of

Chapter 39-b1, Code of 1927, as amended by the Acts of the Forty-third General Assembly.

April 18, 1930. *Auditor of State:* We acknowledge receipt of your request for an opinion from this department on the following question:

Is it necessary under the permanent registration law (Chapter 39-b1, Code of 1927) for an absent voter to register in accordance with the provisions of said law before he can vote, or is the affidavit that goes out with the absent voter's application sufficient registration to entitle the voter to vote?

Section 6, Chapter 37, Acts of the Forty-third General Assembly, provides as follows:

"That section seven hundred eighteen-b twelve (718-b12) of the Code, 1927, be repealed and the following enacted in lieu thereof:

" 'Any person entitled to register who is permanently disabled by sickness or otherwise, or who will be absent from the election precinct until after the next succeeding election, may up to and including the tenth day next preceding an election, apply in writing to the commissioner of registration who shall thereupon forward to such voter duplicate registration cards which shall be executed by the voter before a notary public and returned to the commissioner of registration. If such registration cards are properly executed and show that the voter is duly qualified, then such cards shall be placed in the registration lists.' "

In view of the above section we are of the opinion that it is necessary for an absent voter, in cities and towns which are operating under the permanent registration law, before he can vote to register in accordance with the provisions of Section 6, Chapter 37, Acts of the Forty-third General Assembly.

ELECTIONS—PERMANENT REGISTRATION—POLL BOOKS—JURY LISTS: In cities and towns under permanent registration plan the certificates of registration are substituted for the poll books as required by Sections 800 and 808, Code of 1927. The jury list would be made up from the certificates of registration.

April 18, 1930. *Auditor of State:* Pursuant to your request we are hereby rendering you an opinion on the following question:

In cities and towns which have adopted the permanent registration plan is it necessary that the names of the voters in the various precincts be entered in poll books provided for in accordance with the provisions of Sections 800 and 808, Code of 1927? If not, from what record is the jury list to be made?

Section 718-b20, Code of 1927, provides that the voter before voting must sign a certificate of registration to the effect that he is a qualified voter duly registered under the permanent registration law in the precinct and ward of the city of which he is a resident, and his party affiliation if the election is a primary election.

Section 11, Chapter 37, Acts of the Forty-third General Assembly, provides as follows:

"The entries required to be made in sections eight hundred (800) and eight hundred eight (808) of the Code, 1927, shall be made on the certificates of registration provided for in section seven hundred eighteen-b twenty (718-b20)."

In view of the provisions of Section 11, Chapter 37, Acts of the Forty-third General Assembly, we are of the opinion that in cities and towns which have adopted the permanent registration plan the certificates of

registration are substituted for the poll books required by the provisions of Sections 800 and 808 of the Code of 1927, and that there is no longer a necessity for keeping the poll books in such cities and towns. The jury list would, therefore, be made up from the certificates of registration which are substituted for the poll books.

CORPORATIONS: The Secretary of State is clothed with the power and authority to ascertain whether the articles of incorporation or amendments proposed are in proper form to meet the requirements of the law; that their objection is lawful; that their objection is not against public policy and that the plan of doing business provided for is honest and lawful, and if in the exercise of a reasonable discretion the Secretary of State finds that the articles or amendments do not comply he may refuse to file the same. Section 8344, Code 1927.

April 24, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Herman M. Brown Company, a corporation organized and existing under the laws of this state, has presented to the Secretary of State amendment to its articles of incorporation. The amendment in part provides for two classes of stock, one known as Class "A" stock without any voting power, having preference only in case of dissolution and distribution of the assets of the corporation. Class "B" stock has the voting power and thus the management and control of the corporation. Both Class "A" and Class "B" stock share equally in any dividends when and as declared by the board of directors. The amendment provides for 500 shares of each class of stock the par value of each class is $100.00 per share.

The question has arisen as to whether or not, under Section 8344, Code of 1927, the Secretary of State has the power, if he finds from an examination of the articles of incorporation or amendments that the same provide for a plan for doing business which is not honest and lawful or that their object is an unlawful one or against public policy or that said articles are not in proper form to meet the requirements of the law, he may refuse to file the same.

You are advised that this question has been passed on by our Supreme Court in the case of *Lloyd vs. Ramsay*, 192 Iowa 103. The court in that case holds that the legislature, by the adoption of Section 8344, Code of 1927, clothed the Secretary of State with power to ascertain and determine (1) whether the articles of incorporation presented to him are in proper form to meet the requirements of the law; (2) that their object is lawful; (3) that their object is not against public policy, and (4) that the plan of doing business provided for is honest and lawful, and that the Secretary of State is not a mere ministerial officer with respect to such matters but has the power to exercise discretion and judgment in connection with the powers conferred by said Section 8344.

We are, therefore, of the opinion that if the Secretary of State finds in the exercise of a reasonable discretion that the provisions of Section 1 of the amendment to the articles of incorporation of the Herman M. Brown Company are against public policy or that the plan therein provided for is not honest and lawful, or that said section is otherwise objectionable, he may properly refuse to file said amendment.

SCHOOLS AND SCHOOL DISTRICTS: 1. District may vote on question of levying school house tax under section 4217 (7) at special election. 2. Electors may vote tax for a term of years subject to being rescinded if no vested interest attached.

April 25, 1930. *County Attorney, Britt, Iowa:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following propositions:

1. May the question of levying a school house tax, under the provisions of Section 4217, sub-section 7, be submitted and voted upon at a special election called in accordance with Section 4197 of the Code, as amended?
2. May the electors vote upon such tax not exceeding ten mills in any one year for a period of five years, or any other term?

It is provided by Section 4197 of the Code, as amended by Chapter 100, Acts of the Forty-third General Assembly, that the board of directors may, at a special election, submit the proposition of authorization of a school house tax, or indebtedness, as provided by law, for the purchase of a site and the construction of the necessary school house, and for obtaining roads thereto.

We are, therefore, of the opinion that this question may be submitted at a special election duly called by the board of directors.

The provisions empowering the electors to vote this ten mill tax are contained in Section 4217, sub-section 7 of the Code, which provides as follows:

"The voters assembled * * * shall have power to vote a school house tax not exceeding ten mills on the dollar *in any one year* * * *."

We are of the opinion that it was the legislative intent to permit the electors to vote a tax for more than one year, for the reason that there is included in the sub-section giving them that power the language above underlined. If it were the legislative intent that this should be done for but one year at a time, there would be no necessity of including the above underlined language.

We are, therefore, of the opinion that the electors of a school corporation may vote a tax over a term of years including a five-year term, as your question is submitted.

SCHOOLS AND SCHOOL DISTRICTS: County superintendent may conduct a one day institute with approval of superintendent of public instruction. (Section 4108, Code.)

April 30, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"We would like a written opinion from your department as to whether it would be legal for a county superintendent to hold a one-day institute program if this department saw fit to approve such an institute plan."

This will be governed by the statutes upon county teachers' institutes. It is provided by Section 4108 of the Code that the county superintendent shall hold county teachers' institutes as directed by the Superintendent of Public Instruction, and by Section 4112; that the program shall be as approved by the Superintendent of Public Instruction.

The only provisions indicating that the institute should be held for 2 days is Section 4109 which merely provides that the school board shall allow teachers to attend such institutes for not less than 2 days without loss of salary. This is, of course, conditioned upon there being a 2-day institute.

We are of the opinion that in view of Sections 4108 and 4122 above referred to that the county superintendent may with the approval of the Superintendent of Public Instruction, hold and conduct a teachers' institute for one day.

BOARD OF SUPERVISORS—DRAINAGE: Board of supervisors, acting as a drainage board, has no authority to abandon a drainage district after it has been established and the construction completed unless upon the unanimous petition of all the landowners in the district.

May 1, 1930. *County Attorney, Muscatine, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

After a drainage district has been established and the work contemplated has been constructed and completed has the board of supervisors the power to abandon said drainage district?

We find no statute which would authorize the board of supervisors, acting as a drainage board, either with their own county or acting in connection with an inter-county drainage project, to abandon a drainage district once established and completed unless, of course, all of the property owners within said county or inter-county drainage district unanimously petitioned said board or boards for the abandonment of the district. It would appear that the basis of the drainage law is that a district may only be established when it is for the public convenience, health, utility, and necessity, and the board having once determined the question and established and constructed the district there could be no occasion which would ordinarily so change the situation as would justify the abandonment of the district.

BOARD OF EDUCATION—EXECUTIVE COUNCIL: Board of Education has the power and authority to sell and dispose of personal property which is not needed for the purpose for which it is required, without the approval of the Executive Council.

May 1, 1930. *State Board of Education:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Has the State Board of Education, under the statutes of this state, the power and authority to sell and dispose of personal property and equipment without the approval of the Executive Council?

We find no statute which would require the approval of the Executive Council before a sale of personal property could be made by the State Board of Education.

We are, therefore, of the opinion that the State Board of Education has the power and authority to sell and dispose of personal property belonging to any of the institutions under its jurisdiction without the approval of the Executive Council.

TAXATION—EXEMPTION: Fruit-tree reservation of not less than two nor more than ten acres is exempt from taxation. But an owner of a forty-acre tract which is set out in fruit trees cannot deed ten acres to each of his two children and his wife for the purpose of having each claim an exemption and thus exempting the whole forty-acre tract. Chapter 126, Code of 1927.

May 1, 1930. *Department of Agriculture:* We acknowledge receipt of

your letter requesting an opinion of this department on the following question:

A certain person owns forty acres of land which is set out into an orchard. Section 2606, Code of 1927, states: "or a fruit-tree reservation or reservations, not less than one nor more than ten acres in total area."

This statement limits the area for fruit tree reservations to ten acres. Can the owner of the forty-acre orchard tract divide the same into four equal parts and deed ten acres to each of his two children, ten acres to his wife and retain ten acres himself, and then apply for tax exemption based on $1.00 per acre valuation?

We are of the opinion that an owner of a forty-acre tract which is set out in fruit trees cannot, for the specific purpose of securing exemption from taxation, as provided in Chapter 126, Code of 1927, divide said forty-acre tract into tracts of ten acres each, deeding ten acres to each of his two children, ten acres to his wife and ten acres to himself, for this would be only an evasion of the statute and would not be a good faith transaction and should not be permitted.

COUNTY OFFICERS—TRANSFERS—BUDGET: County treasurer has no authority, upon his own initiative, to make transfers from one fund to another. All transfers must be made by the authority of the board of supervisors with the consent and approval of the Budget Director.

May 1, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

It appears from an examination of certain municipalities that a certain county treasurer has upon his own initiative transferred funds from the county fund to the court expense fund.

Can the county treasurer make transfers from one fund to another without the authority of the board of supervisors and the approval of the Budget Director?

Has the board of supervisors authority now to transfer out of the court expense fund the amount which he transferred from the county fund?

Transfers from one fund of the county to another, under the statutes of this state, may only be done upon resolution of the board of supervisors with the approval of the Budget Director, and the county treasurer has no authority to make a transfer from one fund to another without a resolution of the board of supervisors approved by the Budget Director authorizing such a transfer. The treasurer should be directed to correct his books accordingly.

TAXATION — SCAVENGER SALE: When duplicate certificates have been issued by the treasurer for the same tract of land at scavenger sale, and a deed has been issued to one of the certificate holders, the certificate holder who holds the duplicate certificate is entitled to surrender the same and to a refund of the amount paid for each. Section 7294, Chapter 349, Code of 1927.

May 1, 1930. *County Attorney, Jefferson, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The county treasurer of this county at scavenger tax sale sold a particular tract of land three different times during the sale and issued three certificates to the same person. It was later discovered that the three certificates covered the same piece of ground and the certificate holder took a deed on one of the certificates. The question now has arisen as to what should be done with the other two certificates.

You are referred to Section 7294, Chapter 349, Code of 1927. We are of the opinion that under this chapter the purchaser is entitled to surrender the two certificates and to a refund of the tax paid for each. We are also of the opinion that the issuance of the second and third certificates was without authority and that they should be cancelled in the manner prescribed in Section 7294, Code of 1927.

TAXATION—ASSESSOR—COUNTIES: The fact that an assessor in assessing the property in the township used the wrong basis of valuation, and that said mistake was not discovered by the local board of review, would not entitle the taxpayers to any relief, no objection having been made before the board of review.

May 1, 1930. *County Attorney, Burlington, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In one of the townships of this county the township assessor used the wrong tax-book as a reference and assessed all of the property at an increased value of about 15%, that is 15% over the value of the previous year as fixed by the court when an appeal was taken. The assessor was unaware of this fact and none of the taxpayers' attention was called to the same; everybody assuming that the same valuation had been used by the assessor as for the previous year.

The local board of review did not notice the mistake and no appeal was taken to the county board of review.

The question now is, have the taxpayers in this county any remedy?

On questions of valuation the only remedy which a taxpayer has is to follow the remedies given by statute and our courts have always held that if these remedies are not invoked the taxpayer has no remedy.

The property owners of the particular township in question having failed to invoke the remedies afforded by statute, whether the failure was due to misinformation or misunderstanding, they cannot now secure any relief. The board of supervisors has no power to make any refund for such an error as the one complained of.

FISH AND GAME: Rock bass are game fish and subject to the open and closed season. (Section 13, Chapter 57, Forty-third General Assembly.)

May 1, 1930. *County Attorney, Osage, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. Are rock bass included in Paragraph 4, Code Section 1731, as amended?
2. Is there any closed season on bullheads?

For answer to your first question, we refer you to Section 13, Chapter 57, Acts of the Forty-third General Assembly. It will be found from an examination of that section that rock bass are not included within the provisions of Paragraph 4 thereof. However, rock bass are usually considered by the public as game fish and the closed season, as provided in Paragraphs 1 and 3 of Section 13, Chapter 57, Acts of the Forty-third General Assembly, would in our opinion be the closed season for such fish.

For answer to your second question we are enclosing copy of opinion rendered by this department to the State Game Warden under date of

March 3, 1930, together with a letter written by this department under date of March 27, 1930.

FISH AND GAME—HUNTING LICENSES—MINORS: Hunting licenses may be issued to minors over 14 years of age. Section 12936, Code of 1927, simply prohibits the carrying of fire arms of any description by persons under 14 years of age.

May 1, 1930. *County Attorney, Sac City, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Section 1721, Code of 1927, provides as follows:

"Consent of parent or guardian: No license shall be granted any person under eighteen years of age unless the written consent of parents or guardian is attached to the application."

Section 12936, Code of 1927, provides in part as follows:

"* * * provided that no person under fourteen years of age shall be allowed to carry firearms of any description."

Can these two sections be reconciled?

The prohibition contained in Section 12936, Code of 1927, is against all persons of fourteen years or under and would not prohibit the county recorder from issuing a license to persons under eighteen years and over fourteen years of age, providing the consent of their parents or guardians was attached to the application for the license.

The county recorder should, in view of the provisions of Section 12936, Code of 1927, when issuing a license to an applicant whose application shows that his age is under fourteen years, caution him as to the use of firearms.

TAXATION: A person who moves from one district to another on or after April 1st is subject to the imposition of a poll tax in the district of his new residence, if the same has not been imposed and collected by the district of his old residence.

May 1, 1930. *County Attorney, Carroll, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Supposing a person over the age of 21 and under the age of 45 on or after April 1st moves from one taxing district to another, is said person subject to the imposition of a head or poll tax in the district of his new residence?

We are enclosing herewith copies of opinions rendered by this department to Wm. W. Simmons, County Auditor, Fairfield, Iowa, under date of February 5, 1930, and to Honorable J. W. Long, Auditor of State, under date of March 27, 1930; one which holds that anyone becoming 21 years old on or before October 1st is subject to the poll tax. The other holds that if a person has not reached the age of 45 by the first day of January, but subsequently during the year obtains that age, he must pay the tax.

We are of the opinion that if the person who moves into the new taxing district after April 1st did not pay a poll tax in the district from which he moved that said person would be subject to and must pay the poll tax in the new district. If said person has already paid the tax in the district from whence he came his receipt would relieve him from the payment of the tax in his new district, the intention of the legislature being that only one head tax be paid.

FISH AND GAME: There is no authority in the statute for destroying by seining, or otherwise, black suckers. Section 17, Chapter 57, Acts of Forty-third General Assembly.

May 1, 1930. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

It is the practice of this department to have its deputies and employees each spring seine out with gill nets adult pike for the purpose of securing pike eggs for fish hatcheries. In doing this they have caught a number of *black suckers.* The question about which we desire an opinion is, whether or not, under the fish and game laws of this state, they would have authority to destroy the black suckers and not have to turn them back into the lake?

We refer you to Section 17, Chapter 57, Acts of the Forty-third General Assembly. If would appear from reading that section that the only kinds of fish which may be taken out by seine are buffalo, carp, quillback, dog fish, gizzard shad and gar; the statute itself providing specifically that no other fish shall be taken by seine or net. This is a matter for the legislature.

COUNTIES — BOARD OF SUPERVISORS — OSTEOPATHS — CHIROPRACTORS: County boards of supervisors are authorized, under Chapter 149, Acts of the Forty-third General Assembly, to enter into contracts for medical and dental services for the poor; this does not include or authorize a contract with an osteopath or a chiropractor or anyone else other than graduate physician and surgeon and a licensed graduate dentist.

May 1, 1930. *Commissioner of Health:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"May a county board of supervisors legally contract for the medical care of the poor with an osteopath, a chiropractor or any other than a graduate physician and surgeon (M. D.) and a licensed graduate dentist?"

Chapter 149 (Section 2), Acts of the Forty-third General Assembly, provides as follows:

"Sec. 2. There is hereby enacted and ordered inserted in the code immediately following section fifty-three hundred thirty-four (5334), code, 1927, the following section, to-wit:

" '5334-c1. Medical and dental service. The board of supervisors may make contracts with any reputable and responsible person licensed to practice medicine or dentistry in this state to furnish medical or dental attendance or services required for the poor, for any term not exceeding one (1) year, and shall require all such contractors to give bonds in a company authorized to do business in this state in such sum as it believes sufficient to secure the faithful performance of such contracts.' "

It will be noted from reading the above section that the board of supervisors is authorized to enter into contracts with "any reputable and responsible person licensed to practice medicine or dentistry in this state." This would seem to be the positive limitation on the board of supervisors, and we are of the opinion that by the provisions of Section 2, Chapter 149, Acts of the Forty-third General Assembly, the board of supervisors is only authorized to enter into contracts with persons who are licensed to practice medicine or dentistry, and that they are not authorized to enter into contracts for services for the poor with an osteopath or chiropractor.

BOARD OF HEALTH—CITIES AND TOWNS—COUNTIES: Cities and towns must pay the expense of the services of an investigation and elimination of the source of typhoid fever and the board of supervisors has no authority to pay such bill.

May 1, 1930. *County Attorney, Clinton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In the fall of 1929 the city of Clinton was subject to a very severe epidemic of typhoid fever. The city council, acting as a local board of health, secured the services of a veterinarian and an etiologist. The veterinarian examined various dairy herds in order to determine the source of the fever, and the bills of the two men so employed amounted to about $1,400.00. The local board of health has certified these bills to the board of supervisors for payment. The board has refused to allow the same.

The question is, are these bills such bills as must be paid by the county?

An examination of Chapter 108, Code of 1927, pertaining to contagious and infectious diseases discloses that there is no authority for the county allowing and paying the bills which have been filed with the county board.

We are of the opinion that these claims are not claims which are properly payable by the county board of supervisors, but that they are claims which must be paid by the city of Clinton.

BLUE-SKY—MUNICIPALITIES—BONDS—EXEMPTION: Improvement bonds or special improvement bonds or street improvement bonds issued by a municipality which are not a general obligation of the city are not exempt under the provisions of Section 4-a, Chapter 10, Forty-third General Assembly.

May 1, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Under Section 4-a, Chapter 10, Acts of the Forty-third General Assembly, are improvement bonds or special improvement bonds or street improvement bonds issued by municipalities in this state or other states of the United States exempt under said section if such bonds are in fact not a general obligation of such municipality but are payable only out of special assessments levied against abutting property or property included in an improvement district?

Section 4-a, Chapter 10, Acts of the Forty-third General Assembly, provides as follows:

"Exempt securities. Except as hereinafter otherwise provided, the provisions of this act shall not apply to any of the following classes of securities:

"a. Any security issued or guaranteed by the United States or any territory or insular possession thereof, or by the District of Columbia or by any state or political sub-division or agency thereof.

"* * * * *"

It will be noted from reading Section 4-a, Chapter 10, Acts of the Forty-third General Assembly, that the securities which are exempted are such as are issued *or guaranteed* by the United States or any territory or insular possession thereof, or by the District Court of Columbia or by *any state or political sub-division or agency thereof.*

We are of the opinion that the word "or" as used in Section 4-a between the word "issued" and "guaranteed" is not used as a disjunctive but as a conjunctive, and that the exemption provided for in said sec-

tion applies only to securities which are issued and guaranteed by the state or political sub-divisions thereof, and that improvement bonds or special improvement bonds or street improvement bonds issued by a municipality in this or other states of the United States, which are not general obligations of such municipality are not exempt securities.

CORPORATIONS — BLUE-SKY — REAL ESTATE — CONTRACTS: See opinion. (Chapter 10, Acts Forty-third General Assembly.)

May 1, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The Cross S. Winter Garden Farms, Inc., a Texas corporation, proposes to sell Texas land in the State of Iowa under a sales contract which is enclosed. This contract provides in Paragraph 3 that the seller will drill or furnish a well and equip the same with pumping plant and power and also to build and construct an earthen reservoir with a specified capacity, said pumping plant, well and reservoir to be situated on each one-quarter section.

The company further agrees that after said well, pumping plant and reservoir have been installed that it will by warranty deed transfer a certain undivided interest in the same, together with the land on which the same is situated, to the purchaser.

The question has arisen as to whether or not a land contract with such a provision as is contained in Paragraph 3 would make the same a security under Chapter 10, Acts of the Forty-third General Assembly, and thus make said company subject to the provisions of said chapter?

From an examination of the definition of "security" as contained in Chapter 10, Acts of the Forty-third General Assembly, we are of the opinion that the land contract under which the Cross S. Winter Garden Farms, Inc., proposes to sell Texas land in this state is not a security, and sales under this contract would not, in our opinion, be subject to the provisions of Chapter 10, Acts of the Forty-third General Assembly.

DEPARTMENT OF AGRICULTURE — BOVINE TUBERCULOSIS — COUNTIES: County entitled to indemnity where it owns reacting cattle. Chapter 129, Code 1927.

May 6, 1930. *Secretary of Agriculture:* This will acknowledge receipt of your request for the opinion of this department upon the following proposition:

"Where cattle reacting to the tuberculin test are owned and used at the county farm, shall indemnity be paid under the provisions of Chapter 129 of the Code?"

The fund provided for the payment of cattle reacting to the tuberculin test consists of the state appropriation and a special county levy. The statute provides that no cattle shall be slaughtered unless there are funds available for the payment of indemnity provided by law. The county is the owner of these cattle, but they are owned by it for the use and benefit of the poor since the fund created for that purpose is a special levy.

We are, therefore, of the opinion that the county is owner in such sense that it is entitled to the indemnities provided by statute for animals that react to the tuberculin test.

SCHOOLS AND SCHOOL DISTRICTS: Nurses, doctors and dentists not subject to teachers' pension and retirement system unless actually engaged in teaching. Section 4345, Code 1927.

May 6, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following:

"Will you kindly give us a written opinion on the question whether nurses, doctors, and dentists, when employed by a school board as provided by law, can be considered teachers in connection with the teachers' pension and retirement system."

We are of the opinion that nurses and other employees are not subject, unless they have a certificate and do instruction work, to the pension provided for in Section 4345 of the Code of Iowa, 1927.

ELECTIONS: Section 557, Code of 1927, is the law with respect to the arrangement of names of candidates for office of territories smaller than a county.

May 9, 1930. *County Attorney, Chariton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Should the names of the candidates for offices in territories smaller than a county be arranged and printed alphabetically or should they be rotated as provided in Section 3, Chapter 40, Acts of the Forty-third General Assembly?

It will be noted that Section 3, Chapter 40, Acts of the Forty-third General Assembly, was substituted for and in lieu of Section 556, Code of 1927, which section applied only to candidates for offices to be filled by voters of a county or the voters of any district composed of more than one county, and that Section 557, Code of 1927, was not amended or changed in any manner.

We are, therefore, of the opinion that Section 557, Code of 1927, is the section which applies to the candidates for offices in territories smaller than a county, and that the names of such candidates should be printed on the ballot in accordance therewith.

ELECTIONS: A candidate for office cannot verify his own nomination papers, and the fact that he was affiliated with another party at the last preceding election would not affect his being a candidate at said election.

May 15, 1930. *County Attorney, Fort Madison, Iowa:* We acknowledge receipt of your request for an opinion of this department on the following questions:

1. A candidate for county office has filed his nomination papers, said nomination papers being sworn to by said candidate himself. The question has arisen as to whether or not this candidate's name should be printed on the ballot or whether the county auditor should refuse to print his name on the ballot, or whether objections must be filed before the question of the sufficiency of the affidavit may be raised.
2. A candidate files nomination papers for an office on the republican ticket, the records show that his party affiliation at the last two preceding elections was that of another party. Can this candidate's name be placed on the primary election ballot for the party for which nomination papers were filed?

You are referred to Section 543, Code of 1927. It will be noted from reading that section that the affidavit must be the affidavit of a qualified elector, other than the candidate. Section 537, Code of 1927, provides for the filing by candidates of nomination papers. Section 539, Code of

1927, provides in substance that no candidate for office named in Section 537 shall have his name printed on the official primary ballot of his party unless nomination papers are filed as provided for in Section 537, Code of 1927.

We are, therefore, of the opinion that a candidate who files nomination papers with the county auditor, which are sworn to by himself, should not be considered nominated by the county auditor and his name cannot be placed upon the official primary ballot of his party in accordance with the provisions of Section 539, Code of 1927. The auditor has no authority to place said candidate's name on the election ballot.

Each candidate is required to file an affidavit as provided for in Section 544, Code of 1927, and the fact that he is nominated on a party ticket with which party he was not affiliated at the last election would, in our judgment, make no difference in view of Section 544, Code of 1927.

BOARD OF PHARMACY—ITINERANT VENDORS: One who sells McNess, Watkins or Rawleigh remedies from house to house is an itinerant vendor within the meaning of the statute and must secure a license from the Board of Pharmacy Examiners.

May 16, 1930. *County Attorney, Storm Lake, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Is it necessary for a man selling McNess or Watkins or Rawleigh remedies to secure a state license from the Board of Pharmacy Examiners before he can sell these remedies?"

You are advised that a man who sells these remedies from house to house or place to place about the country, is an itinerant vendor within the meaning of the statutes pertaining to the same, and is required to secure a license from the Board of Pharmacy Examiners before he can sell these remedies in this state.

ELECTIONS—PRIMARY ROAD BONDS: Necessary to have two poll books where primary road bond election is held on the same day of the primary election.

May 17, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"When a special election is called on the primary road bond issue on June 2, 1930, same day of the primary election, shall there be two separate poll books—one for the primary election and another for the special election on issuance of primary road bonds, or can one poll book serve for both elections?"

You are advised that the special election on the primary road bond issue is a separate and distinct election, and that the same rules would govern said election were it not called and held on the same day as the primary election. The primary election books are for the purpose of showing who are the qualified electors of the several precincts and to show who and how many qualified electors in said precincts voted at such election.

In addition to this they show the party affiliation of each qualified elector.

These books could only be issued for the purpose of the primary election

and it would be necessary to have separate poll books for the bond election showing the names of the qualified electors in the several precincts of the county, and showing who of the qualified electors in each precinct voted on the bond issue.

We are, therefore, of the opinion that it would be necessary to have separate poll books for the special election on the primary road bonds.

TAXATION—ANNUITIES—ENDOWMENT: The amount received by an annuitant in a fraternal order or college is subject to taxation in the district in which the annuitant is a resident.

May 21, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where a person makes a gift of land or other property, to be used as an endowment for a fraternal order or college, retaining to himself an annuity during his life or the lives of those named in the annuity agreement, is the annuity received by the grantor subject to taxation in his hands?

You are advised that the annuity is taxable to the recipient thereof. You are also advised that if the annuity agreement provides that the annuitant shall receive the same, free from taxes, that this would have no effect upon the taxation of said annuity so far as the various taxing districts are concerned, but would only be effective as between the recipient of the annuity and the college or fraternal order, and would only mean that the college or fraternal order would pay the recipient of the annuity, in addition to the amount of the annuity, the amount of taxes which he would have to pay on such annuity.

ROADS AND HIGHWAYS—BOARD OF APPROVAL: The secondary road construction program must, in accordance with Section 35, Chapter 20, Acts of Forty-third General Assembly, be approved by the board of approval and any changes made in said program must be made with the approval of this board.

May 22, 1930. *County Attorney, Manchester, Iowa:* We acknowledge receipt of your letter on the following question:

The board of supervisors of Delaware county together with the representatives of the various townships adopted a three-year program of construction for the secondary and local county roads as contemplated by Section 35, Chapter 20, Acts of the Forty-third General Assembly. The board now desires to change some of the roads included in this program and add others which would be of more utility to the various townships.

The question has arisen as to whether or not the board of supervisors may make these changes upon their own initiative and without the approval of the respective represenatives of the various townships.

It will be noted from reading Section 35, Chapter 20, Acts of the Forty-third General Assembly, that the action of the representatives of the townships, together with the board of supervisors, with respect to the proposed program or project is final.

We are, therefore, of the opinion that if the board of supervisors desired to make a change in the program as adopted it would be necessary for them to reconvene the board of approval composed of representatives of the various townships and to submit to them the proposed changes and secure their approval on the same. Until this is done the board

of supervisors would have no authority to make any changes upon the local county roads.

ELECTIONS—STICKERS: The judges and clerks of election cannot hand out stickers for the precinct's delegation. (Section 618, Code of Iowa, 1927.)

May 28, 1930. *County Attorney, Adel, Iowa:* We acknowledge receipt of your recent request for an opinion on the following question:

Is it permissible, under the laws, for judges and clerks of election to hand out to the voters stickers containing the names of the delegates to the county convention?

There is no provision in the statute for the placing of names of candidates for delegates to the county convention on the ballot. Section 618, Code of 1927, provides that the names shall be written or pasted with uniform white pasters on the blank lines upon the ballot by the voter or someone designated by the voter. There is no provision in the statute for the furnishing of stickers for delegates. The only provision being for the furnishing of a ballot with blank lines upon it wherein the names may be written or pasted.

We are, therefore, of the opinion that the judges or clerks of election have no authority, under the law, to furnish to the voters of the various precincts any ballot for delegates, except the one with the blank lines on as furnished by the county auditor. If pasters are used they must be handed to the voters outside the polling places and more than one hundred (100) feet therefrom.

ELECTIONS—DELEGATES: Where the judges of an election fail to make a complete certificate as to the election of delegates or to make any certificate at all the judges may, before the canvass, complete the certificate; where only part of delegates were elected the remainder having received an equal number of votes, judges determine by lot which delegates chosen.

June 5, 1930. *County Attorney, Cresco, Iowa:* We beg to acknowledge receipt of your request for an opinion on the following questions:

1. Where the judges of election fail to make a certificate as to the election of delegates, or to make any certificate at all, may the judges now complete the certificate or make the new certificate where one was not made, this being done before the canvass?
2. In a precinct which was entitled to ten delegates, twenty-one were voted for, eight of whom were elected, each of whom received two votes each and the remaining candidates who were voted for received one each as shown by the certificate of the judges of election, and the judges failed to draw a lot, how should the remaining two delegates be determined?

It is the duty of the judges of the election to make a complete and proper certificate, and in any case where the judges file an incomplete certificate which did not show the names of the delegates which were elected, the judges of such precinct may now before the canvass complete their certificates and show the true facts. The judges of election in a precinct who fail to make a certificate showing the delegates elected for the county convention must do so before the canvass.

In a precinct which is entitled to ten delegates and where only eight were elected by the majority vote, the remainder of those voted for

having received each an equal number of votes, it is the duty of the judges of election of that precinct to determine by lot which delegates voted for should complete the delegation in that precinct.

In all precincts where the required number of delegates have not been elected by a majority vote the judges of election should determine by lot who of those delegates voted for should complete the delegation.

In every case the determination should be made before the canvass.

PEACE OFFICERS—CLAIM FOR INJURY: A vigilante not in active service, who is injured, is not entitled to benefits provided in Section 1422.

June 7, 1930. *County Attorney, Northwood, Iowa:* You have requested the opinion of this department upon the following proposition:

"I am writing to you at this time for the purpose of obtaining from your department an opinion upon the following question.

"Last fall one of the county units of the vigilance committee arranged for a practice shoot upon a local range in the county. The members of this unit proceeded in a body at the request of the sheriff of this county, to the rifle range, and tried out the various guns which had been allotted to them. This was done for the purpose of determining whether or not all of the guns were in working condition and for the purpose of enabling them to learn how to use them.

"During this shoot, one of the members of the vigilance committee, Mr. Lemler, of Manly, Iowa, was accidentally shot in the foot by one of the other members of the unit, while upon the range. Mr. Lemler and all of the men who were with him at the time were duly qualified as special deputy sheriffs acting as a vigilance committee, having their bonds and other requirements complied with.

"A claim was made for the injury to the Workmen's Industrial Commissioner, and the claim disallowed."

You are advised that if the person described in your letter is entitled to any compensation at all, it would be under the provisions of Section 1422 of the Code. You will observe that police officers are entitled to the compensation provided who shall "while in line of duty or from causes arising out of or sustained while in the course of their official employment, meaning while in the act of making or attempting to make an arrest or giving pursuit, or while performing such official duties where there is peril or hazard peculiar to the work of their office," be killed or injured.

As we understand the facts, the person concerned was engaged in practice shooting. He was not engaged in the performance of any official duty as a special deputy sheriff. He was merely attempting to equip himself and prepare himself to be of service when called to official duty. In view of this situation, we do not believe that the provisions of Section 1422 are applicable to the situation presented.

COUNTIES: Board of supervisors has no authority to sell heat from court house heating plant to private individuals whose buildings are near the court house building.

June 13, 1930. *County Attorney, Perry, Iowa:* You have requested the opinion of this department upon the following proposition, as stated in your letter of June 10:

"Some years ago Dallas County installed a heating plant for the court house and by arrangement with many of the merchants and property

owners in Adel, mains were laid and heating was furnished to the property owners, the county selling the heat only. My understanding is that the mains and radiation were owned by the property owners.

"The heating plant in Adel has deteriorated and it is now necessary for the supervisors to install a new boiler and there are other repairs necessary which will necessitate considerable expense to put the system in proper condition. The mains are not properly insulated and will have to be relaid and properly insulated.

"In order to provide a proper system to continue furnishing heat to the merchants and property owners, the supervisors will have to expend according to an estimate submitted to them by an architect they have employed, several thousand dollars more expense than they would have to incur if they would provide for the heating for the court house only.

"The supervisors submitted the following questions to me:

"Is there any authorization for and can the county legally sell heat to the merchants and property owners in Adel?

"Could the county legally put in the amount of money which would be necessary to install a system of their own and the property owners put in the amount necessary to install the larger plant necessary for the furnishing of heat to the property owners and operate the plant on a partnership basis?

"I advised the board of supervisors that it could not legally install the larger plant and sell heat; that there was no authorization for operating a plant and selling heat. I also advised them against any partnership proposition, saying that I did not believe it would be practicable.

"The property owners in Adel say that they have installed radiation and have gone to considerable expense because of the fact that they have in the past been furnished heat by the county and they had no thought but what the arrangement would be continued; that if the furnishing of heat is discontinued that it would increase the fire hazard in Adel and they also add many other objections.

"I informed the board that I did not believe they had a right to consider these matters from a legal viewpoint although they might like to accommodate the property owners.

"The supervisors tell me that there are some citizens of the county who have objected to their furnishing heat to the merchants and property owners in Adel and who have recently threatened to bring action to prevent them from furnishing heat in the event that they should contract for the installation of a heating plant large enough to furnish heat to the property owners.

"I would appreciate an opinion on this matter as soon as possible so that the supervisors can make the necessary arrangements for the installation of the heating plant this summer."

There is no question but that the board of supervisors has full power to provide adequate heating facilities for the court house and proper county buildings. However, the question presented involves an exercise of proprietary rights if the county has any such rights in this matter. It is true the county is a body corporate, but this attribute is conferred upon it by legislation and not otherwise. The county is a subdivision of the state. It owes its creation to the state. It is subject at all times to legislative control. It is true that a municipal corporation may have a dual capacity, and in addition to its public capacity, may acquire and exercise proprietary rights which are in the nature of private rights. As applied to political sub-divisions of the state, such dual capacity is exceptional rather than usual. All of the functions of the board of supervisors and of the county are governmental. All of a county's rights, privileges and powers are conferred upon it by legislation. None of those things inhere in the county independent of such legislation. A

county's rights are measured by the statute and it has no rights superior to statutory control. See *Scott County vs. Johnson*, 222 N. W. 378.

So, as to the proposition submitted, Dallas County has no powers except what are specifically prescribed by the statute, and we have been unable to find any provision of law which would authorize the county to embark upon an enterprise such as is described in the proposition submitted.

It is, therefore, the opinion of this department that in view of the absence of statutory authority permitting or authorizing a county to enter into the private business of selling and furnishing heating service to private individuals, such a program as is suggested and submitted in your proposition would be illegal and beyond the power of Dallas County to undertake.

ELECTIONS—DELEGATES — STICKERS — RE-COUNT: Stickers with the names of the delegates printed thereon in squares in front of each may be properly used by the voters. The board of supervisors under Chapter 42, Acts of Forty-third General Assembly, and Sections 585, 586, Code of 1927, in connection with the re-count in case of a primary election, act only as an administrative body and have only authority to take the ballots as certified and re-count them.

June 14, 1930. *County Attorney, Logan, Iowa:* Pursuant to your request we are submitting to you herewith an opinion on the following questions:

1. Is it proper, under the laws of this state, to use in voting for county delegates stickers with the names of the delegates printed thereon with a square in front of each, or must a voter mark in the squares on the official delegation ballot?

2. In this county the following state of facts exist with respect to the vote for delegates in various precincts of this county: It appears that some faction had stickers prepared with the names of the delegates printed thereon, together with squares in front of the names. It is claimed that the faction who had these stickers printed marked crosses in pencil in front of each of the names on the sticker and handed these out to the voters in the various precincts requesting that they use that sticker and the voters in voting had only to paste the stickers on the official delegation ballots. There is to be a re-count and the question has arisen as to whether or not evidence may be produced before the board of supervisors with respect to the matter of the stickers. That is, as to the validity of the ballots where the stickers, such as suggested above, were used, it being claimed by some that witnesses may be produced who will testify that they used the stickers which were marked by someone other than themselves and that the stickers were used in some cases contrary to the wishes of the voter.

This department has previously ruled, and we are of the opinion, that stickers with the names of the delegates printed thereon with squares printed in front of each of the names may be properly used without any violation of the statute.

In connection with a re-count as provided for in Chapter 42, Acts of the Forty-third General Assembly, and Sections 585 and 586, Code of 1927, the board of supervisors has only authority to re-check and re-count the votes cast at the primary for a particular candidate or candidates. The board does not have any authority to hear evidence concerning fraud, error, or mistake complained of by a candidate. They must take the ballots as made by the voters at the poll and re-check

and re-count them. If any ballot does not comply with the provisions of Chapter 40, Code of 1927, especially Sections 809-20 inclusive, then it is the duty of the board to throw such ballot or ballots out. In other words, the error, fraud, or mistake must appear on the face of the ballot.

It would be impossible and wholly contrary to the statute to permit voters to appear before the board and testify concerning the manner or the method in which or by which their ballot was cast, for it would be necessary for the voter to be able to identify his own particular ballot and, of course, if he could do this the ballot would be one which could be identified upon its face and would be contrary to the law and a void ballot. The board of supervisors in making the re-count does not act as a judicial body but simply as a canvassing or counting board.

ELECTIONS—POLL BOOKS: In a precinct which is composed of parts of two individual townships, said precinct including also a village, it is necessary that two poll books be kept, one for each township. Section 770, Code of 1927. Section 725, Code of 1927.

June 16, 1930. *County Attorney, Newton, Iowa:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

Pursuant to Section 725, Code of 1927, the board of supervisors of this county has created a precinct known as Ira precinct, which precinct is composed of part of Sherman and part of Independence townships; said precinct including a village and the two townships named.

Shall the precinct keep only one set of poll books and be furnished with a ballot designated as the official ballot for the Ira precinct of Sherman and Independence townships, which ballot would not include township officers, and be furnished also with a ballot containing the names of township officers only for each of said townships? Or, shall the precinct keep two sets of poll books, one for each township and be furnished with the regular township ballot for each of said townships?

We are of the opinion that there should be two sets of poll books, one for each township, and special ballots prepared for each township represented in accordance with the provisions of Section 770, Code of 1927.

COUNTY HOSPITALS — NURSES' HOME — MAINTENANCE FUND: Where the electors of a county have by their vote refused to authorize the levy of a tax for the purpose of building hospital buildings the hospital trustees do not have the power and authority to use the surplus in the maintenance fund for that purpose. (Sec. 5358, Code of 1927.)

June 17, 1930. *County Attorney, Boone, Iowa:* We acknowledge receipt of you letter requesting an opinion of this department on the following questions:

Trustees of the county hospital of this county have passed a resolution transferring from the hospital maintenance fund the sum of $115,000.00, and this resolution has been approved by the Budget Director. They propose to build a nurses' home with the money transferred. The trustees have asked the board of supervisors of this county to approve the transaction. The question of building a nurses' home was sometime ago submitted to a vote of the people of this county and was voted down.

1. Can the funds derived from the maintenance levies be used for the purpose of building a nurses' home; the question of building a nurses' home having been submitted to a vote of the people and having been voted down?

2. Does the board of supervisors have such control over the hospital maintenance fund and the other hospital funds that it is necessary for it to approve a transfer from one fund to another?

In your letter you call our attention to an opinion rendered by this department under date of August 5, 1927, to the Honorable E. L. Hogue, Director of the Budget. That opinion applies only to the facts which were submitted to this department in that particular case and would not apply to the facts as stated herein.

It would appear from the facts stated that the question of whether or not a nurses' home should be built was submitted to the taxpayers of Boone County and that they by their negative vote turned down the proposition and refused to authorize the levy of a tax with which to pay for the construction of such a home. This being the will of the people of Boone County should, in our opinion, be binding upon the board of hospital trustees as well as the county board of supervisors of Boone County.

We are, therefore, of the opinion that the funds derived from the maintenance levies in Boone County cannot be used for the purpose of building a nurses' home as this would be an indirect way of doing what the voters of the county said they did not want done when they defeated the questions submitted to them.

It will be noted from reading Section 5353, Code of 1927, that the improvement and maintenance levies are such as are certified by the board of trustees of the hospital not exceeding, of course, two (2) mills. It will also be noted from reading Section 5358, Code of 1927, and the following sections, that the board of hospital trustees has control of this fund.

Section 369, Chapter 24, Code of 1927, the local budget law, provides that the word "municipality" shall include such boards as have the power to levy or certify taxes. The board of hospital trustees, therefore, being the certifying board, so far as the improvement and maintenance levies are concerned, is the board which has the control of said fund and any transfer authorized by law would be made upon the resolution of this board with the approval of the Budget Director, and not upon the resolution of the board of supervisors. The board of supervisors, therefore, has nothing to do with a transfer of the improvement and maintenance fund.

TAXATION—REAL ESTATE—SOLDIERS' EXEMPTION: Section 6947, Code of Iowa 1927, provides that the exemptions to soldiers shall extend only to the period during which such persons remain the owner of such property. A soldier, therefore, who purchases property after January 1, 1930, would not be entitled to, under this statute, have his exemption apply on the taxes for the year 1929 which were due and payable in 1930.

June 17, 1930. *County Attorney, Northwood, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. A soldier has acquired real estate since January 1, 1930. The taxes for the year 1929 have not been paid. The soldier is claiming exemption as provided by law and asks that the same be credited on these taxes for

the year 1929. Is he entitled to have this exemption credited on the taxes for the year 1929?

2. A resident of this county sold real estate on contract. The contract was forfeited and he paid the taxes against said property for the year 1929. Included in these taxes were the personal taxes of the contract vendee. This resident did not discover that the personal taxes of the contract vendee were included in the taxes which he paid until sometime after payment was made. He has now filed an application with the board of supervisors for refund of the amount of the personal taxes paid. Has the board of supervisors authority under Section 7235, Code of 1927, to make a refund of personal taxes paid voluntarily under the facts stated?

Section 6947, Code of 1927, provides that the exemption shall extend only to the period during which such persons remain the owner of such property. We are, therefore, of the opinion that the claimant in this case having received possession of the property since January 1, 1930, is not entitled to receive credit for exemption upon the taxes for the year 1929.

Section 7235, Code of 1927, authorizes the board of supervisors to make a refund to a taxpayer when any taxes or portion thereof is found to have been erroneously or illegaly exacted or paid. The payment of the personal taxes by the contract vendor would not be a tax which was erroneously or illegally exacted or paid. Therefore, the board of supervisors has no authority to make such a refund. You are also referred for authority for this to the Annotations to the Code under Section 7235.

COUNTY BOARD OF EDUCATION: Since no time is specified in the statute, the term of the county board of education begins immediately after election and members must qualify within a reasonable time. Chapter 207, Code of 1927.

June 24, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date in which you request the opinion of this department upon the following question:

"We are receiving a great many inquiries as to when a member-elect to the county board of education shall take the oath of office and when his term of office is presumed to begin."

The county board of education is governed by Chapter 207, Code of Iowa, 1927.

This board is elected by the regular convention held for the election of county superintendent. The statute does not prescribe when his term of office shall begin and is silent as to the time within which they must qualify. That would therefore, be governed by the general statutes relating to qualifying for public office. The general time to qualify is before noon of the second secular day in January of the first year of the term for which such officer was elected. It is obvious that this does not apply. See Section 1045. The regular convention for electing this board is held on the second Tuesday in May, and the next regular meeting of the board is on the second Monday of August. The board should, therefore qualify before the second Monday in August.

Since no time is specified within which to qualify, we are of the opinion that such officers elected at the convention in May, may qualify by taking the prescribed oath within any reasonable time after the election.

ACCOUNTANCY—BONDS: Each member of a firm of public accountants who uses a firm name which is registered must also be registered and must each post a $5,000.00 bond with the Auditor of State. (Sections 12-c, 14-a, Chapter 59, Acts of Forty-third General Assembly.)

June 24, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The question has arisen in connection with the practices of accountancy in cases where the firm name, association, or corporate name is registered as to whether or not the requirements of Section 14-a, Chapter 59, Acts of the Forty-third General Assembly, would make it necessary that each member of the firm, association, or corporation, file and post with the Auditor of State a $5,000.00 bond, or would it only be necessary for one bond to be filed in the sum of $5,000.00, said bond covering each of the partners or members of the firm?

You are referred to Paragraph c, Section 12, Chapter 59, Acts of the Forty-third General Assembly, which paragraph reads as follows:

"(c) All senior accountants who have been continuously employed as such for at least three years prior to June 30, 1929, by practitioners entitled to registration under this act or as senior accountants in the employ of public accountants of recognized standing in other states shall be registered as public accountants, provided the last year of such employment shall have been in this state."

It will be noted from reading Paragraph a, Section 14, that every person who is granted a certificate to practice accountancy under the provisions of Chapter 59, Acts of the Forty-third General Assembly, must give a bond in the sum of $5,000.00 to the Auditor of State before entering upon the discharge of his duties.

We are of the opinion that each of the members of a firm of public accountants who use a firm name which is registered must also be registered and must each post a $5,000.00 bond with the Auditor of State.

CIGARETTE PERMITS: Granting cigarette permits is discretionary in the proper authorities. (Section 1557, Code of 1927.)

June 24, 1930. *Treasurer of State:* We acknowledge receipt of your request for an opinion on the following question:

Can a board of supervisors or a city or town council, where they grant permits to some persons, refuse to grant cigarette permits to others?

Section 1557, Code of Iowa, 1927, provides as follows:

"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."

We are of the opinion that the board of supervisors or a city or town council, as the case may be, has a discretion as to what persons or class of persons cigarette permits shall be issued to. The discretion must not be exercised arbitrarily and when a permit has been granted to one of a class, such as druggists or grocerymen, they cannot refuse arbitrarily to grant permits to other persons in the same class. Their

refusal to grant a permit to one of a class must be based upon a good and valid reason.

TAXATION—COUNTY TREASURER: In counties of 80,000 or over the county treasurer may proceed to collect the first half of the delinquent personal taxes immediately after they become delinquent and he may for that purpose appoint one or more collectors to assist him at a compensation not in excess of 5%. (Secs. 7222, 7223, Code of 1927.)

June 24, 1930. *Auditor of State:* We acknowledge receipt of your letter of recent date requesting an opinion of this department on the following question:

The question has arisen in some of the counties as to when and at what time the county treasurer is authorized to appoint collectors to collect the delinquent taxes for the year 1929 which are due and payable in the year 1930.

Sections 7222 and 7223, Code of Iowa, 1927, make it the duty of the county treasurer to roceed to collect the delinquent personal taxes immediately after they become delinquent, and he is authorized to appoint one or more assistants for this purpose. The compensation of such assistants is fixed at 5% on the amount of the taxes collected, which amount shall be collected from the delinquent taxpayers.

It is true that under Section 7222, Code of 1927, the authorization of the treasurer is to proceed to collect such delinquent taxes by distress and sale of personal property. This, however, would not mean that this method should be employed unless it were necessary.

Section 7226, Code of 1927, seems to be in conflict with the provisions of Sections 7222 and 7223 of the Code of 1927 for it provides that in no case shall delinquent taxes of the current year be turned over for collection, whether designated by the board of supervisors or not before the first day of November. Your attention, however, is called to Chapter 201, Section 1, Acts of the Forty-third General Assembly. This chapter provides that the provisions of Section 7226 shall not apply to counties having a population of 80,000 or more.

We are, therefore, of the opinion that in counties having a population of 80,000 or more the county treasurer may proceed to collect the first one-half of the delinquent personal taxes immediately after they become delinquent, and that he may for this purpose appoint one or more collectors to assist him, which collectors shall draw as compensation for their services a sum not in excess of 5% of the taxes collected, which amount shall be paid by the delinquent taxpayers.

Section 7222, Code of 1927, only authorizes the county treasurer to collect delinquent personal property taxes for the current year. All other delinquent personal property taxes are to be collected in the manner provided for in Section 7225, Code of 1927.

ROADS AND HIGHWAYS—COUNTY ENGINEER: Under Chapter 20, Acts of the Forty-third General Assembly, it is necessary that the county engineer keep an account of all expenditures for maintenance according to the various townships. (Section 23, Chapter 20, Acts Forty-third General Assembly.)

June 24, 1930. *County Attorney, Humboldt, Iowa:* We acknowledge re-

ceipt of your letter requesting an opinion of this department on the following question:

Is it necessary, under Chapter 20, Acts of the Forty-third General Assembly, for the county engineer to keep an account of all expenditures for maintenance according to townships?

You are referred to Section 23, Chapter 20, Acts of the Forty-third General Assembly. It will be noted from reading that section that the county engineer and his assistants are required to keep an itemized and verified account of all work done and expenses incurred.

It will also be noted from reading Section 59 of the same chapter that the various townships are to be given extra credit for all machinery, tools, and equipment turned over to the board of supervisors, and that this credit shall be in the way of construction or maintenance work.

It will also be noted from reading the various sections of Chapter 20, Acts of the Forty-third General Assembly, that there is to be an equitable division of the work among the various townships and, of course, in order to equalize the work it would be necessary to keep tract of the same with respect to the various townships.

We are, therefore, of the opinion that the county engineer should keep an account showing the maintenance and construction work done in each township.

TAXATION—BOARD OF REVIEW—ROADS AND HIGHWAYS—CULVERTS: 1. When a taxpayer has received notice that his assessment has been raised by the board of review and he fails to appear before the local board of review at its adjourned meeting and object to the raising of his assessment he has no right of appeal. Section 7132, Code of 1927. 2. County board of supervisors does not have authority to construct and pay for culverts which are 36 inches or less in diameter in cities and towns which do not control their own bridge levies. Section 4665, Code of 1927; Section 4, Chapter 20, Acts of Forty-third General Assembly.

June 24, 1930. *County Attorney, Creston, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. If a taxpayer has notice that his assessment has been raised by the local board of review as provided by Section 7132 of the Code, and the taxpayer after receiving such notice then fails to appear before the local board to object, may he appeal within ten days to the county board of supervisors?
2. Has the county board of supervisors power to authorize the construction of culverts in cities and towns and pay for the same if said culverts are less than thirty-six inches in width?

We are of the opinion that the taxpayer must proceed in accordance with the provisions of Section 7131, Code of 1927, and that if the taxpayer after receiving notice that his assessment has been raised fails to appear before the local board of review at its adjourned meeting and object, that the taxpayer does not then have the right to appeal either to the district court or to the county board of supervisors, he not having appeared before the local board of review and made objection to the raising of his assessment.

You are advised that Section 4665, Code of 1927, was repealed by the Acts of the Forty-third General Assembly, and you are referred to Sec-

tion 4, Chapter 20, Acts of the Forty-third General Assembly which reads as follows:

"Secondary bridge system. The secondary bridge system of a county shall embrace all bridges and culverts on all public highways within the county except in primary roads and on highways within cities which control their own bridge levies, except that culverts which are thirty-six inches or less in diameter shall be constructed and maintained by the city or town in which they are located."

It will be noted from reading that section that the secondary bridge system of a county embraces all bridges and culverts on public highways except on primary roads, and culverts which are thirty-six inches or less in diameter in cities and towns which do not control their own bridge levies. It would appear, therefore, that the county board of supervisors does not have authority to construct and pay for culverts which are thirty-six inches or less in diameter in cities and towns which do not control their own bridge levies.

REAL ESTATE COMMISSIONER: May require written examination to determine competency of applicant.

June 25, 1930. *Secretary of State:* This will acknowledge receipt of your letter of recent date, inquiring whether under the present real estate licensing act the commissioner could require written examinations of the applicants to determine their competency.

Section 6 of the act provides in part as follows:

"The commissioner, with due regard to the paramount interests of the public, *may require such other proof as shall be deemed desirable as to the* honesty, truthfulness, integrity, reputation, and *competency of the applicant.*"

Under this provision we are of the opinion that the commissioner could require, if he deemed it desirable to determine the competency of the applicant, a written examination upon such subjects as he should designate.

BOARD OF CONSERVATION: Custodians of parks who exceed their official authority and are prosecuted either criminally or civilly, must provide their own legal defense.

July 3, 1930. *Board of Conservation:* You have requested the opinion of this department upon the following proposition:

"We have had several instances where our custodians, who are peace officers, and in some cases deputy sheriffs, have had difficulty with unruly persons in our state parks.

"Such occasion has arisen in our Ledges State Park near Boone, where our custodian was compelled to defend himself against slanderous remarks and abusive language, and it appears that for this he has been arrested and the trial has been postponed until some time in July.

"Our object in writing you is for information as to whether the Attorney General's office would be prepared to defend these custodians in cases of this kind. It seems unfair that a state officer in the performance of his duties should be expected to pay for his defense in court."

You are advised that, under the facts stated in your letter, we do not believe that the custodian of the park at Boone was acting in his official capacity. As we understand the situation from your letter and the oral statement of Mr. Hutton, it seems that the custodian became somewhat

provoked and proceeded to give the offending parties a thrashing. Under such circumstances, of course, it cannot be said he was in the performance of his official duties.

Of course, if the officer is making an arrest in the course of his official duties, or is performing any other official duty, as a result of which he is sued, there might be a different proposition presented. In the situation presented by you there is no showing that the plaintiff in this suit was violating any rule of the board or any statute.

DEPARTMENT OF HEALTH—DELINQUENT LICENSES AND REVOCATION OF LICENSES. (Sections 2448 and 2492, Code, 1927.)

July 8, 1930. *Board of Dental Examiners, Mason City, Iowa:* This will acknowledge receipt of your request of June 7, 1930, which is as follows:

"1. Is it legal for the Commissioner of Health or the State Board of Health to reinstate a delinquent dental license without the recommendation of the board of dental examiners? (Such recommendation as provided in Section 2448 of the Code of Iowa, 1927.)

"2. Is it legal for the Commissioner of Health or the State Board of Health to reinstate a revoked dental license without the recommendation of the State Board of Dental Examiners?

"3. Is the recommendation of the Board of Dental Examiners absolutely binding upon the Commissioner of Health or the State Board of Health regarding the reinstatement of a delinquent or a revoked dental license?"

In reply to your first question, the Commissioner of Health should not reinstate a delinquent dental license without the recommendation of the Board of Dental Examiners.

Under our previous ruling of June 26, 1929, it would not be legal for the Commissioner of Health to reinstate a revoked dental license, as this becomes solely the duty of the State Board of Health, for the reason that revocation of licenses is covered by Section 2492 of the Code, giving ten grounds for the revocation of licenses, this being the general provision and one with which the examining boards have no jurisdiction, it being necessary to revoke licenses under any of the grounds of this section through an action in district court. Therefore, where a license has once been revoked, it would be necessary for the applicant, for reinstatement, to first show the State Board of Health that he was no longer guilty, or that he had corrected the situation from which his revocation arose.

As to the third question, the recommendation of the Board of Dental Examiners would be binding upon the Commissioner of Health regarding the reinstatement of a delinquent but not of a revoked dental license.

SHERIFFS—CITY MARSHALS: Sheriff would not be liable for incarceration in the county jails of persons arrested by city marshal.

July 8, 1930. *County Attorney, Maquoketa, Iowa:* This will acknowledge receipt of your reqquest of April 21st, in which you submit the following proposition:

(1) May the city of Maquoketa use the county jail of Jackson county for furnishing one night's lodging to apparently deserving persons?

(2) May the city of Maquoketa use the county jail of Jackson county for incarceration of all persons arrested by the city marshal, many of said arrests being made for violations of the city ordinance and other public offenses, including the arrests of vagrants and tramps?

In reply we would say that the first question is fully answered by the

provisions of Section 13395, which provide that the party shall not be received unless such person has been duly arrested or committed for vagrancy, or the sheriff is requested or ordered to receive them by the board of supervisors.

In reply to your second question we believe that under the provisions of Sections 5497 and 5772, the sheriff would not be liable for incarceration in the county jail of persons arrested by the city marshal, where the arrests were made for a violation of the city ordinances or other public offenses, as it was the intention of the legislature that where a city would not maintain a jail, they might use the county jail, but should be required to pay to the county the cost of keeping the prisoners.

DEPARTMENT OF AGRICULTURE: Stand operated for selling food even for temporary period must procure license.

July 8, 1930. *Secretary of Agriculture:* This will acknowledge receipt of your request for the opinion of this department upon the following proposition:

Does a stand operating and selling food come within the provisions of Section 2809, Code of Iowa, 1927, and thus require a license from your department under the provisions of that section?

It is provided by said Section 2809 as follows:

"No person shall maintain or conduct a hotel, restaurant, bakery, candy factory, ice cream factory, bottling works, canning factory, slaughterhouse, meat market, or place where fresh meats are sold at retail until he shall obtain a license from the department of agriculture. Each license shall expire one year from the date of issuance except a hotel or restaurant license which shall expire on the last day of December following the date of issuance. A hotel license shall be transferable upon the payment of a fee of one dollar to the department but no other license shall be transferable."

From this it will be noted that no person shall "maintain" or "conduct" a "restaurant" without a license from your department.

The term "restaurant" is defined in Section 2808 of the chapter and includes "lunch counter, lunch wagon, or other like place where food is served for pay." "Food" is defined as any article used by man for food, drink, or condiment.

From these sections no other construction can be drawn but that any stand or place where food is sold or served for pay must procure a license from your department under the provisions of Sections 2809 to 2812 of the Code of Iowa, 1927, and any person selling food from such stand without such license would be doing so in violation of the law.

CHATTEL MORTGAGES—CORPORATION: Stockholder in corporation not eligible to take acknowledgment of chattel mortgage running thereto. (Chapter 419, Code of Iowa, 1927.)

July 9, 1930. *Superintendent of Banking:* This will acknowledge receipt of your letter of recent date in which you request the opinion of this department upon the following proposition:

May a stockholder in a corporation operating a chattel loan business, under the provisions of Chapter 419, Code of Iowa, 1927, take the acknowledgment of a mortgage made to such corporation?

We find no provision in said chapter which exempts it from the general rule with reference to the taking of acknowledgments.

It has been held by the Supreme Court of this state that a notary public cannot take an acknowledgment of a mortgage given to a co-partnership of which he is a member.

Wilson vs. Traer, 20 Iowa 231;
Bank vs. Radtke, 87 Iowa 365.

The same rule has been applied to the owner of capital stock of a private corporation.

Bank vs. Owen, 52 Iowa 107;
Smith vs. Clark, 100 Iowa 605.

The same rule has been followed in the following cases:

Farmer vs. Ames Farmers Canning Company, 190 Iowa, 1259 at 1263;
Heitzman vs. Hannah, 206 Iowa, 775 at 779.

We are of the opinion that the same rule would apply to a chattel mortgage given under the provisions of Chapter 419, of the Code, where the acknowledgment was taken by a stockholder in the corporation and that such stockholder, in the language of the court in the Farmer case, "is disqualified to take or certify to an acknowledgment to any instrument in which the corporation is beneficially interested."

SCHOOLS AND SCHOOL DISTRICTS: Persons violating compulsory attendance law may be imprisoned in satisfaction of the fine assessed.

July 14, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"Can a patron who has been assessed a fine for violation of the compulsory school law be made to serve a jail sentence if he fails to pay his fine?"

The penalty prescribed for violation of the compulsory attendance requirement is contained in Section 4415, Code of Iowa, 1927, and shall be a fine of not less than five dollars ($5.00) nor more than twenty dollars ($20.00) for each offense. This is, therefore, a non-indictable offense.

The trial of such offenses and the procedure therefor are prescribed by Chapter 627 of the Code, Section 13588 of which provides as follows:

"A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied."

Therefore, if the magistrate in assessing the fine should provide that in the event the fine is not paid the defendant shall be imprisoned for a specified length of time, not in lieu of the payment of the fine, but as a payment thereof, the defendant could then be committed to jail in case he failed to pay the fine assessed.

SCHOOLS AND SCHOOL DISTRICTS: 1. Petitioners for consolidation may withdraw up to time for hearing on petition; 2. Affidavit from each county required only where territory affected lies in two counties.

July 14, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting an opinion of this department upon the following proposition:

"1. Can persons who signed the petition to enlarge the boundaries of the present consolidated school district withdraw their names from said petition at any time up to the moment of the opening of the hearing

before the county superintendent on said petition and thus render the petition insufficient?

"2. Said petition to enlarge the boundaries was supported by an affidavit of a legally qualified voter residing within the county where the present school building is located. No affidavit of a legally qualified voter residing in the other county was made in support of the petition to enlarge the said district. Is it necessary for such petition to be supported by two affidavits, one from each county in which the present consolidated school district is located?"

The law is well settled that a person who signs a petition may withdraw his name from the same up to the time for hearing on the same. Therefore, any petitioner in this case could withdraw up to the time of hearing before the county superintendent.

Upon the second question, the statute provides that the petition shall be signed by one-third of the voters residing within the limits of the territory described. This must be verified or filed in the form of an affidavit showing the number of qualified electors living in the territory described in the petition, and signed by a qualified elector residing in the territory. Therefore, it would not be necessary for the petition to be supported by two affidavits, one from each county, but merely by one affidavit of one qualified elector residing in the territory described in the petition. If the territory described in the petition lies in two counties then the affidavit must show separately the number of qualified electors residing within the territory in each county and the number of petitioners residing in each county.

ELECTION—REGISTRAR'S COMPENSATION: On election day registrars assume the duties of election clerks without extra compensation as provided by Section 690, Code of 1927, as amended by Chapter 38, Forty-third General Assembly.

July 14, 1930. *County Attorney, Iowa City, Iowa:* Your letter of July 9, 1930, wherein you request an opinion as to compensation of registrars for services performed on election day at a special election, is at hand.

Code Section 684 provides that registrars shall be paid at the rate of $3.00 for each eight hour day.

Code Section 690, as amended by Chapter 38 of the Acts of the Forty-third General Assembly, provides that the registrars act on election day at the regular polling place, and also that on that day they assume and perform the duties of the election clerks as formerly provided by statute.

Under the code sections above cited the registrars still function and officiate as registrars primarily, and their duties are increased to the extent that on election day they, as registrars, perform the duties that were formerly performed by the election clerk.

In view of the above amendment, it is our opinion that on election day the registrar is entitled to no increase in pay for the reason that his salary as registrar is fixed by Section 684, and on election day he is not acting as clerk but as registrar, under the amendment above referred to.

SCHOOLS AND SCHOOL DISTRICTS: Apportionment as used in Chapter 107, Acts of the Forty-third General Assembly means pro rata apportionment.

July 14, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting an interpreta-

tion of Chapter 107, Acts of the Forty-third General Assembly, and its relationship to Chapter 215-b1 of the Code of Iowa, 1927.

You inquire particularly, whether the amount received from the semi-annual apportionments from the permanent and temporary school funds is to be interpreted as the entire amount received or merely the pro rata amount received for the children who are affected by said section and said chapter.

We are of the opinion that the language contained in Section 3 of this chapter relative to the semi-annual apportionments derived from the permanent and temporary school funds, applies only to the pro rata apportionment drawn because of the children affected by Chapter 107, Acts of the Forty-third General Assembly. Chapter 107, Acts of the Forty-third General Assembly was passed to recodify Chapter 215-b1 of the Code of Iowa, 1927, because the original chapter applied only where children residing upon state lands in a given district attended school in a district other than the one within whose territorial limits they resided. The said Chapter 107 applies whether the children attend the school in the district within whose territorial limits they reside or whether they attend a school other than that one.

In computing the amount of the tuition a district is to receive, your department should deduct only the pro rata apportionment from the temporary and permanent school fund, which apportionment is based upon those children alone. For instance: if 20% of the children attending a given public school were affected by said Chapter 107, that is if they lived on state lands within the district, you would deduct from the amount of tuition the district is allowed to receive under said chapter 20% of the amount which the said district would receive from the apportionment of the permanent and temporary school funds.

SHERIFFS—PEACE OFFICERS—STATE AGENTS: Agents of the Bureau of Investigation have the right to demand and receive from the sheriff authority and permission to enter any room in which liquor is stored, for the purposes of invoicing and checking against search warrants, which had been executed and returned.

July 16, 1930. *Mr. J. E. Risden:* Replying to your inquiry relative to the authority of state agents to investigate and invoice the intoxicating liquor held by sheriffs under lock and key where said sheriffs are under investigation, we beg to refer you to Section 13410, of the Code of Iowa, 1927, which is as follows:

"Powers. All special agents of the department of justice shall have, throughout the state, the same power to make arrests and file informations, and otherwise enforce the law, as possessed by county attorneys and peace officers within their respective counties. They shall have the right to demand and receive, in the discharge of their duties, the assistance of any county attorney or peace officer within their respective counties."

There is no question but that, under the provisions of this section, agents of your department would have the right to demand and receive from the sheriff, authority and permission to enter any room in which liquor was stored, for the purpose of invoicing and checking the same against search warrants, which had been executed and returned. It would, of course, be advisable for this to be done in the presence of the

sheriff or one of his force, but there is, as previously said, no question but that the public officer, under investigation, is required to account for all funds and property under and in his care.

ROADS AND HIGHWAYS—TREES—COUNTIES: It is the duty of the board of supervisors to remove all trees and other materials from the highways on secondary roads and of the Highway Commission on primary roads.

July 21, 1930. *County Attorney, Rockwell City, Iowa:* Yours of July 15, 1930, has been received wherein you ask an opinion upon the following proposition:

After cutting trees growing on the county highway, is it the duty of the county to remove the trees, or may they be disposed of by placing them upon the real estate of the party owning the fee title to the real estate upon which said trees are growing and over which the county has an easement for road purposes.

It is well settled in this state that the titles to highways outside of cities and towns are vested in abutting property owners, subject to the easement of the county therein.

Kitzman vs. Greenhalgh, 164 Iowa, 166;
Davis vs. Pickerell, 139 Iowa, 186;
Dierksen vs. Pahl, 194 Iowa, 713.

The establishment of highways and improvement of certain highways is vested exclusively in the board of supervisors. The members thereof determine, subject to certain supervisory powers in the State Highway Commission, what improvement, if any, shall be made in such roads, and enter into contracts for such improvement. The improvement of a highway contemplates not only the change to be wrought in the roadway, itself, but also the changes to be made in the entire width of the highway over which the county has an easement.

In improving the highway it is contemplated that the county dispose of the materials remaining after the improvements have been made. Any other decision on the part of our courts would permit the county to dispose of earth and stones after bringing a road down to grade by piling such earth and stones upon the real estate of the party owning the fee to the roadway, over the protest of that party.

We are therefore of the opinion that, subject to the will of the owner of the fee with regard to disposing of the cut trees by placing them upon his real estate and delivering possession thereof to him, the county must dispose of trees cut in the public highway for the purpose of improving the road.

REAL ESTATE COMMISSIONER: Person admitted to practice law not required to have real estate license.

July 22, 1930. *Secretary of State:* This will acknowledge receipt of your letter requesting the opinion of this department upon the extent of the exemption given to attorneys at law under Section 2 of the real estate license act.

A careful examination of this section reveals that the exemption is extended to "an attorney admitted to practice in Iowa." The exemption is not therefore to "practicing attorneys" but to one who is merely "admitted to practice."

Since this is a regulatory measure and since attorneys are already licensed to practice, it must have been the intention of the legislature that the person already operating under one license where the same elements of trust and diligence are required, would not be required to procure another license and to do so would amount to a duplication. On account of the broad language used in the exemption, we are of the opinion that persons admitted to the practice of law in this state cannot be required to procure a real estate brokers' or salesmen's license.

ROADS AND HIGHWAYS—BRIDGES—COUNTIES: A bridge on a highway is personal property, the title to which is in the county and it may be removed on a road which has been vacated.

July 22, 1930. *County Attorney, Burlington, Iowa:* Your letter of July 16th is at hand. You ask therein in brief the following:

Who has title to a bridge erected upon a county road, the county road having been vacated and no reservation of the bridge having been made by the county at the time the road was vacated?

Bridges are a part of the highway. *Sachs vs. Sioux City*, 109 Iowa, 224. A public bridge is a public highway. *4 Ruling Case Law*, Sec. 3, p. 195. Fee title to a county highway is in the adjoining owner, the public having only an easement.

The fact, however, that a bridge is a part of the highway does not necessarily mean that a bridge is a part of real estate, the highway being simply a path of travel and not necessarily being real estate.

The principal question presented in connection with this matter is whether the bridge in question is a part of the real estate, and as such whether it remains a part of the real estate in case of the vacation of the highway or the expiration of the easement over which the highway runs.

In determining what is a fixture within the meaning of the law, the principal question to be considered is the question of intention. *Fehleisen vs. Quinn*, 182 Iowa, 1283.

The board of supervisors has the right and power to construct bridges upon county highways, to maintain the same, to improve the same and to replace the same so as to form a part of the highway.

They may not, under our statutes, construct or build a bridge upon any other property than a public highway under their jurisdiction, and must construct the bridge for the purpose of the highway only.

It is, therefore, our opinion that the board of supervisors in constructing a bridge, does so for the purpose of the highway only and not with the legal or actual intention that the same become a part of the real estate proper, but only a part of the highway. And upon the vacation of the highway and the expiration of the easement, under and by virtue of the vacation of the highway, the title to the bridge remains in the county and does not vest in the owner of the fee title upon which the bridge is erected, and this is true regardless of the fact that no reservation was made for the bridge at the time the highway was vacated.

Articles attached to a public street by a street railway company remain personalty. *Lorain Steele Company vs. Norfolk Railway Company*, 187 Mass., 500.

SCHOOLS AND SCHOOL DISTRICTS—NEWSPAPERS: Section 4242, Code of Iowa, 1927, applies to newspapers entered for distribution in the post office of the district even though printed elsewhere.

July 22, 1930. *Superintendent of Public Instruction:* 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 newspaper is printed in one place but 'is entered as second class matter in the post office at ..... Iowa' is the same published at the place where it is entered for delivery or at the place where it is printed?"

Published means to make public; to put into circulation, to send forth, as applying to a book, newspaper or magazine; or to place on sale or for general distribution.

Therefore, this newspaper would be published at the place where it is deposited for general circulation and not at the point where it is printed.

SCHOOLS AND SCHOOL DISTRICTS: 1. Annuity and retirement fund cannot be placed with insurance company under contract, board's only power being to invest said fund; 2. teacher may voluntarily contribute more than 1%.

July 28, 1930. *Superintendent 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:

"1. Would it be legal for the Board of Education to make a contract with some of the old line insurance companies that are specializing in group annuity work, turning over to them the funds which the Board of Education collects for teacher annuity purposes?

"2. Will it be possible for teachers to subscribe to a plan and voluntarily deposit 3% of their salary in addition to the 1% salary tax already made?

"3. Will it be possible, under the state laws of Iowa, for the school board to turn over its pension funds to an insurance company for the purposes explained in this letter?"

The powers of the Board of Education with reference to the pension and annuity system and funds are prescribed by statute and are contained in Sections 4345-7 of the Code.

While the board of directors are made the board of trustees for such fund, and are empowered to make all necessary rules and regulations for the operation of said retirement system, we are of the opinion that the statute does not contemplate any contractional relationship between this board of trustees and an insurance company doing group annuity insurance business.

In answer to your second question, we shall say that we see nothing in the statute which would prohibit the teachers from voluntarily depositing a larger percentage of their salary than that required by the statute. The statute provides that this fund shall be composed of a tax levy not exceeding 2/10 mills on the dollar annually and an assessment on the teachers not exceeding 1 per cent of their salary. This however, does not prevent an additional voluntary contribution on the part of the teacher.

In answer to your third question, we are of the opinion that the only use of this fund which could be made by the board of directors as trustees of the fund would be a safe and careful investment of the funds with

due diligence for their protection. We are of the opinion that the funds could not be turned over to an insurance company unless such turning over was in the nature of an investment of the funds.

SCHOOLS AND SCHOOL DISTRICTS: Board may establish playground under provisions of Section 4433 without submitting proposition to vote of electors; Sections 4434-5 apply only to levying special tax.

July 28, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"May a school board establish and maintain a playground for children during the summer months and pay for the same out of the general fund without special authorization by the voters or must the proposition be submitted to the voters under the provisions of Section 4434 of the Code."

We are of the opinion that Section 4433 so authorizes the board of directors to establish and maintain playgrounds without vote of the electors. The only provision requiring the vote of the electors is upon the question of levying the additional tax for that purpose which is provided for in Sections 4434-5, but these sections are not a limitation upon the board's power to establish and maintain the playground.

SCHOOLS AND SCHOOL DISTRICTS: A school board cannot buy supplies from a corporation whose directors and managing officers are also members of the school board. Section 4468, Code of Iowa, 1927.

August 11, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"Four of five members of a certain school board are stockholders in The Farmers Cooperative Commission Company, the president of the company being a member of the school board. The school coal was bought from the Farmers Cooperative Commission Company at fifty cents a ton above prices submitted by competitors for coal they alleged to be equal or better coal than that bought by the board from the Farmers Cooperative Commission Company. Would the fact that four of the board members are stockholders in the Farmers Cooperative Commission Company make it illegal for the board to purchase coal from said company?"

We are of the opinion that this close alignment of officers would render the member of the board of education an interested party, and particularly so if the officers of the board of education of the school district were also officers or managing officers of the corporation which was dealing with the said board.

The purpose of this statute is to render the act of the member of the board of directors of a school corporation that of an entirely disinterested party in a contract which he is making for the corporation, and to leave his judgment entirely free to act without any personal interest whatsoever.

We are of the opinion that under the circumstances above set out the officer of the school corporation, who is also an officer of the corporation dealing with the board of directors, would not be free to exercise an unbiased and unprejudiced judgment in the purchasing of supplies from the supply company of which he is also an officer, and that such purchase

would be a violation of the statute which prohibits any member of the board to sell supplies to the school district. See Section 4468, Code of Iowa, 1927, or same section, School Laws of Iowa, 1929.

SCHOOLS AND SCHOOL DISTRICTS: District liable for tuition for attendance period even though absent, if work is made up.

August 12, 1930. *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 a debtor school district liable for tuition fee under the provisions of Section 4277 of the Code, entitled to deduct for days absent in computing the tuition where the school district permits the student to make up the work lost and later promotes or graduates the student?"

We are of the opinion that the district is liable for tuition for the full time for which credit is given. For instance, if a student enrolls in a high school in September, but is absent during that semester for a period of one month, the district of his residence would be liable for the tuition for the full semester if the student, though absent, returns to school and makes up the work which he missed during his absence.

We would not apply this rule where the student enters the high school after the beginning of the term. For instance if a pupil should enroll in the high school one month after school started, the receiving district would not be entitled to tuition prior to the enrollment. The opinion herein given is limited to absence after enrollment.

TAXATION—CORPORATIONS—STOCK: Stock of a foreign public utility corporation in the hands of residents of the state is subject to tax under the laws of this state as monies and credits. (Chapter 332, Code of Iowa, 1927.)

August 14, 1930. *County Attorney, Clarinda, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A number of residents of this county have purchased stock in a foreign public utility corporation. The stock was sold and the purchasers were advised that it was non-taxable under the laws of this state. Is such stock taxable in the hands of the purchasers and if so how is it taxed?

You are advised that the stock in any foreign corporation, whether a public utility or not, in the hands of a resident of this state is subject to tax under the laws of this state in accordance with the provisions of Chapter 332, Code of Iowa, 1927; such stock being taxed as monies and credits.

SCHOOLS AND SCHOOL DISTRICTS: Members of the board and secretary are liable to penalty of $25 under Section 32, Chapter 100, Laws of the Forty-third General Assembly and to removal from office under Section 1091 et sequi., for failure or refusal to publish financial statement.

August 18, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"In the event a secretary fails or refuses to comply with the law as set out in Sections 4242 and 4242 b-1 of the Code, what steps may be

taken to force compliance and what, if any, penalty is there for failure to comply with this statute."

These sections make it the duty of the board by affidavit of the secretary to publish or post (where there is no newspaper) a summarized statement showing receipts and disbursements of all funds for the preceding school year, and showing the names of the persons, firms or corporations to whom the disbursements were made and the total amount paid to each during the school year.

The language of these sections is mandatory and provides that the board shall publish these statements if there is a newspaper published in said district or post copies thereof in three conspicuous places in the district and file one copy with the county superintendent if there is no newspaper published in the district. The duty is mandatory both upon the board and the secretary and cannot be avoided. The statutes prescribe a specific penalty for wilfully failing or refusing to perform any duty imposed by law. That specific penalty is set out in Section 32, Chapter 100, Laws of the Forty-third General Assembly and provides as follows:

"Any school officer wilfully violating any law relative to common schools, or wilfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein."

Under this section any taxpayer may bring a suit upon behalf of the school corporation to collect this penalty and the penalty would apply to each member of the board and to the secretary.

This penalty section is specific and we are therefore of the opinion that it would remove the wilful neglect or refusal of a school officer to perform his duties from the general statutes.

We are also of the opinion that Section 1091 of the Code providing for the removal of officers would apply because the act of the board and the secretary in wilfully failing or refusing to publish the report could be construed as wilful neglect or refusal to perform the duties of his office or wilfull misconduct. Under this section, the petition would be filed in the office of the clerk of the district court, signed and verified by five qualified electors of the district. It is the duty, under Section 1099, of the county attorney to appear and prosecute the case where it is sought to remove such officer.

SCHOOLS AND SCHOOL DISTRICTS: Board has power to make rule prohibiting smoking of cigarettes within one block of the school building.

August 21, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter requesting the opinion of this department upon the following proposition:

"1. Does the school board have the power to make and enforce a rule against pupils smoking cigarettes within a block of the school building?
"2. Does the school board have a right to expel a pupil for violating said rule?"

The board of directors is invested with the power to make all reasonable rules and regulations governing the school and to require the com-

pliance with said rules. See Section 4224, Code of Iowa, 1927. Such rules may prohibit the use of tobacco and other narcotics in any form by any student of such schools, and the board may suspend or expel any student for violation of such rule. See Section 4225 of the Code.

Under the breadth of these statutes, we are of the opinion that the board of directors could prohibit the attendance of any pupil addicted to the use of tobacco and could prohibit the smoking of cigarettes within a block of the school building. It has been held that the board may enforce any rule regulating or governing the conduct of pupils even outside of school hours if the effect thereof reaches into the school.

We are, therefore, of the opinion that the board may make such rule as is the subject of your inquiry and may enforce the same by such methods as the board may determine.

TOWNSHIP OFFICERS—VACANCIES—ELECTIONS: Where no nomination is made for a particular township office in the primary there is no vacancy in the nomination within the meaning of Section 614, Code of Iowa, 1927.

August 25, 1930. *County Attorney, Onawa, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In this county there were no nominations for township offices in several townships. The question has arisen as to whether or not, under Section 614, Code of Iowa, 1927, the members of the party committee for the county from those townships can fill the ticket for those offices.

Section 614, Code of Iowa, 1927, authorizes the members of the party committee from the various townships to make nominations in cases where there is a vacancy in nominations made at the primary election, and in cases where there is a vacancy in an office. The fact that no candidate was nominated in the primary election for an office would not be a vacancy in a nomination. A vacancy in a nomination made in the primary would be occasioned when the nominee resigned or otherwise became disqualified by reason of death, etc. There is no vacancy in an office until the present incumbent resigns or dies, and the present incumbent of an office, under our law, holds office until his successor is elected and qualified. A person may be nominated in the primary and elected at the election for an office but if he fails to qualify within the time specified the present incumbent would hold over.

We are, therefore, of the opinion that where no nomination was made at the primary for an office that there is no vacancy in nomination within the meaning of the provisions of Section 614, Code of Iowa, 1927, and that where the office is now filled by an incumbent who was duly elected at the preceding election there is no vacancy in the office, and that there is no authority for making any nominations for such office at this time.

SCHOOLS AND SCHOOL DISTRICTS: A school teacher cannot wear the distinctive garb of a religious denomination while teaching in the public schools.

August 25, 1930. *County Attorney, Clinton, Iowa:* This will acknowledge receipt of your letter of recent date inquiring whether there are

any statutes or decisions affecting the employment of a nun as a school teacher in a public school.

While this question has not been raised directly in this state, our Supreme Court in the case of *Knowlton vs. Baumhover*, 182 Iowa 691 at page 714, quoted with approval from the case of *O'Connor vs. Hendrick*, 184 N. Y. 421, as follows:

" 'The teachers,' when thus arrayed, says the opinion, 'come into the school, not as common school teachers or as civilians, but as the representatives of a particular order in a particular church, whose lives have been dedicated to religious work under the direction of that church. Now, the point of the objection is not that their religion disqualifies them. It does not. * * * It is not that holding an ecclesiastical office or position disqualifies them; for it does not. It is the introduction into the schools, as teachers, of persons who are, by their striking and distinctive ecclesiastical robes, necessarily and constantly asserting their membership in a particular church and in a religious order within that church, and the subjection of their lives to the direction and control of its officers.' "

In adopting this view, our court in the same case said:

"We unite with the New York court in the view that the opinion by Williams, J., is more nearly in accord with the true spirit and principle of the law."

Our Supreme Court in the cited case reviews the conclusion reached in the case of *Hysong vs. Gallitzin, Borough School District*, 164 Pacific 629, which held that the mere wearing by teachers of the distinctive religious garb of a particular religious denomination, did not constitute sectarian influence as "nothing if not remarkable."

This is the only decision of the courts of this state of which we have any knowledge treating on this question. The case seems to be clear however, and unmistakably holds that a teacher in the public schools of this state cannot wear in the school room a distinctive garb of a religious or sectarian institution.

WIDOW'S PENSION: County having a population of less than 80,000 widow's pension should be paid from poor fund.

August 25, 1930. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

In counties having a population of less than 80,000 out of what fund is a widow's pension to be paid?

We are of the opinion that in a county which has a population of less than 80,000 the widow's pension should be paid from the poor fund.

ROADS AND HIGHWAYS—APPROACHES: It is the duty of the county board of supervisors to furnish and place drain tile or pipe across grader ditches at driveways along secondary roads. Section 47, Chapter 20, Acts of Forty-third General Assembly.

August 25, 1930. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Is it the duty of the county board to furnish and place drain tile or pipe across grader ditches at driveways along secondary roads for ingress and egress to the landowner's home and the field gates?

We are of the opinion that under the statutes pertaining to county or

secondary roads it is the duty of the county board of supervisors to furnish and place drain tile or pipe approaches at driveways and field gates so that the farmers may have reasonable ingress and egress to their homes and fields. Section 47, Chapter 20, Acts of the Forty-third General Assembly.

ROADS AND HIGHWAYS—CONDEMNATION—BORROW PITS: The county board of supervisors has the power to condemn or purchase land for the purpose of securing a borrow pit. County boards may condemn land belonging to a member of said board but may not purchase the same.

August 25, 1930. *County Attorney, Centerville, Iowa:* We acknowledge receipt of your letter requesting the opinion of this department on the following questions:

1. Is it legally possible to condemn a tract of land of sufficient area to excavate a borrow pit for the purpose of acquiring dirt for construction of a highway by a county?
2. Does it come within the prohibition of the statute for a county to condemn an area of ground owned by one of the members of its board of supervisors for the purpose of acquiring dirt for the construction of a road, and pay to said member the amount determined by the appraisers as the reasonable value thereof?

We are of the opinion that the county has the power, under the statute, to condemn or purchase land for the purpose of securing tract with which to fill and construct a county trunk or local county road.

Section 13327, Code of Iowa, 1927, would prohibit the member of the board of supervisors, from whom it is desired to purchase the land, from entering into the contract with the board to sell said land to the county. There is, however, no prohibition contained in said section or any other section which would prevent the county from proceeding to condemn land of a member of the board of supervisors and from paying therefor the amount awarded by the condemnation commission or by the court in the event of an appeal.

SCHOOLS AND SCHOOL DISTRICTS: Where territory is to be added to consolidated school district, the vote should be taken separately in the present consolidated district and in the proposed added territory.

August 29, 1930. *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. Where an attempt is made to enlarge a consolidated school district lying wholly in one county by adding four government sections of land situated in an adjoining county and now comprising a rural independent school district by a vote of the electors, how would provision be made for the voters in each district as indicated above to vote separately on this proposition?

"2. Do the voters in each of the districts, present consolidated and rural independent, vote in separate ballot boxes? (Section 4191.)

3. Or will all the voters outside of the incorporated town within the present consolidated school district vote together in a separate ballot box?

"4. Where must the election be held?"

It is provided by statute, Section 4166 of the Code, that where it is proposed to include in such district (consolidated district), a school cor-

poration containing a city, town or village with a population of 200 or more inhabitants, the voters residing upon territory outside of such school corporation shall vote separately upon the proposition to create such new corporation.

It would therefore be necessary for the voters in the rural independent district to vote separately on the proposition.

Under the provisions of Section 4167, the voters in the present consolidated district would vote in one ballot box and the voters in the rural independent school district in another ballot box.

It would not be necessary under these statutes to separate the incorporated town within the consolidated school district from the voters residing outside the limits of the incorporated town and within the present consolidated school district. All voters residing within the limits of the present consolidated district would vote in one ballot box under the provisions of Section 4167.

These elections should be held in the regular voting places of the two school districts, one election being held in each. It is our opinion that this is but one election and the same proposition should be submitted at the same time to both groups of voters.

BOARD OF SUPERVISORS—SOCIAL WORKER: Board of supervisors is authorized by Section 5326, Code of 1927, to appoint an overseer of the poor and may designate this overseer of the poor as a social worker. (Section 5321, Code, 1927.)

August 29, 1930. *Commissioner of Health:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"Can the board of supervisors employ a social service worker as such without designating her as an overseer of the poor?"

You are referred to Section 5321 of the Code of Iowa, 1927. The board of supervisors is by this section authorized to appoint an overseer of the poor for any part or all of the county, and under Section 5326, Code of Iowa, 1927, they are authorized to pay compensation for such overseer.

We are of the opinion that anyone appointed in accordance with this section could be called a social worker if it was desired or overseer of the poor, but only one overseer of the poor may be appointed. If it is desired to call this overseer a social worker we see no reason why it cannot be done.

SCHOOLS AND SCHOOL DISTRICTS: District not liable for injury to children being transported to and from school under supreme court opinion holding bus driver independent contractor; and this would be true regardless of the ownership of the transportation vehicle; board may require driver to carry insurance.

August 30, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department on the following propositions:

"1. If a bus driver is an independent contractor and not an employee of the board would he be personally liable for any accidents that may happen to school children whom he is transporting to and from school?

"2. If he is personally liable in each case can the board require him to carry liability insurance approved by the board as a necessary part of his qualifications?

"3. May such insurance be paid for by the board in individual policies or as a group policy covering all the bus drivers, or should any such insurance be paid for by the bus drivers individually and the cost thereof be taken into consideration by the board when fixing salaries?

4. Would the fact that the district owns part or all of the busses make any difference in a bus driver's relation to the workmen's compensation law?

"5. Would the fact that the school district owns a part or all of the school bus made any difference on the personal liability of the driver for injuries to children or property damage to outside parties because of collision or otherwise while the school bus was being used to transport children to and from school?

"6. What, if any, liabilities would accrue to the school district or the school board as a collective body or the members of the school board as individuals under the conditions last named above."

We shall answer your questions in the order submitted.

1. Bus drivers would be personally liable for any accidents which may happen to school children if such accidents occur while he is transporting them to and from school and if the injury is the result of his negligence.

2. The board could require him to carry liability insurance approved by the board as a necessary part of his qualifications.

3. Such insurance could be paid for by the board in individual policies or as a group policy if the amount of the insurance paid for was considered a part of the compensation paid to the driver for the services rendered. We think it would be the better practice for the drivers to take the insurance themselves and for the board, if it desires to compensate them, to merely add the costs of the insurance to the compensation paid under the contract.

4-5. The fact that the district owns part or all of the busses would not make any difference for the reason that the contract under the statute, must be a contract for transportation and not a contract of employment.

6. No liability would accrue to the school district, the school board as a collective body or other members of the board as individuals, even though they owned the busses.

TAXATION—MUTUAL AGREEMENT—CONTRACT: A mutual agreement providing for the payment of a sum of money from one party to the other creates an obligation and is taxable as monies and credits in the hands of the obligee or payee and is deductible from the gross monies and credits of the obligor.

September 5, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

A enters into an agreement with B, according to the terms of which B was to pay a sum of $15,000.00 within a certain stated period. Said mutual agreement was dated December 14, 1926. B died December 29, 1928. Is this contract, in the hands of A, taxable as monies and credits, and are the executors of the estate of B entitled to deduct the amount of this obligation from their gross monies and credits?

You are advised that the contract creates an obligation on the part of B, it being a promise to pay, for a consideration just the same as a note. Until the same is paid it is subject to be taxed in the hands

of A as monies and credits. The executors of the estate of B, until said obligation is paid, are entitled, under the law, to deduct the amount of this obligation from their gross monies and credits.

FISH AND GAME: One who owns a private fish pond and sells the fish must have a wholesale fish market license.

September 6, 1930. *State Game Warden:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

Is it necessary for an individual owning and operating a private fish pond, who markets fish taken from said pond, to have a wholesale fish market license.

You are referred to Section 19, Chapter 57, Acts of the Forty-third General Assembly. We are of the opinion that under this section it would be necessary for the owner and operator of a fish pond who markets the fish to have a wholesale fish market or peddler's license.

CHATTEL MORTGAGES—COUNTY RECORDER: May be destroyed, when filed with the county recorder, five years after maturity date thereof or an extension thereof.

September 8, 1930. *County Attorney, Des Moines, Iowa:* You have requested the opinion of this department upon the following proposition:

"We beg leave to ask the opinion of your office as to what instruments the recorder is authorized to destroy under Section 10030 of the Code of Iowa.

"In Polk county last year there were 36,000 chattel mortgages filed and there is not room in the recorder's office to hold the accumulation of such instruments. It has been the practice hereofore for the recorder to destroy, after five years, all instruments, unless an extension agreement had been filed as provided in Section 10023. This right has been challenged under the contention that Section 10030 applies only to mortgages that have been satisfied as described in Section 10029."

It will be observed that the provisions of law in question are contained in Sections 10023 to 10030 of the Code of 1927. These provisions of law were originally a part of Chapter 352 of the Acts of the Thirty-eighth General Assembly. They were a part of one general proposition relative to the recording, filing and disposal of chattel mortgages and conditional sales contracts by the respective county recorders.

Sections 2 and 3 of Chapter 352 of the Acts of the Thirty-eighth General Assembly provide that conditional sales contracts and chattel mortgages, where the possession of the property is retained by the mortgagor, may be filed with the county recorder for the inspection of all persons, and that such filing shall have the same force and effect as if said instruments were recorded at length.

Section 4 of the act provides that every mortgage so filed shall be void as against the creditors of the person making the same, or as against subsequent purchasers or mortgagees in good faith, after the expiration of five years after the maturity of the debt thereby secured, unless an extension agreement, duly executed by the mortgagor shall be filed with the instrument to which it relates. It is further provided that such extension agreement shall operate to continue the lien in the same manner as the original instrument.

Thus, it will be observed that a conditional sales contract or chattel mortgage, filed with the county recorder, is not valid after five years from the maturity date thereof, unless an extension agreement extending said time has been properly filed.

It is further provided in Section 9 of the act, that when any such an instrument is satisfied and paid off, that the recorder shall, after making proper entry of such satisfaction in the index book, return the original instrument with any extension thereof, or release thereto attached, to the mortgagor or person executing the same upon request therefor.

The provisions of law in question herein then appear in the chapter as Section 10, and are as follows:

"*Destruction of mortgage—date of, recorded.* In case such instrument, with the extension or lease thereof, if any, be not returned as hereinbefore provided within five years from the maturity thereof, or the maturity of any extension thereof, the recorder shall destroy such chattel mortgages with the extension or releases thereto attached, or other instruments or writing relating thereto, by burning the same in the presence of the board of county supervisors, or a committee appointed by the board of supervisors from their own number, to superintend the same, and when so destroyed the date shall be entered on the index record under 'Remarks'."

It will be observed that these provisions are the same as Section 10030 of the Code. It refers to "such instruments" which means a conditional sales contract or chattel mortgage filed as thereinbefore in the act provided. The section provides that in case such instrument with any extension or release thereof, if any, be not returned as provided in Section 9, before the expiration of the five-year period from the maturity thereof, then the recorder "shall destroy such chattel mortgages with extension or release thereof attached, or other instruments or writing relating thereto, by burning the same in the presence of the board of county supervisors" etc. It is then made the duty of the county recorder to note on the index record of each such instrument, that the same has been destroyed.

There can be no question, after reading of Chapter 352 of the Acts of the Thirty-eighth General Assembly, but that the legislature intended that the county recorder should destroy, by burning, any instrument filed with him under the provisions of the act, and still in his possession after five years from the maturity date of said instrument, or the maturity date of any extension thereof.

We are, therefore, of the opinion that the practice which you say the county recorder of Polk county has been following is in accordance with, and meets the requirements of the statute.

ATTORNEY GENERAL — COUNTY OFFICERS — INSANITY COMMISSION: Clerk of district court entitled to retain fees for services on insanity commission under opinion of the Attorney General from April 10, 1927, to ruling of the supreme court on December 14, 1928.

September 16, 1930. *Auditor of State:* This will acknowledge receipt of your request for the opinion of this department upon the following proposition:

"Should the clerks of the district courts of the State of Iowa, who were paid in addition to their regular salaries, fees for acting on the

insanity commission, under the opinion of the Department of Justice under date of June 10, 1927, be required to return the same to the county treasurer as fees illegally drawn and retained on account of the reversal of the opinion of the Department of Justice by the Supreme Court?"

This question involves the force and effect of an opinion of the Attorney General rendered under the provisions of the laws of this state.

Under the statutes of this state, it is the duty of the Attorney General to render opinions upon all questions of law submitted to him by any state officer. Under this statute the opinion of on or about June 10, 1927, was rendered. This opinion of the Attorney General held that the clerks of the district courts of the state were entitled to fees provided by statute for acting on the insanity commission in addition to their regular salaries. The supreme court in the case of *Baldwin vs. Stewart and others*, 207 Iowa 1135, held otherwise. This opinion was rendered on December 14, 1928. The question involves the status of the law upon the fees collected and paid during this period between June 10, 1927, and December 14, 1928. This status depends, of course, upon the force and effect of the opinion of the Attorney General under which the fees were paid and received. The rule as to the legal effect and force of an opinion of the Attorney General of the United States is set out in "Thornton on Attorneys at Law," volume 2, page 1140, section 728 as follows:

"In giving this advice and opinion on questions of law, the attorney general's duties are quasi-judicial. His opinions are an official interpretation of the law, and in many cases his decision is conclusive, not only with respect to the action of public officers in administrative matters, but also as to many questions which involve private rights, inasmuch as parties having concerns with the government cannot, in many instances, bring a controverted matter before a court of law. Therefore, the opinions of successive attorneys general have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice, and administrative officers should regard them as law until they are withdrawn or overruled by the courts."

The duties of the Attorney General of the State of Iowa with reference to interpretation of statutes, is the same as the duties of the Attorney General of the United States, and therefore, the foregoing citation would apply with equal force and effect to the opinion of the Attorney General of this state.

A very similar case arose in the State of Texas, where a statute provided that on prosecution of cases of violation of the anti-trust laws of that state, the county attorney was entitled to receive a cerain percentage of the amount collected. A subsequent statute rendered the law obscure and an opinion was rendered by the Attorney General of that state holding that the county attorney was still entitled to such fee.

The supreme court in a case brought to determine the right of the county attorney to this fee held that he was not so entitled.

Thereafter suit was brought on behalf of the state to recover fees which had been paid to a county attorney between the time of the opinion of the Attorney General and the ruling of the supreme court. The case therefore, is directly in point on the proposition which we now have before us, namely the status of fees paid between the time

of the opinion of the Attorney General and the ruling of the supreme court in the case of *Baldwin vs. Stewart and others supra.*

In the Texas case, *State vs. Brady*, 114 S. W. 895, the court held:

"Applying the well established rules with reference to the departmental construction of statutes to the facts in this case, I conclude that the construction given said statutes by the attorney general's department, as above set out, and upon the faith of which the defendant acted, should be adhered to by the courts.

"Therefore, I conclude that the defendant was entitled to the fees sought to be recovered in this case and that the state should not recover in this action."

To the same effect see *Johnson vs. Ballou*, 28 Mich., 379; *State vs. Kelsey*, 44 N. J. Law, 1; *State vs. District Court of Lewis and Clark County*, 140 Pac., 732; 49 Mont,. 146. We find no authority to the contrary.

We therefore, reach the conclusion that the fees accruing between the date of the opinion of the Attorney General, April 10, 1927, and the ruling of the supreme court in the case of Baldwin vs. Stewart et al., December 14, 1928, and paid by the respective counties to the clerks of the district courts for services on the insanity commission, in addition to their regular salaries which were paid and received in good faith upon the basis of that opinion, cannot be recovered by the county.

ROADS AND HIGHWAYS: The legislature alone has the right to give authority for any person to use the public highway for any other purpose than travel. Chapter 248 and Chapter 583.

September 24, 1930. *County Attorney, Brooklyn, Iowa:* I am in receipt of your communication of the 16th instant in which you propound the following question:

"The Great Lakes Pipe Line Company, a corporation organized under the laws of the State of Delaware and with offices in Ponca City, Oklahoma, and as I understand it authorized to do business in the State of Iowa, has submitted application to the board of supervisors of Poweshiek County, Iowa, to be permitted to construct a 6-inch pipe line for the transportation of petroleum products across and on certain roads in Poweshiek County.

"Does the board of supervisors of Poweshiek County, Iowa, have any authority to grant a permit for the use of the highway in said county to said company?"

In reply will say that the board of supervisors of a county, and no other public body except the legislature itself, has any authority to grant a permit for the purposes specified in your letter. Any such permit that would be granted would be wholly illegal and void and the members of the board of supervisors granting such a permit would, in my opinion, be guilty of a conspiracy to do an illegal act. The legislature alone has the right to give authority for any person to use the public highway for any other purpose than travel. No legislative authority has been given in this state permitting the construction of a pipe line upon the highway for the transportation of petroleum products.

In addition to the fact that it would be unlawful for anyone to construct such a line upon the highway, we have several remedial statutes making it an offense for persons without legal authority to dig into, construct ditches, or place other obstructions in the public highway.

I call your attention in this respect to Chapter 248 of the Code of Iowa, 1927, and also to Chapter 583 of the Code.

ELECTIONS: There is no limitation as to the number of candidates who may file for same office. If there is not space enough on the voting machine, machine must be abandoned and ballots prepared.

September 26, 1930. *Auditor of State:* We beg to acknowledge receipt of your letter under date of September 23, 1930, requesting an opinion of this department on the following questions:

"1st. How many independent candidates can file for the same office?
"2nd. What procedure shall be followed when there is not space enough on the voting machines for all the candidates?"

We find no statute that limits the number of candidates who may file as independent candidates.

Your attention is called to Section 748, Code of Iowa, 1927, which reads as follows:

"The names of all candidates to be voted for in such election precinct, except presidential electors, shall be printed on one ballot."

This is a positive expression of the legislature, and we are of the opinion that if the voting machines do not contain sufficient number of levers to take care of all the candidates properly nominated then said voting machines cannot be used and it would be necessary that the ballots be printed.

ELECTIONS: Vacancies in nominations in the primaries for a township office should be filled in accordance with the provisions of Section 614, Code.

September 26, 1930. *County Attorney, Newton, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"At the last primary election a candidate for a township office whose name was not printed on the ballot received eight votes. Another candidate for the same office whose name was printed on the ballot received three votes. Eight votes would be less than five per cent of the votes cast in that township for governor on the party ticket of which said candidates are affiliated.
"Under Section 581 of the Code, did the candidate whose name was printed on the ballot but who received only three votes receive the nomination?"

From your statement of facts it would appear that the candidate for the township office whose name was printed on the ballot did not receive the highest number of votes. Clearly then he was not nominated for the office. It would also appear from the statement of facts that the candidate whose name was not printed on the ballot did not receive five per cent of the votes cast in such township for governor on the party ticket with which he was affiliated. You, therefore, have a vacancy in the nomination for the township office and said vacancy in nomination should be filled in accordance with the provisions of Section 614, Code of Iowa, 1927.

ELECTIONS: A candidate for a political party who has been nominated in the primary or by convention may withdraw his name at any time before election.

September 26, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

May a candidate of a political party who has been nominated either in the primary or by convention withdraw his candidacy?

We are of the opinion that a candidate of a political party who has been nominated either in the primary or by convention may withdraw his candidacy at any time before election by notifying the county auditor or the Secretary of State, as the case may be, of his intention and request.

BOARD OF PHARMACY COMMISSIONERS—STOCK TONICS—DRUGS—ITINERANT VENDORS: (1) Salesmen who sell stock tonics and remedies and who deliver the same at the time of sale, or in the future. (2) Those who sell stock tonics or remedies from a wagon or other conveyance and who make immediate delivery. (3) Those who sell stock tonics or remedies and who ship or deliver the same to the purchaser from the vendor's place of business or home.

September 30, 1930. *Board of Pharmacy Examiners:* This will acknowledge receipt of your request relative to the sale of stock tonics, which is as follows:

"The pharmacy board would like an opinion as to whether or not a person selling 'stock tonic,' as defined under Part 2, Section 3113, of the Code, should be classed as an itinerant vendor of drugs, as defined under Section 3148."

In reply we refer you to the provisions of Part 2, of Section 3113 and Section 3143, which are as follows:

" * * * .

"2. 'Stock tonic' shall mean a class of commercial feed such as medicated stock or poultry foods, including such preparations as are composed wholly of drugs—except liquids—which contain any substance claimed to possess medicinal, condimental, or nutritive properties." (Section 3113, Code of Iowa, 1927.)

"For the purposes of this chapter 'drug' shall include all substances and preparations for internal or external use recognized in the United States Pharmacopeia or National Formulary and any substances or mixture of substances intended to be used for the cure, mitigation, or prevention of diseases of either man or animal." (Section 3143, Code of Iowa, 1927.)

We are of the opinion that a corporation or company selling stock tonics or remedies for man or beast through its agents or employees, together with the following classes of persons, would become itinerant vendors of drugs, as defined in Section 3148 of the Code, which is as follows:

" 'Itinerant vendor of drugs' shall mean any person who, by himself, agent, or employee goes from place to place, or from house to house, and sells, offers or exposes for sale any drug as defined in this chapter."

and should be required to secure a license under the provisions of Section 3149.

1. Salesmen who sell stock tonics and remedies and who deliver the same at the time of order.

2. Those who sell stock tonics or remedies from a wagon or other conveyance and who make immediate delivery.

3. Those who sell stock tonics or remedies and who ship or deliver the same to the purchaser from the vendor's place of business or home.

4. Corporations and companies who are making stock tonics or remedies to be used for the cure, mitigation, or prevention of diseases of either man or animal, who have salesmen securing orders, which orders are mailed to the home office of the company, and which are accepted by the company and the goods shipped from the plant.

In other words, where a company employs salesmen who do not make deliveries at the time of order but only secure orders acceptable at the home or local office, then the company should secure a license, but where individuals sell and deliver by themselves or their agents to the consumer either goods which are owned by them, or which are on consignment, then in that event the party making the sale would be liable and should secure an itinerant vendor's license.

ELECTIONS: Where two Republican nominees for Senator have been certified from the same senatorial district it is the duty of the Secretary of State to refuse to certify either party as the nominee from said district.

October 10, 1930. *Secretary of State:* I am in receipt of your communication of October 10th, in which you request the opinion of this department, and in which you state the situation as follows:

"There have been filed in the office of the Secretary of State two convention certificates alleging to be convention nominations for Republican State Senator in the Forty-fifth Senatorial District of Iowa. One certifies Werner Strippel of Vinton to be the nominee of a convention held at Belle Plaine on July 8th. The certificate is signed by Louis P. Tobin, as chairman, and G. E. Carrier, as secretary, and was filed in this office on July 11th.

"The other certificate certifies that W. J. Breakenridge of Dinsdale, Iowa, is the nominee of a convention held at Toledo, Iowa, on the 8th day of July. The certificate is signed by Jas. H. Willett, as chairman, and Ella C. Taylor, as secretary. This certificate was filed in this office on July 9th.

"On September 25th there was also filed in this office petition certificates signed by the required number of petitioners nominating W. J. Breakenridge of Dinsdale, Richard Leo of Tama and Harry White of Vinton as independent candidates for the office of Senator in the Forty-fifth senatorial district.

"We are at this time certifying to the county auditors of Iowa the ballot and it is necessary that we have your ruling and instruction as to the certification to be made by this office to the county auditors in the above case."

The Forty-fifth Senatorial District of Iowa is composed of the counties of Benton and Tama. Under the law this district is entitled to one representative in the State Senate. Your statement of the facts shows that two nominees of the Republican party have been certified from that district. The law precludes the nomination of more than one person for the office by any party. No machinery has been given you by law to determine which, if either, of the two were properly nominated. In the absence of a determination by a tribunal of competent jurisdiction it is your duty to refuse to certify either party as the nominee for State Senator from that district.

It is, however, your duty to certify the name of each person who has

filed a petition of nomination as an independent candidate for the office of Senator in such district.

ELECTIONS: 1. A candidate who has been nominated for an office of a political party may withdraw his name at any time before the election. 2. The county central committee of a political party, in cases where it has authority to make a nomination, may file a certificate of nomination at any time before the election.

October 15, 1930. *Secretary of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

How many days before the November election may a candidate who has been nominated for the office of State Representative file his withdrawal with the Secretary of State?

How many days before the November election must the county central committee file a certificate of nomination for the office of State Representative in the office of the Secretary of State?

With respect to candidates for the office of State Representative who have been nominated by a political party we do not find any statute which prescribes the time within which such a candidate may withdraw his name as a candidate. We are, however, of the opinion that a candidate who has been nominated for the office of State Representative by a political party may withdraw his name as a candidate at any time before the election.

As to candidates who have been nominated by a non-political party organization in accordance with the provisions of Chapter 37-a1, Code of 1927, or who has been nominated by petition in accordance with the provisions of Chapter 37-a2, Code of 1927, withdrawals may be made only in accordance with the provisions of Section 655-a9, Code of 1927.

We do not find any statute which would fix the time within which a county central committee must file a certificate of nomination for the office of State Representative, the only requirement being that when a nomination is made by a county central committee said committee must forthwith certify the nomination to the proper office, Secretary of State, county auditor, as the case may be.

We are, therefore, of the opinion that a county central committee may file a certificate of nomination with the Secretary of State or the county auditor, as the case may be, at any time before the election. Sections 776-780, inclusive, Code of 1927, bear this out.

TAXATION: Where taxes have been suspended by the board of supervisors a subsequent purchaser is liable for suspended taxes together with 6% interest from the date of suspension, without penalty.

October 15, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"A certain town property was sold for taxes of 1923, and the certificate holder has now secured a deed for said property. After said certificate was made, the taxes were suspended for the years 1924-1925 and 1927. Now that the property has passed into other hands, are the taxes so suspended due and collectible together with 6% interest from the date of suspension even though the purchaser of tax sale certificate was not aware the taxes had been suspended for those years?"

You are referred to Sections 6950, 6951 and 6952 of the Code of Iowa, 1927. We are of the opinion that under these sections if the taxes were only suspended and not remitted that a subsequent purchaser from the petitioner, either by tax sale or by direct purchase, would be liable for and must pay such suspended taxes together with 6% interest per annum from the date of such suspension but without penalty.

BANKS AND BANKING: In arriving at the assessable value of the capital stock of a bank, in the case where a bank has charged off part of its real estate, the bank may only deduct as real estate the value as shown by its book invested in real estate less the amount charged off.

October 15, 1930. *County Attorney, Cherokee, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"In arriving at the assessable value of the capital stock of a bank, is it permissible for the bank to deduct a greater amount, as real estate, than the amount at which the real estate is carried on the books of the bank?"

We have some instances where the bank has charged off part of its real estate placing the charge-off in the profit and loss account and the bank in submitting its statement to the auditor for the purpose of arriving at the value of the capital stock has in its capital structure used the value of the real estate as shown on its books and then in making the deduction of real estate has deducted this amount plus the charge-off.

Section 7002, Code of Iowa, 1927, provides in part as follows:

"In arriving at the total value of the shares of stock of such corporations the amount of their capital actually invested in real estate owned by them * * * * * * shall be deducted from the real value of such shares. * * * * *"

Our Supreme Court has held in connection with the construction of this section that banks are permitted to deduct from their capital structure or the real value of the shares the amount which the bank has actually invested in real estate. Where the bank has made a charge-off on its real estate and placed the amount charged off in the profit and loss account said amount is dropped as an admitted asset and then carried as a non-admitted asset.

When the charge-off is made the bank has deducted that amount from the real value of its shares. In other words, from the capital structure, and were the bank permitted to carry in its capital structure only the value of the real estate as shown by its books and then permitted to deduct that amount plus the charge-off the bank would be then deducting from the real value of its capital structure the amount charged off twice.

The statute did not contemplate this, and we are of the opinion that where a bank has charged off part of its real estate that it may then only carry in its capital structure the value of the real estate as shown and carried on its books, and may only deduct from the real value of its shares the same amount. It cannot deduct the amount carried on its books as the value of the real estate plus the amount charged off.

ROADS AND HIGHWAYS: The county board of supervisors cannot expend that part of the secondary road construction fund set aside for use on the local county roads until the board of approval has approved the local county road construction program, but it may expend that

part of the secondary road maintenance fund set apart for use on local county roads without the approval of the board of approval.

October 15, 1930. *County Attorney, Sigourney, Iowa:* We beg to acknowledge receipt of your letter under date of September 12, 1930, requesting an opinion of this department on the following questions:

Can the board of supervisors improve the local county roads by construction work without complying with the conditions of Sections 25-35, inclusive, Chapter 20, Acts of the Forty-third General Assembly?

Can the board of supervisors expend any of the secondary road maintenance fund which has been set aside for use on local county roads for the maintenance of said roads without having first had the construction program for the local county roads approved by the board of approval?

We are of the opinion that the board of supervisors cannot spend any part of the secondary road funds set aside for construction work on local county roads until the board of approval has approved and adopted the program for local county roads.

We are, however, of the opinion that that part of the secondary road maintenance fund which has been set aside for use on local county roads may be used for maintenance purposes on local county roads whether or no the board of approval has passed upon the construction program. The construction program which the board of approval, so far as local county roads are concerned, has nothing to do with the maintenance of the local county roads but only with the construction program so far as it applies to said roads.

TAXATION: In a city or town which has adopted the consolidated tax levy and has passed an appropriation ordinance it is not necessary to secure the approval of the Budget Director for a transfer of a part of one of the appropriated funds to another use within the same fund.

October 15, 1930. *Director of the Budget:* We acknowledge receipt of your letter requesting and asking for an opinion of this department on the following question:

The City of Des Moines has adopted the consolidated tax levy plan and adopts each year an appropriation ordinance in pursuance of Section 6217, Code of Iowa 1927, as amended. By this appropriation ordinance the consolidated levy is divided into the following four funds: to the improvement fund; the sewer fund; the grading fund, and the general fund. Each fund is then divided up and set aside for various purposes for which the particular fund may be used.

The question has arisen as to whether or not it is necessary to secure the approval of the Budget Director in the event the City of Des Moines desires to transfer a part of one of the appropriated funds to another use within that fund.

We are of the opinion that such a transfer is not a transfer within the meaning and as contemplated by the budget law, and that it is not necessary to secure the approval of the Budget Director.

TAXATION: The owner of property which has been partially destroyed by fire is the only one who may make application for remission of taxes under Section 7237, Code of Iowa 1927.

October 15, 1930. *County Attorney, Estherville, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

A dwelling mortgaged and insured belonging to "A" was partly burned in March, 1929. In April, 1929, "A" conveyed by warranty deed including the salvage said premises to "B". The proceeds from the insurance and from the sale went to the lien holders. "B" salvaged some lumber and material and in the fall of 1929 commenced the erection of another dwelling on the premises and had the same completed by February 1, 1930. Later "B" made application to the board of supervisors for remission, in part, of taxes for the year 1929, under Code Section 7237. Can the board of supervisors give consideration to this application of "B", or is it objectionable because of the fact that "B" was not the owner of the premises at the time of the fire?

We are of the opinion that the provisions of Section 7237 apply only to applications made by the owner of the property who has suffered a loss by fire, tornado, or otherwise, which loss was not covered by insurance, and that a purchaser of the premises and the damaged building, after the fire, would have no right to any remission of taxes for the year 1929, under the provisions of Section 7237. The privilege granted by Section 7237 is personal to the owner of the premises who suffers the loss, and is not available to subsequent purchasers.

WORKMEN'S COMPENSATION — CITIES AND TOWNS—MARSHAL: See Opinion. (Section 1422, Code of 1927).

October 15, 1930. *County Attorney, Grundy Center, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

The town marshal of Grundy Center was called upon by the sheriff to assist in making an arrest. The car in which the town marshal was riding went into the ditch and the marshal was injured. Does liability for such injury rest with the county, state, or sheriff?

For answer to your question you are referred to Section 1422 of the Code of Iowa, 1927. It would appear from this section that the town marshal is protected under the compensation law, and that the claim should be filed with the Industrial Commissioner of the State of Iowa.

ROADS AND HIGHWAYS: It is not necessary to comply with the provisions of Section 363, Code of 1927, when funding bonds are issued to take up county road bonds.

October 15, 1930. *County Attorney, Newton, Iowa:* We acknowledge receipt of your recent request for an opinion of this department on the following question:

In 1928 Jasper County issued county road bonds in the sum of $100,000.00, in accordance with the provisions of Chapter 242, Code of Iowa 1927. These bonds carried 4¾% interest and were callable at the option of the county. On account of the favorable condition of the bond market the county board of supervisors recently proceeded to fund these bonds and issue refunding bonds in accordance with the provisions of Chapter 262. The original issue of $100,000.00 was called for November 1st and the new issue of refunding bonds was sold to bear interest at the rate of 4¼% with a premium.

The question has arisen with respect to the right of a county to issue funding bonds to take up an issue of county road bonds which were issued pursuant to the authority granted in Chapter 242, Code of Iowa 1927, without complying with the provisions of Section 363, Code of Iowa 1927, that is, are the provisions of Section 363, Code of 1927, applicable to a funding bond issue such as was made in the present instance?

Your attention is called to Chapter 266, particularly Section 5275, Code

of Iowa, 1927. Clearly the funding bond issue was within the authority granted in said section and said chapter.

Your attention is next called to Section 4771, Code of Iowa, 1927. It will be seen from reading this section that all of the provisions of the law with reference to the voting, issuance, and sale of primary road bonds are made applicable to county road bonds.

You are also referred to Section 4753-a14, Code of Iowa, 1927. This section is contained in Chapter 241-b1 which has reference to the financing of primary roads. Said section, so far as is material to the question, provides in part as follows:

" * * * The board of supervisors may refund at any time at a less rate of interest primary road bonds upon which payment has become optional or unmatured primary road bonds with the consent of the owner. * * *"

It would, therefore, appear that when county road bonds are issued in accordance with the provisions of Chapter 242 that said bonds are issued with the specific authority granted that they may be refunded at any time at less rate of interest.

Section 363, Code of Iowa, 1927, provides as follows:

"Issuance of bonds—notice. Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds."

It will be noted from reading the above section that bonds or evidence of indebtedness which have been authorized by a vote of the people of the municipality (in this case the county) are specifically excepted from the provisions thereof. It will also be noted from examining Section 363 that said section has only application to an original issue of bonds and does not have any application to issuance of funding or refunding bonds which may be issued to take up an original issue which is already outstanding.

In this case the original indebtedness was authorized by a vote of the people and the county road bonds were issued pursuant to the authority granted by the people of Jasper County. The issuance of funding or refunding bonds does not create any new indebtedness nor does it place any additional burden upon the taxpayers of Jasper County. In fact the issuance of said funding bonds reduces the burden upon the taxpayers.

We are, therefore, of the opinion that where a county has issued county road bonds in accordance with the provisions of Chapter 242, Code of Iowa, 1927, and desires to fund the same by issuing refunding bonds that they may do so without complying with the provisions of Section 363, Code of Iowa, 1927, for the reason that said section has no application to bonds issued in accordance with the provisions of Chapter 266, Code of Iowa, 1927.

CITIES AND TOWNS—MUNICIPALITIES: City councils do not have the power or authority, under the statutes of this state, to pass an ordinance requiring traffic within said city or town to make an inside left turn at intersections instead of passing to the right of and beyond the center of the same before making a turn; this because of Sections 4992-5033, Code of Iowa, 1927.

October 15, 1930. *Auditor of State:* Pursuant to your request we are submitting to you herewith the opinion of this department on the following question:

Do city councils have the power and authority to pass an ordinance requiring traffic within said city or town to make an inside left turn at intersections instead of passing to the right of and beyond the center of the intersection before making the turn?

We refer you to Sections 4992 and 5033 of the Code of Iowa, 1927. We are of the opinion that an ordinance requiring traffic to make an inside left turn would be contrary to and in conflict with Sections 4992 and 5033 of the Code of Iowa, 1927, and that cities and towns are not authorized to make such an ordinance.

COUNTY OFFICERS—CLERK—TRUST FUNDS: See Opinion. (Sections 12778-12783, 12784, Section 11007, Paragraph 4, Code of 1927).

October 15, 1930. *Auditor of State:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

On February 6, 1924, the executor of the Oken Estate received an order of court directing him to pay to the clerk of the district court of O'Brien County, Iowa, funds in his hands for whom no claimant appeared. On February 6, 1924, a certificate of deposit was issued by the Bank of Paullina for the sum of $800. This certificate was delivered to the clerk of the district court and entered on the clerk's cash book, November 10, 1926, as a cash receipt. This before the certificate was deposited or credited by the bank to the account of the clerk. On the same date the clerk paid out of funds in his hands to an heir of the estate the sum of $400.00. This $400.00 was paid out of funds held by the clerk in trust, and before the $800.00 certificate of deposit for collection, but before collection was effected the Bank of Paullina, upon which the same was drawn, closed its doors and went into the hands of the receiver. On January 1, 1927, the clerk who handled this matter retired from office and turned the uncollected certificate of deposit over to the new clerk.

As it now stands on the records of the clerk's office, the trust funds of the clerk are short the amount of the certificate of deposit, to wit, $800.00, because of the fact that said certificate was credited on the books as a cash receipt and said funds are also short the sum of $400.00 which was paid out of trust funds, and was paid on the theory that the $800.00 certificate would be cashed and said fund re-imbursed by that amount. The clerk is, therefore, short the $800.00 plus the $400.00 or $1,200.00.

The question has arisen as to how this shortage should be taken care of. Is there any liability on the part of the former clerk for the wrongful payment of the $400.00? If so, has the statute of limitations run against said claim? In the event your answer is that the statute of limitations has run, what should be done to clear up the matter?

The clerk of the district court received the $800.00 certificate of deposit of the Oken Estate pursuant to and in accordance with Sections 12778-12783, inclusive, Code of Iowa, 1927. By these sections he holds all of such funds as clerk of the district court.

Section 12783, Code of Iowa, 1927, provides specifically that the clerk

shall be liable upon his bond for all such funds, monies, or securities and requires him to make a report to the board of supervisors at their January and at their June meetings.

Section 12784, Code of Iowa, 1927, provides and requires that the clerk shall turn over to the county treasurer each six months all of such funds which have not been paid out to rightful claimants. These funds, while in the hands of the clerk, are held by him for the benefit of the claimants thereto. He is required to account for said funds in the same manner as he is required to account for other funds coming into his hands. In the event he should misappropriate or wrongfully disburse any of said funds he and his bondsmen would be liable for the same, and any claimant or the county might sue the clerk and his bondsmen for any misappropriation or wrongful expenditure and recover therefor.

It is the general rule, however, that a municipality is not liable for the negligence or wrongful acts of its officers. Therefore, in this case, when the clerk paid out the $400.00 before he had received the cash upon the C. D. he did a wrongful and negligent act for which the county could not be held liable.

Paragraph 4, Section 11007, Code of Iowa, 1927, fixes the statute of limitations at three years for actions against public officials. We refer you to *State vs. Dyer*, 17 Iowa, 223; *State vs. Henderson*, 40 Iowa, 242; *Polk County vs. Roe*, 164 Iowa, 302.

Under Section 12784, Code of Iowa, 1927, the clerk at the end of six months from the receipt of the funds involved in this case is required to turn over the same to the county treasurer, and if the clerk failed to turn over to the treasurer all of such funds received by him which he had not paid out during the six months this would be a wrongful act on his part and an action could be maintained against him and his bondsmen. The new clerk did not receive the misappropriated funds and, therefore, could not be required to account for the same; he only must account for such funds as he received. There would, therefore, be no liability on the part of the present clerk for the funds which were wrongfully paid out.

The entry by the former clerk of the $800.00 certificate of deposit as a cash receipt was erroneous and the books of the clerk should, therefore, now be corrected so that this receipt of $800.00 will not be carried as a cash item. The statute of limitations having run as against the former clerk and his bondsmen any claim to any of the funds which were wrongfully paid out by the former clerk would be barred and no claimant could recover therefor.

INSANE—SUPPORT: A parent of one who has been committed to an insane hospital of this State, whether such incompetent is a minor or not, is liable for the support of such incompetent in such institution where the incompetent does not have means of his own.

October 15, 1930. *Board of Control:* We beg to acknowledge receipt of your letter under date of September 29, 1930, requesting an opinion of this department on the following question:

"Is a parent, who is financially able, bound by law to pay the cost of care and keep at a State Institution for the Insane, of a son or daughter, who has arrived at his or her majority?"

You are referred to Section 3595, Code of 1927, which reads as follows:

"Personal liability. Insane persons and persons legally liable for their support shall remain liable for the support of such insane. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation herein created as to all sums advanced by the county."

You are also referred to Sections 5297-5302, inclusive, Code of Iowa, 1927.

We are of the opinion that under the above sections cited that a parent of one who has been committed to an insane hospital of this state, whether such incompetent is a minor or of age, is liable for the support of such incompetent in cases where the incompetent does not have means out of which his support may be paid.

ELECTIONS: Where someone was voted for on the ticket in the primary the convention may make a nomination and is not limited to nominate the person whose name was written in.

October 15, 1930. *County Attorney, Bedford, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The democratic party had no candidate for either sheriff or auditor of this county on the ballot in our primary election, but for each office two or three names were written in and votes cast for them. The Democratic county convention then made a nomination for the office of sheriff and for the office of county auditor.

Since the Democratic county convention the nominee for auditor withdrew her nomination and the Democratic party central committee made a nomination to fill the vacancy.

You are referred to the case of *Zellmer vs. Smith*, 221 N. W. 220; 206 Iowa, 725. It will be seen from reading this case that where anyone is voted for on a ticket in the primary but who does not receive the required percentage the county convention has the right to make a nomination for such office.

We are enclosing herewith copy of an opinion rendered by this department of the Honorable Ed M. Smith, Secretary of State, under date of September 26, 1930, which holds that a candidate has the right to withdraw, so the withdrawal of the nominee made by the county convention was proper and we are of the opinion that the Democratic party central committee has the power and authority under the statute to fill this vacancy in nomination.

You are also advised that if someone was voted for in the primary on the ticket that the convention is not then confined to make a nomination of the person whose name was written in and who was voted for but may nominate anyone they desire.

ELECTIONS: Candidate for office may be either judge or clerk at the election. Sections 730, 731, 732, Code of Iowa, 1927.

October 16, 1930. *County Attorney, Marshalltown, Iowa:* Yours of October 7, 1930, wherein you ask—

"Can a candidate for a county office at the general election be either a judge or clerk at the election?"

is at hand.

Section 730 of the 1927 Code sets forth some qualifications with regard to judges and clerks.

Section 731 provides that councilmen in cities and towns shall be judges.

Section 732 provides that the trustees of the township shall be judges of election.

When passing these sections the legislature must necessarily have had in mind that the various officials named above would in many cases be candidates for re-election.

The qualifications of clerks and judges not required by statute need not be possessed. *Farleigh vs. Reedy*, 165 Ky., 782. The fact that a person is a candidate at the election does not disqualify him from acting as an election officer unless it is so provided by statute. *Comomnwealth vs. Whitlock*, 12 Pa. Dist., 791; *State vs. Green*, 87 Vt., 515.

In no place does our code disqualify a candidate from being an official at an election. In fact, intention to the contrary is shown in the code sections cited above.

We are, therefore, of the opinion that a candidate for county office at the general election may be either a judge or clerk at the election.

ELECTIONS: The provisions of Section 655-a14, Paragraph 2, Code of 1927, are mandatory and the certificate of nomination must be filed with the county auditor not less than thirty days prior to the general election.

October 17, 1930. *County Attorney, Mt. Ayr, Iowa:* We acknowledge receipt of your letter requesting the opinion of this department on the following question:

The petition of an independent candidate for the office of county attorney was filed with the county auditor of this county on the 6th day of October, 1930. Said petition was circulated on the same date as it was filed, to-wit: Monday, October 6th. Section 655-a14, Paragraph 2, Code of 1927, provides for the filing of certificates of nomination not less than thirty days before the general election. The petition filed on the 6th of October would only be filed twenty-nine days before the general election. The candidate filing the petition contends that Sunday being the thirtieth day before the general election that his time for filing was extended to the sixth.

The question is, should the county auditor have this candidate's name printed on the ballot as an independent candidate for the office of county attorney or was said petition filed too late?

The time of filing the certificates of nomination, petitions in the instant case, as fixed by Section 655-a14, Code of 1927, is mandatory and the time fixed in Paragraph 2 of said section as applicable to the office of county attorney is thirty days before the general election. The fact the thirtieth day before the election happened to fall on Sunday would not, in our opinion, extend the time for filing and we are, therefore, of the opinion that the county auditor should not have the candidate's name printed upon the ballot for the general election to be held November 4, 1930, as said petition for nomination should have been filed on Saturday, October 4th.

ELECTIONS: County convention of a party cannot nominate a candidate to fill vacancies in nomination from a supervisoral district or subdivision of a county.

October 20, 1930. *Auditor of State:* You have requested the opinion of this department upon the following proposition:

"In the primary election held in June, 1930, a certain candidate was not on the ballot for county supervisor, for a certain district, but was upon a separate ballot and received two votes, later this same candidate was certified to the county auditor as being nominated by the Polk County Democratic convention as a candidate for the same office which he received the two votes for in the primary election.

"The question is shall the county auditor place the above candidate's name on the ballot?"

It is evident from the statement of facts submitted, that the "candidate" for supervisor from the supervisoral district involved, which is a sub-division of the county, was not nominated in the primary election. There was, therefore, no nomination made in the primary. There is no provision in the law authorizing the Democratic county convention of Polk County to nominate a candidate for this sub-division of the county. The county convention has power to nominate candidates for an office "to be filled by the voters of the county." The only way that a nomination could be made for a vacancy in a nomination in a supervisoral district is under the provisions of Section 614 of the Code wherein it is provided that such vacancies "shall be filled by the members of the party committee for the county *from such subdivision.*"

Therefore, it is the opinion of this department that the nomination for supervisor for a supervisoral district made by the Polk County Democratic convention is not a valid nomination and that the name of the person so nominated should not be placed upon the ballot.

ELECTIONS: A petition for nomination, under and in accordance with Chapter 37-a2, Code of 1927, must be filed for a county office not less than 30 days before the general election; and if when it is filed it is incomplete but the error is corrected not less than 30 days before the general election said petition is sufficient.

October 20, 1930. *County Attorney, Pocahontas, Iowa:* We acknowledge receipt of your letter requesting the opinions of this department on the following question:

A candidate on the independent ticket for the office of county clerk filed his petition with the county auditor of this county before closing time on October 4, 1930. The necessary affidavit which must accompany the petition was not signed at the time of filing. Later on the same day at 9:45 P. M. he found the deputy auditor and went to the office of the county auditor and had the affidavit properly signed and acknowledged.

Would the fact that the affidavit was signed after closing hours on October 4th make the filing of said petition of nomination illegal?

We are of the opinion that if the petition contained the proper number of signatures and the required affidavits and was in the form provided for by the statute that it would not make any difference whether the affidavit was signed before or after closing hours. The only requirement being that such petition in proper form be filed not less than thirty days before the general election.

ELECTIONS: Where nomination certificate is regular upon its face and is filed within the proper time and with the county auditor, the auditor has no authority to question its validity; the legality and sufficiency

of such a certificate can only be raised by objections filed and determined by the proper tribunal.

October 21, 1930. *County Attorney, Rock Rapids, Iowa:* We acknowledge receipt of a letter from your county auditor requesting the opinion of this department on the following question:

He enclosed a copy of a certificate of nomination filed by the purported chairman and secretary of the Democratic county convention of Lyon County. The question raised by your county auditor is, as to whether or not he must accept the certificate of nomination. In other words, is such certificate sufficient under the laws of this state?

We are of the opinion that the certificate as filed would appear upon its face to be regular, and that the county auditor does not have power or authority to question the authority of the signors of said certificate. This question would only be raised by the filing of objections in the proper manner.

The certificate itself shows upon its face that each of the nominees were voted for in the primary election. If this be true, under the decision in the case of *Zellmer vs. Smith*, 221 N. W., 220; 206 Iowa, 725, the democratic county convention would have the power to make a nomination.

INTOXICATING LIQUOR—DRUGGISTS—COUNTY AUDITOR: Druggist required to file form 1455-a with county auditor unless the federal law provides for discontinuance—federal department ruling not sufficient to exempt filing.

October 21, 1930. *County Attorney, Waterloo, Iowa:* This will acknowledge receipt of your letter of September 23, 1930, wherein you submit the following question:

"Heretofore this druggist has been filing with the auditor federal form known as No. 1455-a. He has now received notice from the federal prohibition department to the effect that this form is no longer required by the federal government. This druggist asks therefore that under such circumstances, is it necessary to file said federal form No. 1455-a under Section 2159 of the Code of 1927.

"It would seem to me very clear that inasmuch as this form is not now required by the federal people, it need not be filed under said section."

It is the opinion of this department that if the requirement stated in your letter were discontinued by law, then it would not be necessary to file the blank mentioned; however, if this were discontinued by a ruling of the federal department, then in that event the druggist would still be required under our statute to file form No. 1455-a.

MUNICIPAL COURT—DISTRICT COURT—TRANSCRIPTED CASES—COSTS: All fees due municipal court in transcripted cases should, when paid, be returned to clerk of municipal court.

October 21, 1930. *Auditor of State:* This will acknowledge receipt of your request of October 13, 1930, which is as follows:

"In the event of a transcripted case, civil or criminal, from the municipal court to the district court, are the municipal court fees for all transcripted cases payable back into the court of original filing and trial upon payment of all costs to the clerk of the district court?"

In reply we would say that the municipal court fees on all transcripted cases, both civil and criminal, should be paid to the clerk of the munici-

pal court by the clerk of the district court when payment is made to the clerk of the district court, so as to enable the clerk of the municipal court to distribute them as provided by the statute.

TAXES—COUNTY AUDITOR: City water bills not to be spread on tax book by county auditor.

October 21, 1930. *County Attorney, Boone, Iowa:* This will acknowledge receipt of your request of August 14th, which is as follows:

"Will your office kindly furnish me with an opinion as to whether or not a city has the right to certify water bills to the county auditor to be spread on the tax books?"

In reply we would say that, in view of the fact that a water bill owed the city by an individual resident is not a tax but purely an obligation owed the city, we are of the opinion that the county auditor would not be required to spread the same upon his tax books.

COUNTY AUDITOR—TAXATION: Under the provisions of Chapter 205, Acts Forty-third General Assembly, the State Board of Assessment and Review has the power and authority to specify and designate the forms to be used by the assessors of the various townships and it is mandatory that such forms be used.

October 21, 1930. *County Attorney, Manchester, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The State Board of Assessment and Review has furnished to the county auditor of this county certain forms for use by the assessors of the various townships of this county. The board of supervisors has decided that these forms are not satisfactory for use in this county, and the question has arisen as to whether or not it is mandatory upon the auditor and the board of supervisors to use the forms prescribed by the State Board of Assessment and Review.

You are referred to Section 17, Paragraph 2, Chapter 205, Acts of the Forty-third General Assembly. You are also referred to Sections 18 and 20 of the same chapter.

We are of the opinion that under these sections the State Board of Assessment and Review is granted full power to prescribe and promulgate such forms as it may deem necessary, and that it is mandatory upon the board of supervisors and all other officers who have any duties to perform with respect to the levy and assessment of taxes to use and adopt the forms prescribed by order of the State Board of Assessment and Review.

FISH AND GAME: The statute does not require that a dealer who ships furs of the one who kills, traps, or ensnares the same, shall secure permit tags.

October 21, 1930. *County Attorney, Dubuque, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

"A" trapped certain fur-bearing animals during the open season and took the pelts to "B" who was engaged in the fur business. "B" shipped the pelts and had them tanned outside of the state and then made a garment for "A."

Section 3, Chapter 58, Acts of the Forty-third General Assembly, requires any person who has trapped, killed, or ensnared any of the

animals named in the chapter to secure special permit tags if he desires to ship said furs out of the state.

The question has arisen as to whether or not "B," who is in the fur business, was guilty of the violation of any of the provisions of Chapter 58, Acts of the Forty-third General Assembly, when he shipped "A's" furs out of the state to have them tanned.

We are of the opinion that "B" was not guilty of any violation by reason of the fact that he shipped the furs out of the state for tanning. The statute places the duty upon the person who has trapped, killed, or ensnared and there is no duty placed upon the fur dealer except as is required in Section 4, of said chapter.

FISH AND GAME: The holder of a license issued prior to July 4, 1929, must comply with the provisions of Section 3, Chapter 58, Acts Forty-third General Assembly, and thus secure permit tags for shipping.

October 21, 1930. *County Attorney, Osage, Iowa:* We are in receipt of a letter from your county recorder requesting an opinion of this department on the following question:

A resident of this state and of this county secured a resident hunting and fishing license prior to July 4, 1929. He trapped some fur-bearing animals and shipped the pelts outside of the state without securing shipping tags as provided for in Section 3, Chapter 58, Acts of the Forty-third General Assembly. The question which has arisen is whether or not since said resident was trapping under a license issued prior to July 4, 1929, the effective date of Chapter 58, Acts of the Forty-third General Assembly, it was necessary for him to secure the special permit tag provided for in Section 3, Chapter 58, Acts of the Forty-third General Assembly?

Enclosed herewith you will find copy of an opinion rendered by this department under date of May 21, 1929, to W. E. Albert, State Game Warden; and also copy of opinion rendered under date of October 29, 1929, to Paul Smith, County Attorney, Independence, Iowa, which hold that the holder of a license issued prior to July 4, 1929, has the right to hunt and fish under said license; that it is not necessary for him to purchase a new license until March, 1930.

You are also advised that we are of the opinion that a person who holds a license issued prior to July 4th, 1929, must, when he desires to ship the pelts for fur-bearing animals outside the state, secure special permit tags as provided for in Section 3, Chapter 58, Acts of the Forty-third General Assembly.

TRAILERS—MOTOR VEHICLE: Trailers weighing less than 1,000 lbs. but having a loading capacity of over 1,000 lbs. are subject to the imposition of a license fee.

October 21, 1930. *County Attorney, Bloomfield, Iowa:* We acknowledge receipt of your request for an opinion of this department on the following question:

Section 10, Chapter 122, Acts of the Forty-third General Assembly, in part provides as follows: " 'Trailers weighing less than one thousand pounds, or with a loading capacity of less than one thousand pounds, shall not be subject to a license fee. * * * "

The question has arisen as to the construction of said part of this section. Whether or not a trailer which weighs less than one thousand pounds but has a capacity of over one thousand pounds is subject to a license.

We are of the opinion that "or" as used in that part of Section 10, above set out, is a conjunctive "or" and not the disjunctive "or," and that a trailer which weighs less than one thousand pounds but which has a capacity of one thousand pounds or more is subject to a license fee.

FISH AND GAME: Seines or nets which have a mesh of less than 2½ inches are subject to seizure under the provisions of Section 1715, Code of 1927.

October 28, 1930. *State Game Warden:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

Where the deputy game warden or an assistant, the sheriff, constable or a police officer of the state, finds a seine which has less than a 2½-inch mesh and which is being used or is in possession or kept or maintained for the purpose of catching, taking, etc., fish contrary to the provisions of Chapter 86, as amended, Code of 1927, may they, with or without warrant, seize and destroy said net?

You are referred to Sections 1715 and 1748, Code of Iowa, 1927. Under Section 1715 the State Game Warden, his deputy or assistants, sheriffs, constables and police officers of the state, are given authority without warrant or process to take and seize any seine or net which is being used or is in possession or kept or maintained for the purpose of receiving and taking fish from the waters of the state contrary to the provisions of Chapter 86, Code of 1927.

Section 1748 provides that no license shall be issued for the use of any seine or net having less than 2½-inch mesh unless said seine or net was possessed and licensed prior to March 1, 1924.

We are, therefore, of the opinion that where the State Game Warden, his assistants or deputy, a sheriff, constable, or other police officer, finds a net or seine which has less than a 2½-inch mesh and which was not licensed prior to March 1, 1924, that they may seize the same in accordance with the provisions of Section 1715, Code of Iowa, 1927.

ELECTIONS: Where no nomination was made in the primary for the office of township trustee the members of the party central committee from said township do not have any authority to make a nomination as there is no vacancy in nomination or vacancy in office which would authorize them to do so. Where a candidate has been nominated for the office of township trustee in the primary but disqualifies himself by removing from the township, the only way to remove his name from the ballot would be by making objections.

October 30, 1930. *County Attorney, Waukon, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following questions:

1. In a number of townships there were no nominations in the June primary for township trustee on one of the party tickets. Can the members of the party committee in these townships fill the township ticket?
2. Is there any time limit on filing petition of nomination as provided for in Chapter 37-a2, Code of Iowa, 1927?
3. We have a case where a township trustee was nominated in the primary but since the primary said nominee has changed his residence by moving out of the township; his name appears on the ballot which has been printed, and the question has arisen as to whether or not his name

should be stricken from the ballot. Can the eligibility of the candidate be questioned by filing objections with the county auditor?

You are referred to Sections 581 and 614, Code of Iowa, 1927. We are of the opinion that under these sections the members of the party central committee for a subdivision of a county, composed of the township, do not have any authority to make a nomination for an elective office in said subdivision where no nomination was made in the primaries. It will be noted that under Section 614 the authority granted is to fill vacancies in nominations made at the primary and nominations occasioned by vacancy in offices.

You are also advised that the members of the party central committee for a subdivision of a county, composed of a township, are given authority under Section 614 to make nominations to fill vacancies in office. The only vacancy in office which the members of the party central committee from a subdivision of a county, composed of a township, are authorized to fill would be one occasioned by the death of the present incumbent or by resignation or other disqualification which has occurred since the primaries.

For answer to your question number two, you are referred to Section 655-a20, Chapter 37-a2, Code of Iowa, 1927. It will be noted from reading this section that all of the provisions of Chapter 37-a1 are made applicable. This being true Section 655-a14, Chapter 37-a1, Code of Iowa, 1927, would govern as to the time within which nomination petitions must be filed.

You are advised that the only way that the question of the legal sufficiency of a certificate of nomination or the eligibility of a candidate may be taken advantage of is by the filing of objections to the same. These objections must be filed with the county auditor and the county auditor, clerk of the district court and the county attorney shall constitute a board to hear and determine said objections.

BOARD OF CONSERVATION: Permits for the crossing of navigable and nonnavigable but meandered bodies of water may be issued by the legislature of the state of Iowa and no other body, board, commission, committee or official of the state.

November 11, 1930. *Board of Conservation:* We have yours of November 7, 1930, in which you ask in brief the following:

"May the Board of Conservation grant a permit to a corporation, firm or individual permitting such person, corporation or firm to lay a pipe line for the transportation of petroleum products across the bed of a meandered or navigable stream?"

Petroleum products necessarily include gas, gasoline, crude oil, kerosene and other property, the basic material of which is petroleum.

Section 1799-b1 reads 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."

Section 1799-b2 reads as follows:

"No person, association or corporation shall build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind upon or over any state-owned land or water under the jurisdiction of the board, without first obtaining from such board a written permit. The board shall charge a fee of two dollars for each such permit issued.

"It shall be the duty of the board to adopt and enforce rules and regulations governing and regulating the building or erection of any such pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, and said board may prohibit, restrict or order the removal thereof, when in the judgment of said board it will be for the best interest of the public.

"Any person, firm, association, or corporation violating any of the provisions of this section or any rule or regulation adopted by the board under the authority of this section 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."

Both of the above sections refer to state-owned river beds, lake beds and parks.

The sale of islands by the State of Iowa is regulated by Section 1823 which reads as follows:

"No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the board, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter."

The sale of islands and abandoned river channels are regulated by Section 10230 which reads as follows:

"Such lands shall be sold in the following manner: Any person who has in fact lived upon any such land and occupied the same, as a home continuously for a period of three or more years immediately prior to the time of the appraisement thereof, and such occupancy has been in good faith for the purpose of procuring title thereto, whenever by law such title could be vested in him by purchase from the proper authority, or any person who has acquired possession of such land by inheritance, or by purchase made in good faith from a former occupant, or occupants, whose occupancy dates back over a period of three years prior to the date of appraisement of the land, shall have first right to purchase such land at the appraised value; provided such bona fide occupant shall file his application for the purchase thereof at the appraised value with the secretary of state within sixty days after the date the appraisement is made, and shall accompany such application with affidavits showing proof of such bona fide occupancy. If no application has been filed by such bona fide occupant within the sixty-day period above provided, then the secretary of state shall advertise the sale of such land once each week for four consecutive weeks in two newspapers of general circulation published in the county wherein the land is situated, and proof of publication shall be filed with the secretary of state. The sale shall be made upon written bids addressed to the secretary of state and the advertisements shall fix the time when such bids will be received and

opened. All bids shall be opened by the secretary of state or by the clerk of the state land office at the time fixed, and the land thereupon may be sold to the highest bidder and at not less than the appraised value."

The leasing of islands and abandoned river channels is regulated by Section 10231, which reads as follows:

"If no application is filed for the purchase of the land within the sixty-day period by a bona fide occupant, and if no bids are received for the purchase thereof, on or before the date of the sale as advertised, then the secretary of state is authorized to lease the land for a period of from one to five years, upon as favorable terms as he can obtain. At the expiration of such lease he shall readvertise the land for sale in the manner provided in the preceding section. If no bids for the purchase of the land are received on the date of the second advertised sale, then the secretary of state shall submit the matter to the executive council, and they may either order the land reappraised in the manner provided in Section 10227, and then advertised and sold in the manner provided in the preceding section, or if they deem it advisable, they may authorize the secretary of state to sell the land for less than the appraised value. In such event the secretary of state shall readvertise the land for sale in the manner provided in the preceding section, and such advertisement shall also state that the land will be sold to the highest bidder without restrictions as to the appraised value."

Section 10252 which reads as follows:

"The council may sell the same for such sum and upon such terms as to it seems best, and for any deferred payments of the purchase price thereof it may take such adequate security as it sees proper, and the proceeds of such sales shall be paid into the state treasury, and credited to the fund to which such real estate belonged."

provides for the sale of lands acquired by the state at execution sale, while the leasing of such lands is provided for in Section 10250 which reads as follows:

"When the title to any real estate is vested in the state under this chapter, the executive council shall have the management and control thereof; may lease the same, while so owned, upon such terms and for such rental as it shall deem for the best interests of the state, and such rents shall be paid into the state treasury and credited to the fund to which the debt belonged upon which it was taken."

Section 4858 delegates authority to boards of supervisors for the granting of permission to lay gas and water mains in highways outside of cities and towns.

This section has nothing to say with regard to the right to run gas and water mains over other state owned real estate. Under another section recently enacted the right to grant such permission in connection with primary roads has been given the State Highway Commission.

Section 8300 grants the right to telegraph and telephone organizations to use the public roads of the state and also the rivers and other real estate belonging to the state in the construction of lines. This provision with regard to the use of rivers and state lands is definite and positive.

The case of *McManus vs. Carmichael*, 3 Iowa 1, is original Iowa authority to the effect that the state holds title to the beds of navigable rivers in trust for the use and benefit of the people of the state. This case has been cited in Iowa and other jurisdictions more than forty times and is a leading case in point. It has been repeatedly approved by our own Supreme Court.

The title to meandered but nonnavigable lakes and streams passes under the law of the state under the authority of the case of *Marshall Dental Company vs. State of Iowa*, 226 U. S., 460. The case of *State vs. Jones*, 143 Iowa, 398, is also authority for this rule.

Under the opinions in the two cases last cited, there is also considerable doubt as to whether or not title to the beds of meandered but nonnavigable streams below high water mark does not remain in the federal government.

No provision is made by statute in this state for granting of a permit for occupancy of the channel of a navigable or nonnavigable but meandered stream to a person, firm or corporation for a pipe line for the purpose of transporting petroleum products or for any other purpose.

Our legislature has seen fit to designate parcels of real estate that may be conveyed by the state and the manner of executing such conveyances in various cases.

The legislature has made provision for the use of state real estate, including river beds, by telegraph and telephone companies. It has provided for the use by gas and water companies of the state real estate and state roads, but has made no provision with regard to river beds for occupancy by or with pipe lines.

We are therefore of the opinion that no public body except the legislature itself, has authority to grant a permit for the purpose mentioned in your letter.

Our opinion as above set forth is considerably strengthened because of the decisions of our Supreme Court to the effect that the title to such streams is held in the state in trust to the benefit of he people at large.

BOARD OF CONTROL: Children shall be discharged from the Iowa Soldiers' Orphans' Home at Davenport, when they attain the age of eighteen years. (Sec. 3712, Code.)

November 12, 1930. *Board of Control:* You have requested the opinion of this department upon the following proposition:

"We are interested in receiving an opinion from your department concerning the age limit of the state's supervision over wards of the state.

"In Chapter 180 under Section 3649, the term of commitment of neglected, dependent and delinquent children, it states that it shall be until the age of twenty-one unless otherwise discharged by law.

"In Chapter 185, Section 3712, the last clause reads: Children shall be discharged when arriving at the age of eighteen years, or sooner if provided with sufficient means to provide for themselves, and then again in Section 3716 under placing children under contract it states: Such contract shall provide for the custody, care and education, maintenance and earning of the child for a fixed time which shall not extend beyond the age of majority.

"There seems to be a confliction in these statements which we would like to have clarified."

Chapter 180 of the Code contains the provisions of law relative to the disposition and care by the state of children who have been found by a court to be neglected, dependent or delinquent. Among other things, it is provided in said chapter that if a child is found by a court to be neglected, dependent or delinquent, it shall be committed to either the State Training School, the Iowa Juvenile Home at Toledo, or the Iowa

Soldiers' Orphans' Home at Davenport. It is provided further that it is the intent of the law to so classify commitments that the merely neglected and dependent children will not be associated with the delinquent, and that delinquent children will be so segregated that the least delinquent will not suffer by association with those of greater delinquency.

Section 3649 is a part of Chapter 180 of the Code, and is a general provision applying to all commitments of neglected, dependent and delinquent children by the court, and provides that:

"Commitments shall be until the child attains the age of twenty-one years, unless otherwise discharged by law."

Thus, it will be observed that this provision is a part of the general chapter dealing with the general commitment of these classes of children. The Board of Control is given authority, in other provisions of the law, to finally discharge delinquent children from any of the state institutions provided the county attorney of the county from which the commitment was made has been notified that such matter is pending. The Board of Control also has the right, under the law, and particularly Section 3648 of the Code, to transfer children committed to any of those institutions under its control to any other institution which it determines will more nearly effect the declared intent of the chapter relative to the handling of such children. So, therefore, the general rule laid down in the statute is that a child committed as a neglected, dependent or delinquent child is committed in the first instance by the court until said child attains the age of twenty-one years.

There seems to be a special provision of law relative to the discharge of children from the Iowa Soldiers' Orphans' Home. The children committed to this home are merely neglected or dependent children. It is provided in Section 3712, which is a part of the law relative to the children in the home, that:

"Children shall be discharged upon arriving at the age of eighteen years, or sooner if possessed of sufficient means to provide for themselves."

This provision of law is a special provision applicable only to the children committed or admitted to the Iowa Soldiers' Orphans' Home at Davenport. It being a special provision applicable to a special class of commitments, takes precedence over the general provision contained in Section 3649 of Chapter 180 of the Code. In any event, it will be noted that Section 3649, the general provision, provides that commitments shall be until the child attains the age of twenty-one years *"unless otherwise discharged by law."* Hence there is no conflict, for the special provision of law in Section 3712 provides for the discharge of these children committed to this home on attaining the age of eighteen, and is an exception to the provision of law in question, Section 3649.

It is, therefore, quite apparent under the law that children committed to the Iowa Soldiers' Orphans' Home, and who are still in the home when they reach the age of eighteen years, must be discharged under the special provision contained in Section 3712 of the Code.

If a child in said home is placed under contract under the provisions of Section 3716, the law provides that the contract therefor must require that the private family shall take care of, educate and maintain the child for a period which shall not extend beyond the age of majority. It is

then provided in Section 3717 that if the contract is violated the board of control may cause the child to be repossessed by the state, so to speak, and the board may then make such other disposition of him as shall seem to be for his best interests. Under the provisions of these two latter sections, the board may replace a child retaken in another private home, even though the said child is over eighteen years of age and has not yet attained his majority.

TAXATION—SPECIAL ASSESSMENT: The county treasurer has no authority to change, modify or abrogate any special assessment as certified to him by the county auditor.

DIVISION of real estate for taxation purposes is made, under Section 6036 of the Code of 1927, by the owner of property to be divided and must be approved by the council before it becomes effective.

November 12, 1930. *Auditor of state:* Your letter of October 27, 1930, is at hand wherein you ask:

"What does Section 6036 of the Code of 1927 mean?

"If division of property is made under this section who determines the area of the several tracts entering into the division?

"Has the county treasurer the right barring clerical errors, to change the record as certified in by the city under Section 6034?"

Section 6036 as amended by the Acts of the Forty-third General Assembly, Chapter 179, Paragraph 5, reads as follows:

"If any owner of property subject to special assessment shall divide the same into two or more lots and if such plan or division is accepted or approved by the council, he may discharge the lien upon any one or more of them by payment of the amount unpaid calculated by the ratio of square feet in area of such lot or lots in the area of the whole lot."

Section 6034 reads as follows:

"A certificate of levy of such special assessment, stating the number of installments, the rate of interest, and time when payable, certified as correct by the clerk, shall be filed with the auditor of the county, or of each of the counties in which such city is located, and thereupon said special assessment as shown therein shall be placed on the tax list of the proper county."

In no place in the Code is the county treasurer given any authority to change, modify or abrogate any special assessment as certified to him by the county auditor except on proper order of court entered in the proper action.

We are therefore of the opinion that division of the property under Section 6036 of the Code of 1927, is made by the owner of the property, or his agent, and approved by the city council. We are also of the opinion that the county treasurer has no power or authority to change the record of such special assessment as certified to him under Section 6034.

COUNTY FAIRS: Money raised by taxation for the fairground fund may be expended only for the erection and repair of buildings or other permanent improvements of real estate and for debts contracted for those purposes.

November 17, 1930. *Director of the Budget:* Your letter of November 12, 1930, is at hand. You ask—

May money raised by taxation under Section 2909, Code, 1927, be used to pay off the deficit in the current account of a county or district fair association occasioned by operating expense in excess of receipts?

Section 2910 of the Code, 1927, reads as follows:

"The fairground fund shall be expended only for the erection and repair of buildings or other permanent improvements on said real estate, or for the payment of debts contracted in such erection or repair."

Section 2911 of said Code is as follows:

"Each society receiving an appropriation from the county shall, through its secretary, make to the board of supervisors a detailed statement, accompanied with vouchers, showing the legal disbursement of all moneys so received."

The statements contained in Section 2910 are definite and precise.

It is therefore our opinion that the fairground fund above mentioned may be expended for the erection and repair of buildings or other permanent improvements of real estate and for debts contracted for those purposes and said fund may not be used to remove the deficit first above described.

TELEPHONE COMPANIES—WAIVER OF FRANCHISE: A telephone company which has had a legislative franchise under statute prior to 1897 waives that franchise when it applies for and accepts a city franchise under statute subsequent to 1897. Section 776, Code, 1897.

November 19, 1930. *County Attorney, Jefferson, Iowa:* Your letter of November 11th is at hand wherein you ask—

Does a telephone company whose grantor maintained its lines and poles upon the streets of a city prior to 1897, but which has since that year obtained a franchise from that city and maintains its lines and poles upon the streets of that city upon the franchise last mentioned, have a perpetual franchise for the construction and maintenance upon those city streets of its poles and lines?

A telephone company which has constructed and maintained its lines and poles upon a city street under the general statute prior to 1897 which gives such franchise to the telephone company, has a perpetual franchise for the purpose mentioned, provided it has continuously used the streets and alleys for the purpose mentioned. *State vs. Telephone Company*, 175 Iowa, 607.

Under Section 776 of the Code of 1897 companies were first required to obtain a franchise from the cities and towns for occupancy of streets and alleys with its lines and poles.

The franchise gained by operation of such telephone company upon the streets and alleys prior to 1897 is not a property right, but a license to operate. *State vs. Telephone Company* (75 Iowa, 607) supra.

A perpetual franchise may be waived or abandoned; and the above case is also authority for the proposition that the user of the streets and alleys for the purposes mentioned must be continuous, or the legislative franchise, being contractual in effect, is abandoned.

We are, therefore, of the opinion that when a telephone company chooses to operate under any other authority than the legislative franchise granted by statute prior to 1897, it has waved its right to operate under the legislative franchise.

STATE HOSPITALS: Persons committed to a state hospital under Chapter 199 of the Code, 1927, may not be required to submit to a surgical operation except under provisions of Section 3361 of said Code and sections pursuant thereto.

November 20, 1930. *County Attorney, Eagle Grove, Iowa:* Yours of November 6, 1930, is at hand wherein you ask—

After commitment of a person to a state hospital under the provisions of Chapter 199 of the Code, 1927, may a surgical operation be performed upon his body against his will?

The only provision made for a surgical operation upon the person of a resident of Iowa against his will is found in Section 3361 and sections pursuant thereto, which provide for sterilization of individuals under certain circumstances.

The patient is the final arbiter as to whether he shall take his chance with the operation or take his chance of living without. Every individual of adult years and sound mind has a right to determine what shall be done with his own body. To permit an operation over the protest of the patient under code provision, would be a legalization of assault and battery.

We are therefore of the opinion that no operation can be performed upon the body of a patient in the State of Iowa without his consent, as above stated.

CITIES AND TOWNS—EXPLOSIVES—DYNAMITE—STORAGE WAREHOUSE: The maintenance of a storage warehouse for dynamite and powder outside the corporate limits of a city or town does not constitute a violation of the laws of Iowa.

November 28, 1930. *County Attorney, Burlington, Iowa:* We have yours of November 26, 1930, wherein you ask:

Does the maintenance of a storage warehouse for the storage of dynamite and powder outside of the corporate limits of a town or city violate the laws of this state?

Section 5764 of the Code, 1927, provides as follows:

"They shall have power to regulate the transportation and keeping of gunpowder, inflammable oils, or other combustibles, and to provide or license magazines for storing the same, and prohibit their location or maintenance within a given distance of the corporate limits of such cities or towns."

The above code provision would seem to confer upon towns and cities the right to regulate by ordinance the distance from the town or city at which such warehouse might be established and maintained. The exercise of such power could be no more than reasonable.

Aside from the above, there is no provision of our code making criminal the storage of gunpowder and dynamite, and we are, therefore, of the opinion that the storage of dynamite and powder in a warehouse outside the corporate limits of a city or town is not a violation of the criminal laws of the State of Iowa.

COUNTY TREASURER—TAX DEEDS: Where original tax deed lost county treasurer may if records show original issuance issue duplicate.

December 3, 1930. *Auditor of State:* This will acknowledge receipt of your request of November 4th, which is as follows:

"Where the county treasurer has issued a tax deed and all of his records and files confirm this action, and the party to whom deed was issued has lost same, and it is not of record in the recorder's office, can the treasurer issue a duplicate deed?"

In reply we would say that we can see no reason why the county treasurer would not be authorized to issue a duplicate tax deed where all his records and files conclusively show that the party had been issued a deed and was entitled to same, provided the party to whom he issued the deed filed with him a sworn affidavit to the effect that the deed which had been previously issued had been lost, and that he was still the owner of the property, and under the same status as he was at the time the original deed was issued.

CITIES AND TOWNS—SPECIAL ASSESSMENT CERTIFICATES—BUDGET LAW: The provisions of Section 363, Code, 1927, must be complied with in the issuance of special assessment certificates.

December 3, 1930. *Director of the Budget:* We acknowledge receipt of your letter asking for an opinion of this department on the following question:

Where special assessment certificates are to be issued in payment for paving already in place is it necessary that the provisions of Section 363, Code of Iowa, 1927, be complied with?

We are of the opinion that said section is applicable to the issuance of special assessment certificates.

BUDGET DIRECTOR—BONDS—COUNTIES: It is not necessary to comply with the provisions of Section 363, Code, 1927, where funding or refunding bonds are issued in accordance with Chapter 266, Code, 1927.

December 3, 1930. *Director of the Budget:* We acknowledge receipt of your letter for an opinion of this department on the following question:

Where a county has county bonds outstanding which are now due and payable under their terms, and does not have funds with which to pay the same, and are now proposing to issue funding or refunding bonds in accordance with the provisions of Chapter 266, Code of Iowa, 1927, do the provisions of Section 363 of the budget law have any application with respect to the issuance of said bonds; and if said funding bonds are issued is it necessary that they be advertised and sold in accordance with the provisions of Chapter 63, Code of Iowa, 1927?

We are of the opinion that Section 363, Code of Iowa 1927, has only application to the creation of an original indebtedness and the issuance of bonds in connection therewith and has no application to the issuance of funding or refunding bonds issued in accordance with the provisions of Chapter 266, Code of Iowa 1927.

The indebtedness has already been created and the funding or refunding bonds are only issued in lieu of bonds which have already been issued and are outstanding and are due or callable at the option of the county board of supervisors. Chapter 266, Code of Iowa 1927, provides that funding or refunding bonds be issued and sold in accordance with the provisions of Chapter 63. Under this chapter the bonds should be advertised and sold as therein provided.

CITIES — BRIDGES — COUNCILMEN — MAYOR: Toll bridges under jurisdiction of mayor or bridge commission. (Section 5899, Code, and Section 13, Chapter 195, Laws of Forty-third General Assembly.)

December 3, 1930. *Auditor of State:* This will acknowledge receipt of your request of November 4, 1930, which is as follows:

"Does the superintendent of finance have jurisdiction and control over

a bridge, insofar as collecting tolls and appointing a toll taker is concerned, under commission form of government?"

In reply we would say that under the provisions of Section 5899, a toll bridge, being an interstate bridge, would fall within the jurisdiction of the mayor of the city, who would make the appointments, which appointments, under the provisions of this section, would have of necessity to be approved by the council.

However, under the provisions of Section 13 of Chapter 195, Laws of the Forty-third General Assembly, the city council might by resolution create a bridge commission as provided for in that section, which would have the power to appoint, collect tolls, etc.

I believe the question submitted by you is determined by Section 5899, Code, and Section 13, Chapter 195, Laws of the Forty-third General Assembly.

FIRE DEPARTMENT—POLL TAXES—EXEMPTION: Exemption from poll tax for service in volunteer fire department applies only in town or city where service is rendered. (Section 57-a1, Chapter 20, Laws of Forty-third General Assembly.)

December 3, 1930. *County Attorney, Davenport, Iowa:* Replying to your request relative to the poll tax, which is as follows:

"Is a male person over the age of 21 years and under 45 years of age, who is a resident of the county, outside the corporate limits of a city and town, and who formerly served as a member of a volunteer fire department of a corporate town and has a certificate from the foreman of such volunteer fire company showing that he has served as a member of said fire company for ten years, entitled to an exemption from the payment of road poll tax as provided in Chapter 20, Laws of the Forty-third General Assembly?"

—we beg to advise that we are of the opinion that the provisions of Section 1658, providing for the exemption of firemen, would not exempt residents outside of the corporate limits of cities and towns, but that under the provisions of Chapter 20, Laws of the Forty-third General Assembly, they would be required to pay the poll tax, as provided under the provisions of Section 57-a1.

EDUCATIONAL INSTITUTIONS — CHARITABLE INSTITUTIONS — TAXATION: Y. M. C. A. and Y. W. C. A. not educational institutions but are charitable and religious institutions.

December 3, 1930. *County Attorney, Spencer, Iowa:* This will acknowledge receipt of your letter of November 4, 1930, in which you submit the following question:

Under the provisions of Section 6944 relative to the exemption of real estate, can a Y. M. C. A. and a Y. W. C. A. be classed as educational institutions?

We do not believe either of these institutions could be called educational, although there is no question but that they could be considered as charitable or religious institutions.

OSTEOPATHS—CHIROPRACTORS—SCHOOLS: Osteopath and chiropractor may certify children to be non-infectious from communicable disease.

December 3, 1930. *Commissioner of Health:* This will acknowledge receipt of your request of October 22, 1930, which is as follows:

May a chiropractor or an osteopath legally certify children to be non-infectious from a communicable disease and should this certification be accepted by a board of education through their principal or teacher?

We are unable to discover any distinction between a physician, osteopath or chiropractor, as the same relates to communicable disease, and we are, therefore, of the opinion that a chiropractor or an osteopath may certify children to be non-infectious from a communicable disease, and that this certificate should be given the same weight by a board of education through their principal or teacher as that of a physician.

Under Title 7 relating to public health, Parapraph 5 of Section 218 states:

"Physician shall mean a person licensed to practice medicine and surgery, osteopathy and surgery, osteopathy or chiropractic, under the laws of this state."

In the same Title, Chapter 108 relating to contagious and infectious disease, we find that it is made the duty of the physician or in the event there is no physician the parent, guardian, school teacher, or householder of the premises to report quarantinable or placard disease, whenever the same shall come to their attention, but we do not find any particular section bearing on the certificate or requiring that a certificate should be issued to children at the termination of the communicable disease, to be used by them in their school work, so that we can find no distinction between a certificate issued by a physician practicing medicine and an osteopath or chiropractor.

TAX EXEMPTION—SOLDIERS: Exemption may be claimed by widowed mother of World War veteran.

December 3, 1930. *County Attorney, Perry, Iowa:* This will acknowledge receipt of your request of November 12th in which you submit the following questions:

"No. 1. Which is the beneficiary intended under Section 6948, the World War veteran or his mother? Which should claim the exemption?

"No. 2. In the event that the assessor fails to list the exemption after the first year in which it is claimed, the property is sold for taxes and later redeemed, has the board of supervisors a legal right to refund the tax and penalty as they have been requested to do in this case?

"No. 3. Does the law as contained in the last three lines of Section 6948 in any way conflict with the law as contained in Section 6949 of the Code?"

In reply we would say that under question No. 1, the exemption should be claimed by the mother after making the required affidavit to the effect that she was a widowed mother remaining unmarried and dependent upon a World War veteran.

Replying to question No. 2, we are of the opinion that the board of supervisors has no right to refund the tax and penalty, as it is made an obligation upon the beneficiary of an exemption to make a claim each year.

As to question No. 3, we do not believe there is any conflict there as it were the intention that even though the ex-service man failed to file his claim for exemption with the assessor, he still would be entitled to file with the board of supervisors up to September first, giving him additional time in which to file his required claim for an exemption.

RENEWAL FEES—BOARD OF ENGINEERING EXAMINERS: Upon reinstatement former licensee required to pay only current renewal fees.

December 4, 1930. *Board of Engineering Examiners:* This will acknowledge receipt of your request of December 3, 1930, which is as follows:

"Motion made and seconded that the Attorney General be asked if he interprets that clause in Section 1869 b-1 which requires payment of 'renewal fees then due' to mean the current year's renewal fees, or the accumulation of yearly renewal fees during the time the registration was lapsed."

We believe that Section 1869 would be interpreted to mean that where a license had been allowed to expire, the former licensee might be reinstated, upon the payment of ten dollars and the current year's renewal fee, for the reason that during the time the license was lapsed, there would be no renewal fees accumulating and the licensee would only be liable for the current year's renewal fees, if he had been reinstated by the Examining Board upon application and the payment of the registration fee of ten dollars as provided in Section 1864.

SCHOOLS AND SCHOOL DISTRICTS: May employ teacher for any number of months and pay the compensation on the calendar year basis. Section 4228 of the Code.

December 4, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"May a school board employ a teacher for eight, nine or ten months of four weeks each and stipulate in the contract that her salary shall be paid by the calendar month in twelve instalments?"

The statute provides that the board shall elect all teachers and make all contracts necessary or proper for exercising the powers granted for performing the duties required by law. See Section 4228 of the Code.

The only limitation upon this power of contract is found in Section 4229 of the Code which provides that the contract shall specify in writing the length of time that school is to be taught, the compensation per week of five days or month of four weeks. The compensation therefor must be expressed in terms as specified by the statute. However, there is no provision as to when the compensation shall be paid and it is therefore, within the power of the board and the teacher to make such agreement as they desire as to the time of payment of the compensation. For instance, the compensation per month of four weeks could be specified but it could then be provided that this compensation should be divided into twelve instalments and paid on the first day of each calendar month.

FEEBLE-MINDED PERSONS—BOARD OF CONTROL: When a feebleminded person has been committed to a state institution by court order, he cannot be discharged except by court order.

December 5, 1930. *Board of Control:* You have requested the opinion of this department for an interpretation of what appears to be a conflict in the law in Sections 3405 and 3440 of the Code relative to the method of discharge of persons committed to the State Institution for the Feeble Minded.

Section 3405 of the Code provides as follows:

"Admission to said institution may be either voluntary, by parents, guardian, or county attorney, under such rules as the board may prescribe, or by commitments under the following chapter of this title. The board may at any time return any inmate to its parent or guardian."

It will be observed that the last sentence in this section of the law seems to authorize the Board of Control at any time to return any inmate to its parent or guardian. Chapter 171 of the Code which follows the chapter in which Section 3405 appears, provides for the commitment of feeble minded persons to a state institution by order of court. It is provided in Section 3440 in said chapter that discharges and modification of orders may be made upon any one of four grounds, namely:

1. That the person adjudged to be feeble minded is not feeble minded;
2. That said person has so far improved as to be able to care for himself
3. That the relatives or friends of the feeble-minded person are able and willing to support and care for him and request his discharge subject, however, to the best judgment of the superintendent of the institution; and,
4. For any other cause which to the court appears to be proper.

At first blush there seems to be a direct conflict between these two sections of law insofar as discharges are concerned. However, upon analyzing the situation, it will be observed that there are two classes of commitments:

1. Where the commitment is by a parent, guardian, the county attorney, or the individual himself, under the rules adopted and prescribed by the Board of Control; or,
2. By court order.

Thus, it would follow that the general provision in Section 3405, relative to the discharge of such persons, would apply if they were committed in any manner other than by a court order. Then, on the other hand, if the person be committed by order of court, he is a ward and charge of the court insofar as his commitment is concerned, and he cannot be discharged nor the order modified unless by further court order in the manner prescribed in Chapter 171 of the Code. By thus construing these two provisions of law, it is apparent at once that there is no conflict.

It is, therefore, the opinion of this department that the Board of Control may return any inmate to its parent or guardian if said inmate were committed without a court order in the manner prescribed by statute, and that said board has no jurisdiction to discharge a person committed, or to modify the order of a court committing any person to the Institution for the Feeble Minded, except on order of a court.

As to commitments made by the court prior to the enactment by the Thirty-eighth General Assembly, you are advised that the entire law was recodified by the Fortieth Extra General Assembly, and the two provisions of law simultaneously re-enacted. Therefore, the law must be construed in the light of that history, and if the person were committed by a court order, even though prior to the enactment of that provision of law, he must come under the present provision of the law now applicable to that class of cases.

SCHOOLS AND SCHOOL DISTRICTS: School attendance by non-resident is discretionary with the board, but the board cannot exclude a pupil merely because the parent of the child has land in the district and would, therefore, be entitled to an off-set on the tuition.

December 5, 1930. *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 power of the board where such parent attempts to send his children to prevent their admission, if the board knows that the parent will lay claim to the offset provided for in Section 4269, in cases where a parent's home district is under no obligation to pay the tuition?"

The statute provides that a child residing in one corporation may attend school in another in the same or adjacent county if the two boards so agree. See Section 4274.

Nonresident children and those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine. See Section 4268 of the Code. The same section provides that persons between five and twenty-one years of age shall be of school age.

Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident honorably discharged soldiers, sailors and marines as many months thereafter as they have spent in the military or navy service of the United States prior to their attending their majority. Sec. 4273.

It will therefore be observed that the qualifications for attending school free of tuition are proper age and actual residents of the school corporation; and that the attendance of nonresident children is on such terms as the board may determine. Therefore, the fact of ownership of land in the district does not confer any right to attend school.

We are therefore of the opinion that the board may exclude nonresidents even though the parents may own land within the district. However, exclusion could not be merely for that reason and the same uniform rule must be applied to all without discrimination against the applicant whose parent happens to own land in the district.

COUNTY OFFICES: County superintendent has right to vote on all questions before county board of education unless barred by the provisions of Section 4163, Code.

December 15, 1930. *Superintendent of Public Instruction:* This will acknowledge receipt of your letter of recent date requesting the opinion of this department upon the following proposition:

"Section 4119, Code 1927, makes the county superintendent a member ex-officio of the county board of education, and Section 4121, Code 1927, makes him the chairman of said board.

"In view of these sections would the county superintendent have the legal right to vote upon the selecting of text books by the said county board of education under the provisions of Chapter 231?"

The question of the county superintendent's right to vote upon a question before the county board of education, has been passed upon by the courts and it would seem that there is no question about his right to do so.

In the case of *Thie vs. Cordell*, 202 N. W. 532, the court held that the

county superintendent is not disqualified, on appeal to the county board of education from his decision to dismiss a petition for the dissolution of a consolidated school district, from voting as a member of the said board to sustain his own decision.

We are therefore of the opinion that the county superintendent has the right to vote upon every question coming before the board unless the county superintendent lived or owned land within a particular consolidated school district whose organization was in question under the provisions of Section 4163 of the Code.

ELECTIONS—SHERIFF — VACANCY — BOARD OF SUPERVISORS: Where there is a vacancy in the office of sheriff after election but before qualification the board of supervisors makes the appointment to fill the vacancy.

December 30, 1930. *County Attorney, Des Moines, Iowa:* I have your communication of the 30th instant, requesting the opinion of this department upon the following question:

"Has the board of supervisors of Polk County, Iowa, as presently constituted, authority to appoint a successor to Sheriff-elect W. C. Walker or must the appointment be made by the new board of supervisors which convenes on January 2, 1931, at which time the late W. C. Walker would have been eligible to assume office?"

It is the opinion of this department that the board of supervisors of Polk County, as it is legally organized, under the law, on the second secular day of January, 19331, is the proper tribunal to select a successor to the present sheriff of Polk County due to the death of W. C. Walker, the sheriff-elect. There will be no legal vacancy in the office of sheriff of Polk County until noon of the second secular day in January—hence no vacancy to fill until that date.

VETERINARY MEDICINE—ANIMAL INDUSTRY: One selling and administering remedies to stock for a flat sum covering the price of the medicine and administration of same is practicing veterinary medicine.

December 31, 1930. *Secretary of Agriculture:* This will acknowledge receipt of your request of December 15th, which is as follows:

Where a person, not a licensed veterinarian, buys a product at twenty-five cents per dose and makes a charge of fifty cents for the medicine and administration of same, is he violating the veterinary practice act?

In reply we desire to quote Section 2764, which is as follows:

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

1. Persons practicing veterinary medicine, surgery, or dentistry, or any of the branches thereof.
2. Persons who profess to be veterinarians, or who profess to assume the duties incident to the practice of veterinary medicine.
3. Persons who make a practice of prescribing or who do prescribe and furnish medicine for the ailments of animals."

This question has arisen many times under the medical practice acts of the different states in which unlicensed persons practicing medicine have attempted to evade the law by stating they were advertising their medicine and charging for it but not for prescribing or administering the same, and the courts have consistently held that unlicensed practitioners cannot evade the law in this manner.

In a Virginia case, *Pickard vs. Commonwealth*, 100 S. E., at page

21, an unlicensed individual through his agency, a drug store, sold certain proprietary medicines of his own manufacture. Some of the people coming to him would describe their ailments and he would prescribe which medicine would suit their case. At his trial he admitted that he had diagnosed and prescribed for the patients but qualified his statement by alleging that he did these things not as a doctor but to advertise his medicine, and charged for the medicine and not for the examinations and advice. The court, however, held that the defendant could not evade the law by stating that his acts were only for the purpose of selling his medicine, as it would be necessary for a person administering the medicine to diagnose the condition of the patient in order to determine what medicine was to be used.

This same argument would apply to the case presented by you, as the individual selling the medicine and administering the same would, of necessity, have to determine what was ailing the animal before he could determine whether or not the medicine he sold should be given, and the fact that the product that he purchased at twenty or twenty-five cents and sold for fifty cents would withdraw him from the provisions of paragraph 3 of Section 2765, so that we are of the opinion that where one made a business of selling medicine and administering the same to animals that he would be guilty of prescribing and furnishing medicine for the ailments of animals, under the provisions of Paragraph 3 of Section 2764.

See also the following cases:

People vs. Poo On, 230 Cal., 193;
People vs. Lee Wah, 11 Pac., 851;
Commonwealth vs. Reed, 76 Penn. Supreme Court, 202;
State vs. Van Doran, 14 S. E., 32;
State vs. Hefferman, 65 Atl., 284;
Payne vs. State, 79 S. W., 1025.

BOARD OF SUPERVISORS—COUNTY OFFICERS—DEPUTIES: Duty of board of supervisors is to designate number of deputies for each county office and after their appointment by the principal to approve or disapprove the appointment.

December 31, 1930. *County Attorney, Bedford, Iowa:* Replying to your telephonic request for an interpretation of Section 5238, which is 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."

—we beg to say that we believe this section places in the hands of the board of supervisors the authority to authorize the number of deputies or assistants a county officer may employ, and when the assistants or deputies are appointed it is then the privilege of the board of supervisors to approve or disapprove the appointment as made by the principal, so that this section above quoted places both the authority

to limit the number of deputies and also to pass their approval upon the appointees as made by the principal.

SHERIFF—RESIDENCE—RENT: Under Section 5226, Code 1927, the sheriff is to receive an annual salary and be furnished a residence by the county or in lieu thereof an additional sum of $300 per annum, and where the sheriff rents a portion of the residence furnished him by the county he is entitled to retain as his own the rent collected.

December 31, 1930. *County Attorney, Fort Dodge, Iowa:* We acknowledge receipt of your letter requesting an opinion of this department on the following question:

The sheriff of Webster County was furnished an apartment in the county court house for his home while he was sheriff of Webster County. For the past two years he has rented a portion of this apartment to one of his deputies, who, with his wife, has lived there and has paid the sheriff approximately $600.00 in rent. The board of supervisors feel that Webster County is entitled to receive this money and want to know if they would be within their rights to deduct this amount from the last warrant which the sheriff will receive when he goes out of office on January 1, 1931. In other words, does the sheriff have the legal right to retain the amount that he collected as rent for a portion of his apartment?

Under Section 5226, Code of Iowa 1927, the sheriff is to receive an annual salary and be furnished a residence by the county or in lieu of the residence an additional sum of $300.00 per annum. It would appear, therefore, from the facts that Webster County chose to furnish the sheriff an apartment in the court house for his residence. This being the case the sheriff would have full control over his residence and if he saw fit to rent a portion of the residence furnished him by the county he would be entitled to collect the rent from the same and would be entitled to retain it as his own, the county would have no claim to any part of it.

The fact that the sheriff's residence was an apartment in the court house would be no different than if his residence was a private home.

Index to Opinions

Page

ACKNOWLEDGMENTS—
Officer taking acknowledgment should not use signature stamp; while possibly legal, state should not take such chances.... 144
Stockholder cannot take on mortgage to corporation..... 328

ANIMALS—
A wolf is a cub until weaned..... 193

ASSESSOR—
City assessor not entitled to expenses incurred in viewing property for fixing values unless special contract with board of supervisors 115
Entitled to compensation fixed by board on estimated basis; cannot later diminish..... 115
No provisions for deputy..... 269
State Board of Assessment and Review may prescribe forms.... 361

ATTORNEY GENERAL—
Agents have right to liquor store room to invoice and check same against search warrants..... 331
Duties. See State ex rel Fletcher vs. Executive Council, 207 Iowa 923 .....
Opinion is binding until courts hold otherwise; fees paid and received under opinion cannot be recovered..... 344
Sheriff must comply with rules of Attorney General..... 66

AUDITOR OF STATE—
May examine township affairs despite Ch. 20, 43 G. A..... 278

BANKS AND BANKING—
Check given with sufficient funds at the time, but held several days not a violation of Sec. 13047..... 59
Corporation cannot use words "bank" or "trust" without qualifying under Ch. 416, Code..... 209
Limitations on use of words "state," "savings" or "trust" does not apply to national banks; applies only to the domestic or foreign corporations 162-209
May deduct only real estate as shown by its books to be capital investment 351
Must have two-thirds vote for renewal of charter..... 141
National banks cannot pay interest on time deposits until full period of 3 months..... 266
State or savings cannot loan its bonds to a national bank..... 133

BLUE SKY LAW—
All securities except those sold by owner must qualify under Ch. 10, laws 43rd G. A..... 182
Certain real estate contract not a security..... 312
Fur bearing animal contracts violation of..... 176
Improvement bonds not general obligations of the city, therefore not exempt under Ch. 10, 43 G. A..... 311
Profit sharing fur bearing animal contracted within securities act, if profit sharing..... 223
Real estate mortgage bonds may be registered although secured also by lease hold interests..... 223
Sale of stock by owner or assignee to different persons within Ch. 10, 43rd G. A..... 294
Section 398 Code does not apply to expenses of investigation of business of foreign companies..... 278

BOARD OF ACCOUNTANCY— Page
C. P. A. licensed in another state may perform temporary engagements in Iowa. Ch. 59, 43rd G. A. 239
Each member of firm must be registered 323
May fix time and place of examination 63
May print law in pamphlet form; may fix time and place for examination and prescribe notice thereof 108
Practitioner may maintain office in home; licensee in foreign state may accept temporary engagements in Iowa without registration under Ch. 59, 43rd G. A. 210
State employees engaged in accountancy work entitled to certificate 189

BOARD OF CONSERVATION—
Cannot grant permits to pipe lines over streams 364
Des Moines river and inland waters of state and boats operating thereon are subject to inspection 138
Has jurisdiction over lakes and streams but not within corporate limits of a city 300
Has power to license and regulate boats of all kinds on state waters under its control and charge reasonable license fee therefor 171
May, in discretion of executive council, become member of wild life school 105
May require permit for placing dock in or on public waters of the state; certain cities control river fronts within city limits 109
May license craft on waters under jurisdiction of the board 164
Park custodians who exceed official authority must provide own defense 326

BOARD OF CONTROL—
Balance remaining at end of biennium not certified if not needed. May be carried forward to current appropriation account 75
Child born to wards of the state is not ward of the state, but must be committed as such 273
Discharge of feeble-minded person from state institution only by court order 375
Incompetent child of superintendent of institution not entitled to support under Sec. 3297 after majority 173
Inmates at Iowa Soldiers' Orphans' Home discharged at age 18 367
Inmate cannot be subjected to surgical operation without his consent 370
Minor child abandoned by parents acquires residence of persons acting in loco parentis; later county liable for maintenance if committed to state institution 172
State tuberculosis sanitarium should first provide for patients from counties which do not have county sanitariums 274

BOARD OF HEALTH—
Apprentice barber may work for more than 2 years in this state as such 80
Board of eugenics does not have authority to employ full time secretary; may employ persons to take transcript of hearing 138
Board of nurse examiners may enter into reciprocity agreement 117
Boards of supervisors may contract for medical care for the poor; only with licensed physicians, surgeons and dentists 310
Commissioner cannot reinstate suspended licensee 327
Commissioner of health to sign dentist's license 58
"County funds legally available" means county general fund 258
County health unit power supervisory only; final authority in local board of health 213
Each member of undertaking firm must be licensed; any person may sell undertaking supplies; corporation likewise; corporation cannot practice embalming 199

Page
Gratuity extended by one embalmer to another is not division of profits 142
"Itinerant" defined 188
"Itinerant vendor of drugs" defined 243
License required for the practice of cosmetology 174
Licensed barber as cosmetologist not itinerant even though called occasionally to other towns for work 136
Licensed dentist may own and operate more than one dental office, if under his own name 168
Not required to pay for analysis at state university laboratory .. 96
"Occupied spaces" defined 56
Patients returned by hospital, but yet requiring treatment, under charge of local board of health; cost thereof should be paid from poor fund 246
Where cosmetology fee is charged license must be procured 170
Where license has been revoked application for reinstatement should be made by the board 146

BOARD OF HEALTH—LOCAL. (See Township Officers)
City must pay expenses of investigation of source of typhoid fever 311
County health unit power supervisory only; final authority in local board of health only 213
May order treatment of any person infected with venereal disease and collect cost from person if financially able; if not, expense paid by the county 107
Patient returned by hospital, but yet requiring treatment, under charge of local board of health; cost thereof should be paid from the poor fund 246
Where investigation ordered by township board of health county liable for payment 81

BOARD OF PHARMACY EXAMINERS—
"Itinerant vendor" defined 243
Itinerant vendor includes one selling Watkins, Rawleigh and similar remedies from house to house 314
Itinerant vendor includes salesman of stock tonics 348

BOARD OF PAROLE—
Board, nor warden, has power to offer reward for apprehension of court parolee 258
Peace officers entitled to reward even though they have no order for apprehension of parole violator 47
Should pay necessary medical expense of absconding parolee 247

BOARD OF RAILROAD COMMISSIONERS—
Board does not acquire jurisdiction over truckers by publication of notice in newspaper 285
Franchise, may refuse or grant within discretion 122
See also Motor Carriers.

BOARD OF SUPERVISORS—
Advertisement for bids not necessary for purchase of road machinery; best practice however 70
Board of supervisors has no authority to modify court order allowing attorney fees in liquor injunction 68
Boards of supervisors may contract for medical care for the poor; only with licensed physicians, surgeons and dentists .. 310
Can make additional drainage assessment to pay deficiencies 197
Cannot construct and pay for culverts in cities and towns 325
Cannot purchase road equipment on the installment plan if purchase price exceeds collectible revenue for the year; may lease same at reasonable annual levy 292
Cannot redeem from tax sale property of soldier's widow for which exemption was not claimed 62

Page
Discretionary with board of supervisors whether or not township trustees maintain local roads..... 229
If trustee appointed as weed commissioner refuses to act he may be removed or compelled to act by mandamus..... 161
In publishing proceedings must include name of all claimants.. 257
May amend budget estimate, republish, and make additional levies at September session of board..... 192
May fix compensation of assessor; once fixed the board may increase but not diminish..... 115
May purchase right of way and anticipate primary road refund by issuing certificates therefor..... 116
May maintain supply depots..... 276
Members of board of supervisors not incompatible with member of school board..... 140
Must make levy as certified by secretary of agriculture for bovine tuberculosis eradication, not in excess of 3 mills..... 161
No authority to sell heat from court house plant to private individuals 317
Not necessary to publish items of expenditures of library fund which is made by the county board of education..... 155
Supplies furnished to county superintendent discretionary with board of supervisors..... 148

BOXING—
The collection of contributions or donations at a prize fight, where the contestants receive a prize, is a violation of the provisions of the boxing statute..... 126

BOVINE TUBERCULOSIS—
See Department of Agriculture.

BUDGET DIRECTOR—
Amendment of senate file 329, 43rd G. A. does not alter power of the director..... 129
Has no power to reject contemplated improvement; can recommend modification only..... 69
May amend decision making modification of the proposed plan for paving or other public improvement..... 162
May order transfer from secondary road maintenance fund to county road funds..... 245

BUILDING AND LOAN ASSOCIATIONS—
Board of directors or clerk of the district court may require increase of bonds of officers..... 279
In case of liquidation debts must be first paid; balance pro rated among members 250
Liquidated under Sec. 9365 Code, 1927..... 250

CEMETERIES—
Cemetery devoted to general public use may receive benefit of tax under Sec. 5562 Code..... 76
Tax levy should go to township clerk; mayor has no duty in connection therewith 247

CHIROPRACTOR—
Entitled to practice in county hospitals..... 250
Osteopath and chiropractor may certify children to be non-infectious from communicable disease..... 373

CITIES AND TOWNS—
Bailiff municipal court must account for fees received for serving notice 196
Board of park commissioners cannot anticipate revenues..... 196
Budget director has no power to reject contemplated improvement; can recommend modification only..... 69
Cannot authorize inside left turns..... 355

Page
Cannot prohibit sale of soft drinks and candies in pool halls.... 61
City assessor not entitled to expenses incurred in viewing property for fixing values, unless special contract with the board of supervisors 56
City held liable for fines and forfeitures collected and embezzled by clerk of the municipal court..... 252
City manager; councilman designated as mayor has same right to vote as other members..... 208
Cities under commission form not excused from examination by auditor of state. Sec. 6582 Code..... 92
City water bills cannot be spread on tax books of county..... 361
Council must pass ordinances appropriating proceeds of consolidated levy 288
Distribution of fees between cities, towns and counties discussed. 235
Exemption from poll tax for fireman applies only where service is rendered 373
Fees due municipal court returned on transcripted cases..... 360
Liability to county for care of prisoners is open account..... 217
Library board has exclusive control over expenditures, including erection, construction, and purchase of site..... 65
May maintain play grounds and recreation centers; cannot offer prizes 297
May provide by ordinance for city clerk..... 299
May sell abandoned city hall site..... 151
May take up water works bonds at a premium, if saving thereby. 119
Must comply with Sec. 363 Code in issuance of special assessment certificates 372
No authority for donations to patriotic associations..... 229
Offices of mayor and justice of the peace incompatible; city treasurer and secretary of school board not so; nor city attorney and justice of the peace; vacancy in office of mayor filled by council 48- 61
Ordinances imposing poll tax of $4, giving $1 discount for payment by a certain date, void..... 150
Park commissioner cannot sell to park commission..... 196
Proceeds of cemetery tax may be apportioned to cemeteries open to the public for burial purposes; cannot be used to gravel highways leading thereto..... 214
Required to publish proceedings..... 262
Toll bridges under jurisdiction of mayor or bridge commission.. 372
Under Sec. 6033 Code, first installment of special assessment due 30 days after date of levy; second installment on annual basis 50
Vacancies in nominations at city elections may be filled under Secs. 65a-11-a12 Code..... 71
Warehouse for explosives outside of corporate limits not in violation of law..... 371

CORPORATIONS—
All persons, associations and corporations issuing stock on the installment plan must qualify under Ch. 392, Code..... 119
All securities except those owned by bona fide owner must be qualified under Ch. 10 laws 43rd G. A..... 182
Application fee of corporation for registration under securities act retained whether or not application is granted..... 158
Cannot renew corporate period by amendment to articles..... 95
Charter for renewal may issue where statute has been complied with and rights of minority stockholders safeguarded..... 190
Corporations organized under the laws of Iowa which exchange one class of stock for another must comply with the provisions of Sec. 8413 et sequi Code..... 298

Page
Dealer under securities act defined 159
Exchange of stock one class for another held not an increase in authorized capital 137
Foreign corporation must qualify as trustee. Such action would not constitute doing business in this state 225
In issuing non par stock for property; executive council must appraise both property and stock value 149
Installment plan discussed; liability defined 129
Indebtedness; in view of Ch. 12, 43rd G. A., articles of incorporation need not specify limit of 192
Qualification under Ch. 392 does not relieve from qualifying under Ch. 10, 43rd G. A. 291
Secretary of state has power to determine whether articles of incorporation comply with the statute 304
Stockholder cannot take acknowledgment of chattel mortgage running to corporation 328

COUNTIES—
Boards of supervisors cannot sell heat from court house plant to private parties 317
Board of supervisors designates number of deputies and approves or disapproves appointment 379
Boards of supervisors may contract for medical care for the poor; only with licensed physicians, surgeons and dentists 310
Building used to store road machinery repaired or rebuilt from county general fund 76
Cannot anticipate funds except under Sec. 5259 Code 253
Cannot assume and pay illegal obligations of township incurred for road work 134
Complaint under Sec. 4005 may be filed in county where minor is found 77
"County funds legally available" for county health unit means county general funds 258
County wherein poor person has legal settlement must pay for his support 118
Indebtedness for court house not within 1¼% debt limitation 181
Information against incompetent filed in any county where alleged incompetent is found 178
May anticipate revenues of bridge fund for emergency expenditures 74
May issue bonds authorized before increased limitation 105
Notice of finding settlement of insane patient in another county mandatory; if not given, county of commitment liable 125
Not liable for torts of employees 62
Refunding bonds not subject to Sec. 363 Code 372
Statute of limitations on insane account runs from last payment by the county to the state 174
Where investigation ordered by township board of health, county liable for payment 81
Witnesses at insane hearings entitled to same fees as in district court 177

COUNTY ATTORNEY—
Board of supervisors has no authority to modify court order allowing attorney fees in liquor injunction 68
Not entitled to commission upon a fine until fine paid 65

COUNTY BOARD OF EDUCATION—
Superintendent may vote on all questions unless barred by Sec. 4163 Code 377
Term begins immediately after election and members must qualify within reasonable time 322

Page

COUNTY FAIRS—
Farm aid associations conducting fair entitled to state aid under Sec. 2905 Code 182
Proceeds of tax cannot be used for deficit in operation 369

COUNTY HOSPITALS—
Original bills should be certified to and filed with county auditor 96
Osteopaths and chiropractors entitled to recognition in 250
Premiums for liability insurance payable from hospital fund; expense of indigent patients cannot be paid from poor fund .. 201
Surplus in maintenance fund cannot be used for buildings 320

COUNTY OFFICERS—
Attorney entitled to fee in liquor injunction although second injunction against same individual; county attorney "prosecuting case" entitled to fee although not collected until after expiration of his term 42
Board of supervisors designates number of deputies and approves same 379
Clerk has no authority to fix penalty of bonds of administrators and executors 198
Clerk holds estate fees in trust; county not liable for wrongful payment 355
County attorney not entitled to commission upon fine until fine is paid 65
County attorney should advise county superintendent on appeals; if disqualified, application should be made to the board of supervisors for counsel 146
County attorney not entitled to commission on fines paid by jail sentence 192
County attorney not entitled to commission on forfeited bonds ... 198
County attorney entitled to fees in mulct tax cases under Sec. 1616 Code 199
County engineer and assistant salary payable out of county general fund, secondary road construction and/or maintenance fund 219
County engineer is not required to make certificate for transmission line 224
County engineer must keep accurate account of all expenditures .. 324
County superintendent may vote on all questions unless prohibited by Sec. 4163, Code 377
County treasurer cannot change or abrogate special assessment .. 369
Deputy must be resident of county 282
Deputy sheriff may execute sheriff's deed 84
Detachment of territory by county superintendent under house file 152 acts of 43rd G. A. mandatory; board of receiving district may accept therefor 127
Farm leases may be recorded 277
Fees paid under opinion of attorney general cannot be recovered. 344
First grade county certificate not sufficient for qualifications of county superintendent 168
If trustee appointed as weed commissioner refuses to act he may be removed or compelled to act by mandamus 161
Illegal fees collected by county recorder paid into county treasury 191
In county having two district courts deputy clerk in charge at sub-county seat entitled to compensation under Sec. 5236 Code 205
Lease providing for lien may be recorded as chattel mortgage .. 291
Neither sheriff nor county liable to prisoner for work done 245
Recorder may destroy chattel mortgage after 5 years 343
Recorder may file claims with chattel mortgage clause under Secs. 10017-8 Code 70

Page
Sheriff entitled to mileage earned prior to, but collected after, he leaves office 103
Sheriff is not liable for incarceration of persons arrested by city marshal 327
Sheriff killed while in performance of official duty entitled to compensation 137-270
Sheriff may retain rent for portion of residence furnished him by county 380
Sheriff required to comply with ruling of attorney general under Sec. 13416 Code in regard to photographing prisoners..... 66
Sheriff required to serve notices sent him from outside the state or county 59
Sheriff should make proper charges for foreclosure of chattel mortgages 100
Superintendent may hold one day institute with approval of superintendent of public instruction. (See Ch. 84-85, 44th G. A.) 305
Treasurers cannot make transfers of funds; only boards of supervisors with approval of budget director can do so..... 307
Treasurers in counties over 80,000 may proceed to collect delinquent personal tax immediately after delinquency and employ collectors 324
Treasurer may pay jurors, grand jurors and witnesses on their certificates and then attach all to claims of board of supervisors 257
Treasurer must issue duplicate receipts to purchasers at tax sale under provisions of Sec. 7266, and cancel erroneously issued receipts 43
Treasurer required to keep accounts secondary road construction and secondary road maintenance funds..... 116
Treasurer should issue duplicate tax deed where original is lost.. 371

COUNTY RECORDER—
See County Officers.

COUNTY SUPERINTENDENT—
See County Officers.

COUNTY TREASURER—
See County Officers.

CRIMINAL LAW—
Collections of contributions and donations at a prize fight where contestants receive a prize is in violation of criminal statute. 126
Punch board which dispenses U. S. postal cards and the possibility of other prizes in violation of Sec. 13198..... 230
Road house defined..... 157

DEPARTMENT OF AGRICULTURE—
Board of supervisors should appoint weed commissioner; if they fail, must do so at some future meeting; commissioner paid from county general fund in case of townships and city general fund in case of cities..... 139
Can require by mandamus levy of tax certificate by the secretary of agriculture for bovine tuberculosis eradication, not in excess of 3 mills..... 161
Chapter 64, acts 42nd G. A., does not require eggs to be sold under grades established 115
County entitled to indemnity on reactors slaughtered..... 312
Federal statute controls over state in case of conflict..... 201
Good faith joint ownership of unregistered stallion for use of joint owners not in violation of Sec. 2618 Code..... 157
If trustee appointed as weed commissioner refuses to act he may be removed, or compelled to act by mandamus..... 161

Page
Indemnity may be paid as pure breds for animals slaughtered, if an application for registration has been mailed and is accepted 92
Land owner required to cut weeds in open drainage ditch through land and on adjoining highways 152
Limitation on fruit trees and forest reservation applicable to both 217
One selling and administering stock remedies is practicing veterinary medicine 378
Owner not entitled to indemnity where reacting animal dies before slaughter 187
Temporary food stand must be licensed 328
"Tract" defined within meaning of noxious weed statute 179

DRAINAGE AND DRAINAGE DISTRICTS—
Assessments may be paid at any time and certificate holder must surrender certificates; certificate holder cannot proceed against county but may against property owner where assessment has not been paid 106
Assessments on roads may be paid from either construction or maintenance fund 169
Board of supervisors may abandon or close lateral drain; or may repair same at cost of benefited parties 194
Boards of supervisors may make additional assessments to pay deficiency 45
Board of supervisors may abandon uncompleted project, but must proceed in the same manner as for establishment 289
Board of supervisors cannot abandon district except by unanimous petition of land owners affected 306
Deficiency in funds caused by treasurer's failure to collect interest cannot be reassessed against property owner; deficiency could be collected from treasurer if negligent 108
Interest on bonds must be paid to the maturity thereof; to date of payment if paid before 73
Interest on drainage bonds should be paid for the balance outstanding after maturity 131
Lateral tile drains are ordinary laterals 283

ELECTIONS—
Arrangement of names of candidates in districts smaller than a county under Sec. 557 Code 313
Auditor has no discretion where certificate is regular upon its face 359
Boards of supervisors may fix bond election date 86
Candidate cannot verify his own nomination papers 313
Candidate may withdraw by resignation 347
Candidate may be either clerk or judge of election 357
Convention may nominate if any one was voted for in the primary 357
County central committee may nominate at any time before election 350
County convention cannot fill vacancy for subdivision of county .. 358
Electors desiring to vote by absent voters ballot must comply with permanent registration statutes 302
Electors in school election may vote by absent voters ballot; all qualified electors may vote at school election 79
General election ballot sufficient if column "independent" is provided 165
In cities having a permanent registration, commissioner of registration appoints clerks 241
In cities and towns having permanent registration the certificates of same are substituted for the poll books 303

Page
Judges and clerks cannot hand out stickers..... 316
Judges must determine delegates to convention by lot, if tie.... 316
Jury list made up from certificates signed and in hands of registration clerk 296
No limitation as to number of candidates..... 347
Party central committee cannot nominate where no nomination in primary for township offices..... 363
Petition for nomination must be filed or corrected not less than 30 days before election..... 359
Registrars act as clerks of election; Ch. 38, 43rd G. A..... 263
Registrar not entitled to extra compensation on election day.... 330
Separate poll book necessary where road bond election is held on the primary election day..... 314
Statute providing for certificate of nomination is mandatory.... 358
Stickers with names printed thereon may be used; board of supervisors acts merely as canvassing board..... 319
Two poll books required where precinct is composed of more than one township 320
Vacancies in nominations in city elections may be filled under Secs. 655-a11-12 Code..... 71
Vacancies in nominations for township officers filled under Sec. 614 Code 347
Where two republican nominees are certified from same senatorial district secretary of state should certify neither..... 349
Where voting machines will not carry all names, ballots must be used 347
Where vacancy occurs after election but before qualification board may fill vacancy..... 378

EMINENT DOMAIN—
Buildings situated on real estate considered in awarding damages 184
Condemnation jury is not jury within meaning of the constitution 59

ENGINEERS—
See County Officers.
A firm advertising themselves as "an engineering company" which does not contain as a member thereof any licensed engineer cannot use the name "engineering company"..... 151
Board cannot collect renewal fee until expiration of license..... 296
Upon reinstatement former licensee to pay current renewal fees only 375

EUGENICS BOARD—
Expenses for, payable through retrenchment and reform committee 242

EXECUTIVE COUNCIL—
Annual inspection and license fee of dams not collectible before construction 284
Duty to furnish quarters for state departments; may rent quarters if necessary..... 101
License issued for construction of a dam may be cancelled upon surrender of the permit..... 77
Person not licensed engineer cannot use the name "engineering company" 151

FAIRS—
See County Fairs.

FARM AID ASSOCIATIONS—
Chapter 80, laws 43rd G. A., removes disability of supreme court decision in Jefferson County Farm Bureau vs. Board of Supervisors 152
Entitled to state aid under 2905, if it conducts a county fair.... 182

Page

FIRE MARSHAL—
Officer reporting fire entitled to fee of 50c regardless of number of buildings destroyed 268

FISH AND GAME—
Advisory board appointed by governor unauthorized..... 175
Affidavit under Sec. 1676-a2 Code may be filed at any time within 10 days after receipt of wild game or animals..... 79
Assistant and deputy game wardens entitled to fees for service of process issued out of municipal court as the bailiff..... 73
Bag limit for pheasants three birds per day; legal possession limited to ten birds..... 212
Bullheads are not game fish..... 281
Calibre .410 Stevens shot gun classified as shot gun under fish and game laws..... 232
Dealer required to secure permit tags even though he has license prior to effective date of act..... 362
Dealer who ships furs for owner not required to secure permit tags 361
Fish and game fund not available for removal of algae unless in interest of fish life..... 72
Fishing license required in meandered lakes, streams and stocked waters 164
Frogs not protected by statute except use for bait..... 42
Hunting license may be issued to minors..... 309
Land owner may lease premises for trapping purposes..... 213
Nets with mesh less than 2½ inches subject to seizure..... 363
No authority for refunding license fees..... 238
No authority for destroying black suckers..... 310
One who secures title to furs by attachment may dispose of same. 255
Open season covers licenses whether issued before or after effective date of the act..... 239
Owner of private preserve may spear or sell fish..... 128
Private fish pond owner who sells fish must have license..... 343
Rock bass are game fish..... 308
State waters defined..... 153
Statute prohibits the use of shot gun but not other firearms in killing fur bearing animals..... 240
Tenant, owner, wives or children not required to have license to hunt on lands owned or occupied by them..... 226
Trapper required to file inventory; dealer subject to prosecution if he knows purchased hides illegally taken or held... 259
Traveling representative soliciting hides for tanning purposes must secure permit..... 249
Trot lines illegal. See Sec. 1734 Code..... 153
Unforeseen contingency may be paid for out of fund provided by Sec. 1717 Code..... 243
Use of shot gun prohibited in taking fur bearing animals; no prohibition against use of dogs..... 227

GAMBLING—
See Criminal Law.

GENERAL ASSEMBLY—
Amendment to bill cannot be made after it is sent to the governor, but before it has been signed by him..... 94
Cannot pay chief clerk for preliminary organization work..... 124
Discussion of right of lieutenant governor to vote..... 50
Expressions "with approval of two-thirds of the members of the senate," etc., construed..... 52
Member thereof would forfeit membership by accepting employment by the state or a department thereof..... 135
Power of legislative committee not specially appointed..... 90

HIGHWAY COMMISSION— Page
Easements for road purposes should be recorded in the county auditor's office 98
Not authorized to employ traffic patrolmen for primary roads.... 143
INHERITANCE TAX—
Appraisers cannot appraise property outside county of residence. 275
Fees and mileage to be collected by inheritance tax appraisers under Sec. 1219, Code 1927..... 149
See also Taxation.
INDIGENTS—
Complaint under Sec. 4005 Code, may be filed in county where indigent minor is found..... 77
Court committing indigent patient to state hospital may also commit unborn child..... 218
(See also Ch. 82, 44th G. A.)
INDUSTRIAL COMMISSIONER—
Special deputy sheriff entitled to benefit of Sec. 1422 Code..... 137
INSANE—
County cannot purchase real estate to protect claim for insane support 224
Expenses attending arrest, etc., chargeable to county of legal settlement 275
Information may be filed in any county where alleged incompetent is found 178
Neither insane person, nor those responsible for his support, are liable for the costs in connection with hearing before commission 75
Notice by county mandatory where settlement is found in another county; without which county of commitment is liable..... 125
Parents liable for support of incompetent, whether minor or not.. 356
Statute of limitations on liability for insane care runs from last payment by county to state..... 174
Witnesses at hearing entitled to same fee as in district court.... 177
INSURANCE AND INSURANCE COMMISSIONER—
Commissioner not personally liable for loss of securities in the absence of negligence..... 40
Fraternal society not permitted to exchange real estate for long time lease 264
Insurance companies not authorized to invest in municipal trust ownership certificates 158
Insurance corporation must renew charter under Sec. 8365 Code. 238
Mutual assessment associations discussed..... 294
INTOXICATING LIQUOR—
Board of supervisors has no authority to modify court order allowing attorney fees on injunction..... 68
Druggist required to file form 1455-a unless federal law exempts. 360
Fees allowed injunction cases even though second injunction against same defendant; and collectible by county attorney prosecuting same even after he leaves office; injunction state wide in effect..... 42
Installment plan of paying fine is unauthorized; no fees on bond forfeiture unless specific provisions in the bond..... 54
Permit cannot be granted to drug store serving sandwiches, coffee and pie 186
JUSTICES OF PEACE—
May order new trial where jury disagrees..... 288
LABOR AND LABOR COMMISSIONER—
Child under 16 years of age not permitted to work in restaurant, even though owned and operated by parent..... 169

LEGAL SETTLEMENT— Page
"Residence" defined with reference to dependents.....283-286
LIEUTENANT GOVERNOR—
Discussion of right to vote..... 50
MINES—
Rock quarry not mine within statute..... 57
Working place includes the roadway or spur into room..... 97
MISCELLANEOUS—
Newspaper published where deposited for distribution..... 334
MORTGAGES—
County recorder may destroy filed chattel after 5 years..... 343
MOTOR CARRIERS—
Operated under Ch. 252-a1 not affected by Ch. 128, 43rd G. A., removing speed limit..... 167
Persons requiring permits discussed..... 260
Ton mile tax computed on licensed capacity basis, not manufacturer's rated capacity..... 165
MOTOR VEHICLES—
Boys' welfare association car not exempt from license fee..... 42
Chauffeur's license required of driver of truck who also solicits accounts..... 261
Claim for refund on junked cars cannot be required to be filed by July 1st..... 251
In hands of used car dealer and licensed not to be taxed as merchandise..... 265
Judgment in justice courts not final within provisions of Ch. 117, 43rd G. A..... 177
Person whose license has been suspended or revoked must pay full license fee and penalty at end of suspension..... 49
Reconstructed motor vehicle again placed upon the highway cannot obtain license for portion of year..... 163
Semi-trailer is motor vehicle..... 274
Trackless trolley motor vehicle, must be licensed..... 258
Trailer with loading capacity of over 1,000 pounds subject to license..... 362
Validity of chattel mortgage on motor vehicles seized for conveyance of intoxicating liquor determined by court..... 134
MUNICIPALITIES—
See Cities and Towns.
OSTEOPATHS—
Entitled to practice in county hospitals..... 250
Osteopath and chiropractor may certify children to be non-infectious from communicable disease..... 373
PEACE OFFICERS—
Peace officer entitled to reward even though he has no order for apprehension of parole violator..... 47
Special deputy sheriff entitled to benefits of Sec. 1422 Code..... 317
PERMANENT SCHOOL FUND—
City held liable for fines and forfeitures collected and embezzled by clerk of municipal court..... 252
POOR, CARE OF—
County cannot collect from widow moneys advanced to her as a pension upon her inheritance of property..... 216
Legal settlement of children same as parents..... 286
Legal settlement discussed..... 283
Overseer of, may also be social worker..... 341
PUBLIC CONTRACTS—
Claims for work and labor on highway improvements filed with auditor of state, forwarded to state highway commission. Memorandum retained by auditor..... 142

PUBLIC FUNDS— Page
Proceeds of sale of bonds cannot be invested under Sec. 12775-b1 Code 229

PUBLIC OFFICERS—
City park commissioner and members of school board not incompatible 214
Judge of superior court and inheritance tax appraisers not incompatible 237
Officer of board of supervisors and board of education not incompatible 140
Office of constable and road patrolman incompatible..... 46
Office of county attorney and city solicitor not incompatible.... 91
Office of deputy sheriff without pay, and city policeman not incompatible 91
Senators and representatives in congress not state officers; therefore not entitled to free copies of the Code..... 129

REAL ESTATE COMMISSIONER—
Agent who is financial correspondent and who sells real estate on commission basis for insurance company must procure license 249
Auctioneer selling real estate must procure license..... 255
License not required for company engaged in mortgage loan business whose regular employees manage and sell company's real estate 248
May require written examinations to determine competency of applicants 326
Person admitted to practice law not required to have real estate license 332

RETRENCHMENT AND REFORM COMMITTEE—
May order transfer of funds for expenses of eugenics board.... 242
May order transfer for use of real estate commission..... 247

ROADS AND HIGHWAYS—
Anticipation of secondary road fund limited to 50% of construction fund 189
Assessment district for improvement of secondary roads not abolished by Ch. 20, 43rd G. A..... 220
Board of supervisors may fix bond election date..... 86
Board of supervisors may establish secondary road improvement districts irrespective of lapse of time..... 122
Bridge on abandoned roadway belongs to county..... 333
Cities and towns not entitled to representation on board of approval 254
Construction of side walks or streets cannot be paid for from maintenance fund of Iowa State Board of Education; may be paid for from general improvement fund..... 183
Construction or maintenance work due various townships by reason of credit for road improvement, paid out of secondary road and/or maintenance fund under Ch. 20, 43rd G. A..... 221
Contracts for material for bridge construction need not be approved by highway commission; contracts for road construction must be so approved..... 285
Cost of engineering on co-operative improvement of primary and secondary highways may be paid from proceeds of bonds voted, and not from the general fund of the county..... 52
Cost of grading, bridging, graveling and maintaining county trunk system chargeable to fund of which road is continuation 271
Counties cannot anticipate refunds from primary road fund; all refunds accrue to secondary road construction fund. Ch. 20, 43rd G. A..... 215
County engineer must keep an account of all expenditures..... 324

Page
County must furnish bridging to agricultural field..... 339
County primary road bond redemption and interest fund derived from special levy may be transferred to county general fund, but premium received from sale paid on the principal..... 78
Counties share of township road assessment payable from 35% secondary road construction fund..... 238
Date fixed for turning over funds from township to county treasury directory only..... 214
Discretionary with board of supervisors whether or not township trustees maintain local roads..... 229
Distribution of maintenance fund within discretion of board of supervisors. Ch. 20, Sec. 35, 43rd G. A..... 228
Drainage assessments against secondary roads payable in accordance with Sec. 76, Ch. 20, 43rd G. A..... 277
Equipment and machinery may be bought from construction or maintenance fund; Sec. 43, Ch. 20, 43rd G. A., applies to materials only 237
Error in charge of assessment on road district may be corrected. 240
Funding or refunding bonds not affected by Ch. 20, 43rd G. A..... 193
Legislature alone has authority over public highways for purposes other than travel..... 346
Limitation of indebtedness not changed by S. F. 480, 43rd G. A... 123
Local county roads but not bridges and culverts may be maintained by trustees under authority of board of supervisors.. 254
Mandatory on board of supervisors to improve road or street continuation of county trunk system. Ch. 20, Sec. 48, 43rd G. A. 256
Mandatory secondary road construction levies cannot be anticipated by secondary road bonds. (See Dee vs. Board of Supervisors, 209 Iowa 1341)..... 155
May condemn land for borrow pit..... 340
Poll tax due if age of 21 reached prior to October 1st..... 269
Primary road fund cannot be anticipated or pledged to assist in extension of improvements in cities and towns..... 175
Proceeds of bonds not needed in the improvement may be used to retire bonds..... 282
Refunding bonds may be issued without complying with Sec. 363 Code 353
Right of way acquired under provisions of Ch. 241-b1 may be paid for under provisions of Sec. 4755-b5 by issuing certificates anticipating the revenue to be refunded..... 116
Road established prior to effective date Code 1851, has width established; if since that date statutory width is 66 feet; land owner acquires no rights by encroachment upon highway 120
Road equipment turned over to county for legal obligations paid by it; if trustees maintain local roads depreciation and depletion of equipment chargeable on annual basis..... 262
Salary county engineer and assistants payable out of county general fund or secondary road and/or maintenance fund..... 219
Secondary road construction material chargeable to construction fund; repairs to maintenance fund..... 200
Secondary road construction fund apportioned by board of supervisors 251
Secondary road construction program subject to approval of board of approval..... 315
Secondary road construction fund set aside for local roads can be expended only with approval of board of approval..... 351
The 35% of secondary road construction fund pledged to local roads must be equitably distributed..... 264

Page
Transfers may be made from secondary road maintenance fund to county road funds with approval of the director of the budget 245
Trees cut on highway cannot be piled on adjoining lands..... 332

SCHOOLS AND SCHOOL DISTRICTS—
Annuity and retirement fund cannot be placed with insurance company under contract; teacher may volunteer more than 1% 334
Appeal cannot be taken from refusal of county superintendent to revoke certificate 208
Appeal will not lie from refusal of consent under Sec. 4274 Code, Field vs. Samuelson, 233 N. W. 687.....
Apportionment under Ch. 107, acts 43rd G. A., means pro rata apportionment 330
Architects' fees may be paid from the proceeds of bonds voted.. 54
"At a general election" as used in senate file 78, 43rd G. A., means regular school election..... 121
Attendance by non-resident discretionary with the board..... 377
Board cannot buy supplies from corporation whose managing officer is a director..... 335
Board has discretion either to furnish transportation, or compensation therefor, where school is closed for lack of pupils.. 211
Board may direct treasurer where and in what amounts to deposit school funds (See Ch. 2, 44th G.A.)..... 87
Board may establish play ground..... 335
Board may excuse person over 21 years of age from paying tuition 147
Board may prohibit smoking within reasonable distance of school grounds 337
Board may purchase real estate for school purposes from a member thereof 93
Bonds, or taxes voted for building, and equipping building cannot be used for purchase of site; proposition submitted should conform to petition and notice..... 44
Cannot loan or lease school property for parochial school..... 212
Cannot pay group insurance premium for teachers..... 256
Child placed under contract by board of control, or paroled from industrial school, becomes resident of school district for school purposes 57
Clause providing for termination of teacher's contract on 20 days' notice by either party valid and enforceable. (See Miner vs. School Dist., 234 N. W. 817)..... 185
Combined course in American history and constitution of the United States and of the State of Iowa, not sufficient to comply with Sec. 4256 Code..... 62
Consolidated district may transfer funds under the provisions of Sec. 4241..... 54
Consolidated school bus subject to road limitations prescribed by highway commission..... 300
County superintendent cannot require board to operate a school.. 222
County superintendent may conduct one day institute. (See Ch. 84-85, 44th G. A.)..... 305
County superintendent may call election to fill vacancies without court procedure to determine status of directors..... 87
County superintendent may vote on all questions unless prohibited by Sec. 4163 Code..... 377
Detachment of territory under conditions described in house file 152, acts 43rd G. A., mandatory; board of receiving district may act therefore..... 127
Discretionary with board whether junior college be established.. 269

Page
District liable for tuition for attendance period, if absent work is made up 336
District may vote on levying school house tax at special election. 304
District may vote tax for a term of years, subject to recision if no vested rights attach 304
Electors may vote by absent voters' ballot; all qualified electors may vote at school election 79
Electors may direct sale or other disposition of property owned by the district 244
Fine for violation of attendance law may be satisfied by imprisonment 329
First grade county certificate not sufficient for county superintendent 168
Independent district formed when vote is canvassed; thereafter township board has no jurisdiction 184
Inmates at juvenile home and Iowa Soldiers' Orphans' home may be counted in school census 160
Library fund may be expended for approved magazines 186
May abandon pension or annuity system 86
May employ teacher for any number of months and pay compensation on calendar year basis 375
May enter into contract for leasing building for junior college, and may maintain the same, but cannot bind subsequent boards to do so 89
May levy $80 per pupil and up to $1,000, if necessary and in addition tuition expense of pupils attending high school outside of the district 204
May maintain junior college and pay portion of the expense from tax levied within per pupil limitation 67
May purchase real estate from member of the board upon appraisal; may also condemn 146
Member not entitled to mileage for attending board meeting 187
Members of board and secretary subject to penalty and removal from office for refusal to publish financial statement. Ch. 100, 43rd G. A. 336
Members of board of supervisors not incompatible with member of school board 140
Neither board nor members thereof liable for damage for injury to person on rented or owned premises 267
Newspaper is published where deposited for circulation 334
Not liable for injury to child transported to and from school 341
Nurses, doctors and dentists not subject to teachers' annuity unless actually teaching 312
Osteopath or chiropractor may certify children to be free from infectious or communicable disease 373
Petitioners for consolidation may withdraw up to time of hearing; affidavit from each county required where territory lies in more than one 329
Prosecution under Sec. 4297 Code may be done by school board or attendance officer 266
Reduction in curriculum which would remove school from approved list releases home district from liability for tuition .. 167
Right to use real estate for school purposes is valid consideration for quit claim deed 56
Rule automatically suspending pupil failing to pass in two subjects unreasonable 74
School districts may anticipate revenue to the extent of taxes levied 54
Secretary of board and city treasurer not incompatible 48
Secretary is within soldiers' preference law 157

Page
Separate ballot boxes for consolidated districts and proposed added territory 340
Section 4191 is limitation upon Sec. 4135 relating to boundary lines of school districts. (See also 206 Iowa 1183)..... 141
Stranger to appeal before county superintendent cannot appeal to the state superintendent..... 132
Superintendent or janitor not "official" within Secs. 13301-2 Code; member of board is..... 165
Teacher cannot wear distinctive garb of religious denomination while teaching 338
Tenant is not an employee or appointee under provisions of Ch. 215-c1 Code..... 280
Treasurer cannot deposit bond proceeds in trust; must deposit same in designated depositary..... 172
Where school is closed for lack of attendance boards must furnish transportation for kindergarten pupils..... 207
SECRETARY OF STATE—
Fees and charges discussed..... 98
Fur bearing animal contracts violation of securities act..... 176
See several departments of office of secretary of state.
SHERIFF—
See County Officers.
SOLDIERS—
Adoption of child of soldier does not destroy right of tax exemption under 6946 (5) Code..... 135
Entitled to relief if domiciled in county..... 47
Exemption may be claimed by widowed mother of World War veteran 374
Legal residents defined..... 72
Memorial building subject to use by all service organizations.... 231
Property for which exemption is not claimed cannot be redeemed by board of supervisors..... 62
Relief is not pension, but only temporary relief..... 234
Soldier's widow entitled to apply tax exemption on life estate.... 81
SOLDIERS' PREFERENCE—
Secretary of school board under soldiers' preference law..... 157
STATE BOARD OF ASSESSMENT AND REVIEW—
May prescribe forms for assessors..... 361
May reconvene county board of review or local boards of review or change assessment of any property..... 195
STATE BOARD OF EDUCATION—
Cannot pay city for fire protection. (See Ch. 69, 44th G. A.).... 215
Cannot pension instructors..... 242
Construction of side walks or streets cannot be paid for from maintenance fund of Iowa State Board of Education; may be paid for from general improvement fund..... 183
Court committing indigent patient to state hospital may also commit unborn child..... 218
Has neither power nor authority to employ fireman of city fire department nor to pay salaries of same..... 180
Hospital authorities may restrain patient transferred from institution under board of control to state hospital..... 232
May purchase materials from corporation of which member is a stockholder 207
May turn over moneys withheld under Sec. 10313 Code after expiration of time..... 148
May sell personal property without approval of executive council. 306
Nonresident not entitled to treatment at state hospital; legal residence defined 153
Repairs to psychopathic hospital payable out of physical plant operation appropriation 219

Page

SUPERINTENDENT OF PUBLIC INSTRUCTION—
See Schools and School Districts.
TAXATION—
Agreement to pay, taxable as moneys and credits..... 342
Agricultural lands in tracts of 10 acres or more within cities which control their own bridge levies subject to 5 mill levy.. 236
Annuity taxable in taxing district where annuitant resides..... 315
Apartments or dormitories owned or rented by a railroad company, not used in the operation of its business, taxed as the property of an individual..... 93
Apportionment of losses under Sec. 5169-a1-a10 Code should be upon basis of taxable value of all property including moneys and credits 86
Assessment for street or sewer improvement may be paid at any time; interest computed to date of payment only..... 262
Bank can deduct real estate only as shown by its books..... 351
Banks not entitled to deduct depreciation..... 240
Board may refund tax erroneously paid where taxpayer is entitled to reduction for moneys and credits..... 206
Board of supervisors cannot remit tax on property destroyed by fire, if insured..... 101
Board of supervisors does not have power to cancel or remit taxes to soldiers, etc., unless application is filed with assessor, or board of supervisors..... 178
Capital stock of telegraph and telephone companies not assessable. See Ch. 336 Code..... 83
Change in method of taxation becoming effective April 17, does not affect taxation of property for that year; the assessment being made as of January 1..... 110
City may redeem from scavenger sale..... 280
City water bills cannot be spread on tax books..... 361
College is entitled to exemption from taxation on land owned on January 1. (See Iowa College vs. Knight, 207 Iowa 1238).. 85
Cost of appeal from local board of review not chargeable to the county 84
Cooperative association subject to taxation upon personal property 200
County may anticipate revenues of bridge fund for emergency expenditures 74
County treasurer has no authority to change or abrogate special assessment 369
County treasurer must issue duplicate receipt to holder of tax sale certificate of subsequent taxes under provisions of Sec. 7266 Code 43
Deficiency in drainage assessment by reason of treasurer's failure to collect interest to maturity date of bonds cannot be reassessed against the property assessed; treasurer liable on his bond for failure to perform duty..... 108
Delinquent personal taxes in estates preferred as claims of the second class 188
Delinquent special assessment installments subject to interest after delinquency, and penalty..... 145
Drainage assessment may be paid at any time and certificate holder must surrender certificate; cannot be collected from county but certificate holder may proceed against property owner 106
Duplicate tax deed should issue where original is lost..... 371
Endowment fund for benefit of aged ministers not exempt from taxation 45
Error by assessor can be corrected only by local board of review.. 308
Executors and administrators not liable for taxes against the estate, except inheritance taxes..... 216

Page
Failure to sign assessment roll does not invalidate assessment. (See Ch. 245, 44th G. A.) 281
Fees and mileage to be collected by inheritance tax appraisers under Sec. 1219, Code 1927 149
Fruit tree reservation exempt from taxation; owner cannot divide same among members of his family to avoid tax 306
Fruit tree reservations apply whether within or without incorporated town or city 140
Grain in branch elevators assessed under Sec. 6965; stored in warehouse reported, under Sec. 6973 63
Interest on drainage should be paid for the period outstanding.. 131
Lien on stock of merchandise liability of purchaser 64
Mines in operation are taxable as real estate 80
Moneys and credits in hands of executor for investment listed where executor lives 104
No provision for compensation to township clerk for collecting poll tax 234
Nursery stock taxed as a part of the land, if growing thereon; as personal property when growing in containers separate therefrom 118
Parking station where charge is made, partly for police protection and the balance to charity, would not make property used exempt from taxation under Section 6944 (9) (3) 117
Person moving from one district to another is subject to poll tax in the new district if he has not already paid same 309
Person not 45 years of age on January 1 subject to poll tax for that year 291
Plot of ground used for buildings not taxable as fruit tree reservation 175
Poll tax exemption to firemen applies only to cities or towns where service is rendered 373
Poll tax does not bear interest and penalty 250
Proceeds of insurance on merchandise subject to taxation as moneys and credits 290
Real estate entered exempt class after January 1st, cannot be sold for taxes (See Iowa College vs. Knight, 207 Iowa 1238). 171
Real estate of Indians subject to tax for state purposes 301
Refund under Sec. 7235 does not include interest accrued or costs incurred subsequent to payment of illegal taxes 51
Remission of taxes on property partly destroyed by fire available to owner only 352
Reserve officers not entitled to exemption from poll tax 274
Right of child to soldier's tax exemption not destroyed by adoption 135
Shares of revocable trust taxable as moneys and credits 180
Soldiers' exemption applies only "while such person remains the owner of the property" 321
Soldier's widow entitled to apply exemption on life estate 81
Special assessment for drainage tax erroneously omitted from tax list is not a lien 87
State Board of Assessment and Review may reconvene county or local board or change assessment on any piece of property.. 195
State Board of Assessment and Review may specify forms for assessors 361
Statute of limitations does not apply on collection of delinquent personal property tax by distress and sale 132
Stock in foreign corporation taxable as moneys and credits 336
Subsequent purchaser at tax sale or by direct purchase must pay suspended taxes 350
Subsequent sale of property after a fire would not preclude the

Page
board of supervisors from remitting taxes thereon. Sec. 7237 Code 136
Tax ceases to be a lien unless carried forward; personal tax may be cancelled at any time after same becomes due..... 231
Taxes received from scavenger sale apportioned under Sec. 7256 Code 255
Tax payer cannot deduct assessment due for drainage purposes from moneys and credits list..... 113
Tax payer has no right to appeal from increased assessment if he fails to appear before local board of review..... 325
Tax sale should be cancelled, where no action to secure deed for 8 years or more..... 187
Telephone companies taxed on mileage basis whether poles or underground conduits 66
Transfer of funds under consolidated levy may be made without the approval of the budget director if within the same fund. 352
Treasurers in counties of 80,000 or over, may proceed to collect first half of the delinquent personal tax immediately after delinquency 324
Trustee or guardian personally liable for taxes on estate..... 283
Under Sec. 6033 Code, first installment of special assessments due 30 days after date of levy; second installment on annual basis 50
Where duplicate certificates have been issued for same tract of land the duplicate should be surrendered and refunds made. 307
Widowed mother of World War veteran entitled to exemption.. 374
Y. M. C. A., etc., not educational, but charitable or religious, institutions 373

TELEPHONES—
Company waives legislative franchise by accepting city franchise 370

TOWNSHIPS AND TOWNSHIP OFFICERS—
Clerk has no duties in connection with handling of road funds under Ch. 20, 43rd G. A..... 252
Clerk has no duties to perform in handling road funds; hence no bond is required..... 257
County cannot assume illegal obligations of a township..... 135
Indebtedness and validity thereof discussed..... 170
Local health physician entitled to compensation from county for services in inspection of school buildings..... 82
New trial in justice court where disagreement of jury..... 288
No provision for deputy assessor..... 269
No provision for compensating township clerk for collecting poll tax 234
Office of constable and road patrolman incompatible..... 46
Township may accept cemetery property as gift and thereafter maintain same 76
Trustee entitled to per diem but not mileage for conference with board of supervisors in regard to new law..... 103
Trustees may levy tax on incorporated town within township; should not contract with township board..... 232
Where no nomination was made, party committee cannot nominate 338

TRADE MARKS AND TRADE NAMES—
Nothing of "distinctive character" in use of color alone..... 100
Scheme emphasizing the numeral "5" may be registered as a trade mark 233

TREASURER OF STATE—
Inheritance tax appraisers entitled to 50 cents per hour and 5 cents per mile of distance traveled..... 149
Power to grant cigarette license discretionary..... 323

Page
Surviving partner may continue business under partnership cigarette permits 93

TUBERCULOSIS—BOVINE—
See Department of Agriculture.

VOTERS—
See Elections.

WEEDS—
See Department of Agriculture.

WIDOW'S PENSION—
One year's bona fide residence prerequisite to application..... 154
Paid from poor fund in counties less than 80,000 population.... 339
Wife of parolee not entitled to widow's pension..... 225

WITNESSES—
Insane hearing entitled to same fees as in district court..... 177

WORKMEN'S COMPENSATION—
See Industrial Commissioner.
Town marshal assisting sheriff in making arrest entitled to.... 353
Vigilante, not in active service, not entitled to..... 317
Widow cannot be substituted in arbitration proceedings pending at death of workman; legal representative may be substituted. Widow may intervene..... 271