ELECTIONS. Challengers at municipal elections -- There is no authority for the presence of challengers at the counting of ballots in non-partisan municipal elections.

January 17, 1962

Mr. Edward F. Samore
Woodbury County Attorney
204 Court House
Sioux City, Iowa

Dear Mr. Samore:

This will acknowledge receipt of yours of the 20th, ult., in which you submitted the following:

> "Your opinion is respectfully requested on the situation arising from the recent 1961 municipal elections concerning the problem of the presence of challengers during the counting of the ballots. You will recall our municipal elections are non-partisan. On November 7th I called your office following the demand of one of the candidates to have such challengers present. Such claim arose purportedly from Section 49.104, 1958 Code of Iowa.
>
> "Your opinion is requested as to whether or not in municipal non-partisan elections such as those held in Sioux City, Iowa, candidates are permitted the presence of challengers at such elections during the counting of ballots.
>
> "Your opinion is also requested as to whether or not under any such circumstances the Clerk of the City of Sioux City would have the authority to issue the certificates to each candidate for use by his challengers if such challengers were permitted."

In reply thereto, I advise as follows.

There appears to be no express provision in Chapter 363 devoted to the statutory authority and direction in the conduct of municipal elections with respect to the presence of a challenger in the counting of ballots. The only provision for challengers to be present at the counting of ballots at any election (other than the provision for double counting boards set up in Chapter 51, Code of 1958) is that provided by Section 49.104, Code of 1958, in terms as follows:

> "49.104 Persons permitted at polling places. The following persons shall be permitted to be present at and in the immediate vicinity of the polling places, provided they do not solicit votes:
>
> "1. Any person who is by law authorized to perform or is charged with the performance of official duties at the election.
>
> "2. Any number of persons, not exceeding three from each political party having candidates to be voted for at such election, to act as challenging committees, who are appointed and accredited by the executive or central committee of such political party or organization.
>
> "3. Any number of persons not exceeding three from each of such political parties, appointed and accredited in the same manner as above prescribed for challenging committees, to witness the counting of ballots."

These provisions, and specifically the provisions of subsection three thereunder, are not operative in a non-partisan municipal

election, and it is quite apparent from its terms, notwithstanding the pertinent provisions of Section 363.26, Code of 1958, in terms as follows:

> "363.26 Municipal election procedure. The municipal election shall be conducted in the manner provided by law for conducting general elections."

Political parties and membership therein are not involved in the conduct of a non-partisan municipal election. I, therefore, answer your request as follows.

1. Candidates of a non-partisan municipal election are not permitted the presence of challengers at such election during the counting of ballots.

2. In view of the conclusion reached in answer to your question 1., there appears no reason to answer your query 2.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS: Steward of County Home -- A corporation is not eligible to be steward of a county home as the duties to be performed by the steward are personal services that could be performed only by him.

January 15, 1962

Mr. Harold B. Heslinga
Mahaska County Attorney
118 North Market Street
Oskaloosa, Iowa

Dear Mr. Heslinga:

This will acknowledge receipt of yours of the 28th., ult., in which you submitted the following:

> "The Steward of our County Home desires to incorporate in order to limit liability in case of suit.
>
> "I would appreciate an opinion as to the legality of our Board of Supervisors appointing such a corporation, under Section 253.4 of the Code of Iowa, to act as Steward of the County Home."

In reply thereto, without elaboration upon other reasons for concluding that a corporation is not eligible to be steward of a county home, it seems sufficient to state that in view of the fact that corporations act only through agents that in the event of such appointment the corporation's agents would be just that and not county agents. Plainly, the duties to be performed

by the steward are personal services that could be performed only by him.

The answer is plainly in the negative.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS: County Board of Supervisors -- In proceedings before the Board of Supervisors, there are no requirements that a nomination of an appointive county office bare a second.

January 8, 1962

Mr. William Stuart Charlton
Delaware County Attorney
Manchester, Iowa

Dear Mr. Charlton:

This will acknowledge receipt of yours of the 2nd, insti, in which you submitted the following:

> "Pursuant to my phone call of January 2, 1962, the Delaware County Board of Supervisors has requested me to ask you for an official opinion on the following question:
>
> "(1) May a duly elected Chairman of a three member Board of Supervisors second a motion made by one of the other members thereof?
>
> "(2) If the answer to Question One is in the negative, may the Chairman yield the chair by appointing either other member of the board as temporary chairman with the chair immediately reverting to him after he has seconded the motion?
>
> "As orally advised, we request a written opinion on or before January 8th, 1962, as the Board has adjourned its regular meeting until said date."

In reference to the foregoing I advise as follows.

1. With reference to the proceedings before the Board of Supervisors, it was said in the case of Thorson v. Board of Supervisors, 249 Iowa 1088:

> "(7) We have said at least three times in cases generally like this that the requirements imposed by statute upon an inferior tribunal should not be too technically construed, lest its efficiency be

> wholly paralyzed. In re County Drains v. Long, 151 Iowa 47, 50, 130 N. W. 152,153; Morrow v. Harrison County, supra, 245 Iowa 725, 740, 64 N. W. 2d 52, 61; Johnson v. Monona-Harrison Drainage Dist., supra, 246 Iowa 537, 550, 68 N. W. 2d 517, 525. We have also said proceedings before a board of supervisors and like tribunals are necessarily informal and courts are not disposed to review them with technical strictness. Harris v. Board of Trustees, supra, 244 Iowa 1169, 1176, 59 N. W. 2d 234, 238, and citation."

2. The Board has the power to adopt its own rules, not inconsistent with law, as it may deem necessary for its own government. See Section 332.3 (2). It does not appear to be a prerequisite in making use of the foregoing Statute that its rules be formalized, but may be informal and made to enable the Board to perform its statutory duties.

3. Robert's Rules of Order, revised 1951, at page 37 provides:

> "The following do not require a second:
>
> ". . .
>
> Nominations
>
> . . . "

4. There appears to be no statutory requirement that a nomination for engineer before the Board be seconded, and as a matter of fact the Statute authorizing such appointment appears to contemplate informal action by the Board. Such Statute, Section 309.17, Code of 1958, provides the following:

> "309.17. Engineer--term. The board of supervisors shall employ one or more registered civil engineers who shall be known as county engineers. The board shall fix their term of employment which shall not exceed three years, but the tenure of office may be terminated at any time by the board."

The use of the word "employ" in the foregoing Statute would justify drawing an inference that specific formal action is not required in making the appointment.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:rm

STATE OFFICERS AND DEPARTMENTS. Iowa Public Employees' Retirement System. -- The interest of a member of the Iowa Public Employees' Retirement System is not subject to federal levy by distraint.

January 8, 1962

Mr. Marvin R. Selden, Jr.
Comptroller
L O C A L

Dear Mr. Selden:

This will acknowledge receipt of yours of September 11, 1961, in which you submit the following:

> "Chapter 97B.39, Code of 1958, states:
>
> 'The right of any person to any future payment under this chapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. These moneys shall also be exempt from taxation, either as income or as personal property.'
>
> "We have been served with a levy by the Internal Revenue Service on an Iowa Public Employees' Retirement refund. We request your opinion as to whether we are required to make the levy against funds of the Iowa Public Employees' Retirement System."

In reference to the exemption from "execution, levy, attachment, garnishment, or other legal process," provided by Section 97B.39, it should be noted that a state cannot provide an exemption to federal taxing statutes and when the state attempts

such an exemption, it is invalid as against the federal statutes. In re Washington Square Slum Clearance, Borough of Manhattan, City of New York, 5 N.Y. 2d 300, 184 N.Y.S. 2d 585, 157 N.E. 2d 587 (1959).

A levy by the Internal Revenue Service is made under authority of U.S. Code, Title 26, Section 6331, which reads as follows:

> "§ 6331. Levy and distraint
>
> "(a) Authority of Secretary or delegate.-- If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax." . . .

It is apparent that this section is very broad in including "all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien . . ." However, the law of the state in which the property is located determines the quantum of the taxpayer's property or his rights in the property levied upon. U.S. v. Brosnan, 363 U.S. 237, 4 L. Ed. 2d 1192, 80 S. Ct. 1108 (1960) unless there be "congressional direction to the contrary". No such direction appears to exist. The fund upon which the levy is being attempted arises from Chapter 97B of the Code of Iowa (1958)

and the rights of the employee-taxpayer must be determined under that chapter. The payments made into the system by the employee are in the nature of a tax withheld at the source by the employer. Sections 97B.11 and 97B.14. The employees' rights accrue in the form of "credits" to him and he is advised annually of his "accumulated credits." Section 97B.18. The employee is not entitled to receive any benefits under the plan until he has filed an application and it has been approved by the deputy for claims or on a subsequent appeal. Sections 97B.25-32. Any rights he may have under the system are purely personal and are further limited and protected by Section 97B.39. Thus, it appears that the rights of the employee are those of a creditor limited to the extent provided by Chapter 97B, whereas the position of the State is that of a debtor, but only upon the conditions and to the extent provided by the chapter.

It has been held by several cases that a chose in action created by a debt is not such a property right as is subject to distraint under Section 6331 of the United States Code. In U.S. v. Western Union Telegraph Co., 50 F. 2d 102 (2 C.C.A. 1931), it is said:

> "Section 3186 contemplates a lien on tangible property only, personalty or realty or estates in real or personal property which are or may be the subject of a present sale or assignment by the delinquent taxpayer. . . . Consequently, it would seem that the lien does not apply to a debt. . . . The statute does not authorize garnishment, and it does not authorize the United States to proceed against a debtor of the

> Northwestern Telegraph Company, prohibiting the debtor from paying its debt to the company."

In U.S. v. Aetna Life Ins. Co., 46 F. Supp. 30 (Conn. 1942) the court held that an intangible property right is not subject to distraint. In that case the court said:

> "Section 3670 (6321) uses broad language: it subjects to lien 'all property and rights to property, whether real or personal, belonging to' the taxpayer. If we construe this sweeping language to include incorporeal personal property, the more limited language of Section 3690 (6331) strongly suggests a conscious intent to include within the remedy of distraint only corporeal property except as otherwise specified therein."
>
> "Thus the historical approach leads to the conclusion that personal property subject to distraint under the authority of what is now Section 3690 (6331) of the Internal Revenue Code, . . . is limited to corporeal property except as otherwise provided in that same section."

In accord with the above-cited cases are U.S. v. Metropolitan Life Ins. Co., 41 F. Supp. 91, aff'd. 130 F. 2d 149 (1942); In re Sport Coal Co., 125 F. Supp. 517 (D. C., W. Va. 154). Note that "provision otherwise" is made in Section 66.31 with respect to the subject matter of the levy in that such levy includes other specific property in the following language:

> ". . .Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer * * *."

And, insofar as the power of distraint as a method of collection where the tax is concerned, it is by that Statute, Section 6331(b), made inclusive of the term levy. The language of that section is this:

> "'(b) Seizure and sales of property.--The term "levy" as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).'"

It would appear, therefore, that any interest an employee of the State of Iowa may have in the Iowa Public Employees' Retirement System is not such as is subject to distraint under Section 6331 of the Internal Revenue Code.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS: Election to fill vacancy in office of County Auditor. A person appointed to fill vacancy in office of County Auditor holds office until the next general election and at such election the vacancy shall be filled for the remainder of the term, and the nominee for such vacancy shall be selected at the preceeding primary.

February 26, 1962

Mr. Edward F. Samore
Woodbury County Attorney
204 Court House
Sioux City, Iowa

Dear Mr. Samore:

This will acknowledge receipt of yours of the 14th, inst., in which you submit the following:

> "Your opinion is respectfully requested concerning the election to the County Auditor following the removal of, and replacement of him by an auditor appointed by the Board of Supervisors.
>
> "The present was appointed on February 12, 1962 to fill the vacancy of the auditor which was a four year term commencing with the year 1961. The following problems must be resolved:
>
> "(1) Is it necessary that the Primary Ballot of June of 1962 provide for candidacy for the unexpired term of the auditor removed?
>
> "(2) What should be used in the caption in the ballot to designate this office in the Primary Election of the following elections?
>
> "(3) Is the person so elected to complete the unexpired term only?"

(1) In answer to your question (1), I would advise you that on the authority of official opinion of this Department

issued February 16, 1961, a copy of which is hereto attached, this office shall be filled in the general election to be held in November of 1962, and under the provisions of Section 43.3, Code of 1958, nominations to fill this vacancy shall be made at the primary election to be held in June of 1962.

(2) In answer to your question (2), I would advise you that the caption in the ballot designating the office to be filled to be this:

For County Auditor
(To fill vacancy).

(3) In answer to your question (3), I would advise you on the authority of opinion attached that the person to be elected shall be elected to fill the unexpired term of the removed auditor.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

Enclosure

TAXATION: Agricultural land within city, §428.16, Code of Iowa 1958. Agricultural land within the limits of a city not laid off in parcels of ten acres or less is not exempt from city or town taxes. Stock of merchandise held for resale on such premises is taxable under the provisions of §428.16, Code of Iowa 1958.

February 26, 1962

Mr. Richard F. Branco
Ida County Attorney
Ida Grove, Iowa

Dear Mr. Branco:

This will acknowledge receipt of your request in terms as follows:

> "The County Assessor of Ida County, Iowa, has asked me to obtain your opinion upon the following legal problem, to-wit:
>
> "There are several parcels of land of more than ten acres each, located within the city limits of the city of Ida Grove, Ida County, Iowa, which are taxed as farm lands at the rate of approximately 49 mills. The tax rate within the city of Ida Grove is approximately 74 mills. The County Assessor wonders whether these lands legally come within the exemption of Chapter 404.15 of the Iowa Code, which states in effect that, "No land included within the limits of any municipal corporation which is not laid off in lots of ten acres or less, and which is also in good faith occupied and used for agricultural and horticultural purposes shall be taxable for any city or town purposes, *********".
>
> "The parcels of land involved are described as follows"
>
> "1. Parcel One is a 1¼ acre tract upon which the owner has constructed several commercial buildings. These buildings are constructed and

used for the office of a commercial well drilling company, the office of a water softening service, a gasoline filling station and an implement and automobile sales business. The buildings are rented by the operators thereof from the owner of the 14 acre tract. A small part of this parcel is rented by the local Golf Club as part of its Golf Club's fairway, and the balance of the land is taken up by a creek. No crops are grown upon the premises.

"2. A parcel of more than ten acres, which is used for the sole purpose of storing farm implements held for resale by an implement dealer, and for the storage of building equipment. The balance of this parcel not used for the storage of machinery and equipment, is vacant and no crops are grown thereon.

"3. A parcel of land containing 30 acres or more, a small portion thereof being used for the building and equipment of a rendering works, and the balance consisting of timberland upon which no crop is grown, no livestock raised, and from which no timber is sold commercially.

"4. A parcel of land containing more than ten acres, which has not been subdivided into lots and blocks, although the same lies ajacent to a portion of the city developed as a residential district. No crops are grown or livestock raised upon this parcel of land and no use is made of it whatsoever.

"Your opinion would be appreciated as to whether each of the above described tracts come within the exemption from taxes for city purposes at Chapter 404.15 of the Code, and in the event the land described as Parcel 1 above comes within the exemption of said Chapter and should not be taxed for city purposes, your further opinion is desires, and also as to whether a stock of merchandise held for resale upon said premises should be taxed at the high city tax rate or the low farm tax rate."

In reply thereto, I would advise as follows.

It appearing that none of the land included in the fact situations set out by you is laid off in parcels of ten acres or less, answers thereto are conditioned upon whether such lands are used and occupied for agricultural or horticultural purposes. From the facts stated, horticulture is not involved in the determination of the several situations, and so restricting.

Agriculture is defined in the case of Crouse v. Lloyd's Turkey Ranch, 251 Iowa 149, 159, 100 NW 2d 114, as follows:

> "'Agriculture' is variously defined, but generally, in its broad sense, it is said to be 'the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock.' 3 C.J.S., Agriculture, section 1, page 360. In Sycamore v. Horn, 179 Iowa 936, 945, 162 N.W. 209, 212, 7 A.L.R. 1285, we quoted with apparent approval, from Simons v. Lovell (7 Heisk.) 54 Tenn. 510, 516: "'It is equivalent to husbandry, and husbandry, Webster defines to be the business of a farmer, comprehending agriculture or tillage of the ground, the raising, managing and fattening of cattle and other domestic animals, the management of the dairy and whatever the land produces.'"

Applying this definition to your questions, I answer as follows.

(1) Insofar as the parcel described in your question 1., I am of the opinion that parcel is not exempt from taxation for city or town purposes.

(2) Insofar as the parcel described in your question 2. is concerned, I am of the opinion that parcel is not exempt from taxation for city or town purposes.

(3) Insofar as the parcel described in your question 3 is concerned, I am of the opinion that parcel is not exempt from taxation for city or town purposes.

(4) Assuming that the parcel described is within the confines of the city, I am of the opinion that parcel is not exempt from taxation for city or town purposes.

In answer to your question as to whether a stock of merchandise held for resale on the premises described in your question 4 should be taxed, I am of the opinion that such stock of merchandise is taxable under the provisions of Section 428.16, Code of 1958.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

TOWNSHIPS: Withdrawal by individuals from town-township fire district; Chapter 357A, Code of 1958, interpreted. There is no statute authorizing withdrawal by individuals belonging to an existing town-township fire district in order to join another fire district.

Mr. J. T. Snyder
Buena Vista County Attorney
Storm Lake, Iowa

February 23, 1962

Dear Mr. Snyder:

This will acknowledge receipt of yours of the 10th, inst., in which you submitted the following:

> "I have a question from two different areas of the County, Alta and Albert City, in reference to a matter involving the same question. The question is in two parts:
>
> "a. May individuals belonging to an existing town-township fire district, voluntarily elect to be included in another established district?
>
> b. If the answer to (a) above is in the affirmative, how shall the Township Clerk divide the funds available for fire protection through the County Auditor between the existing District and the other District by which the individual members elect to be served?
>
> "In each case, the Township Trustees have received a petition or notice of election from individual farmers within an established town-township fire district that these individual farmers desire to be served by another district, in one case by the Albert City Fire Department and in the other case, by the Aurelia Fire Department in Cherokee County. This would appear to me to require a construction of Section 359.42, which provides,

> 'The Township Trustees of any Township may purchase, own, rent or maintain fire apparatus and equipment and provide housing for same and furnish services in the extinguishing of fires in said township, independently or jointly with any adjoining township or townships, likewise authorized as herein provided, or with any City or town.'
>
> "Must the Township Trustees, under this Section, be a party to any provisions of fire districts, or may the individuals of the district elect to be served by another district irregardless of the action of the trustees?
>
> "An early resolution of this question is requested, since one of the Township Clerks involved has a request from the Aurelia Fire Department for the proportionate amount of the funds levied in the existing District for fire purposes."

In reply thereto, I advise as follows.

I am of the opinion that answer to your first question is in the negative. This is grounded upon the fact that no express provision is made in Chapter 357A, Code of 1958, authorizing such withdrawal from one district in order to join another. Lacking that, such right does not exist. A comparable situation existed in a county library established under the provisions of Chapter 358B, Code of 1958, where an attempted withdrawal therefrom was denied by the Supreme Court in the case of Isbell v. Board of Supervisors, 243 Iowa 941, 54 NW 2d 508, where the Court said:

> "When this county library was established Correctionville had no free public library -- it was established later. It is not

> questioned that Correctionville was included within the county library district at the outset. Nothing has happened that constitutes a withdrawal of the town from that district unless the establishment of the town library has that effect. We find no statute which so provides. If formation of a town library is to constitute a withdrawal of the town from an existing county library district the legislature must so provide. Until it does there is no basis for such holding. Plaintiff's remedy at this point rests with the legislature, not the courts. See Kistner v. Board of Assessment, 255 Iowa 404, 414, 260 N.W. 587; In re Estate of Hagan, 232 Iowa 525, 529, 5 N.W. 2d 856, 859; 50 Am. Jur., Statutes, section 234; 59 C.J., Statutes, section 576."

Subsequent to such opinion, the legislature did enact escape legislation from such county library as shown by Section 358B.16, providing as follows:

> "358B.16 Withdrawal of city or town from district. Whenever any incorporated city or town, having maintained an association library for at least ten years prior to the establishment of a county library which has become a part of the tax supported city or town library and being a part of the county library district, and having levied a tax of its own equal to or greater than that of the county library district for the same purpose, shall decide to withdraw from the county library district, it may do so by giving notice by certified mail to the board of library trustees of said county library and the county auditor prior to July 10, by the governing body of said incorporated city or town, of its withdrawal from the county library district, and thereafter said incorporated city or town, shall cease to be a part of or included in said county library district."

In view of the negative answer to your question number 1., an answer to your question number 2. is not required.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS: Board of Supervisors, §349.18, Code of 1958. In publishing the proceedings of Board of Supervisors' compensation of secondary road employees, the compensation of each employee must be listed separately. Publication of the total compensation to all such employees is regarded as "bunching" and is unauthorized.

March 30, 1962

Mr. Gary L. Cameron
Jefferson County Attorney
Fairfield, Iowa

Dear Mr. Cameron:

Reference is herein made to yours of the 17th, ult., in which you submitted the following:

> "The County Auditor of Jefferson County, Iowa, has requested my office to secure an opinion from the Attorney General on the following:
>
> "In publishing the minutes of the Board of Supervisors Proceedings, we have been listing each name of the secondary road employees and their gross wages. Their pay has been on an hourly basis. Starting April 1, 1962 they will be paid on a monthly basis. Would it be possible to list these employees along with the elective officers, deputies and clerks and not list them each month in the Board's Proceedings. The salaries come from the engineers office on claim forms as do the engineers staff.
>
> "Is it necessary to list each employee and if so, could it be published 'Secondary Road Payroll' without being in violation of Section 349.18 of the 1958 Code of Iowa."

In reply thereto, I would advise you that in publishing the proceedings of the Board of Supervisors, setting up such payroll in the manner proposed is unlawful and unauthorized and violates the provisions of §349.18, Code of 1958. The method of publishing the

salaries of officials and others whose salaries are fixed by statute or ordinance is not applicable to the publication of payroll salaries of others. See page 59 of the Printing Board pamphlet entitled, "Iowa Laws Pertaining to Public Notices", a copy of which, so far as is applicable, is hereto attached.

What you propose is regarded as "bunching of warrants", and such manner of publication of payroll has been passed upon adversely by previous opinion. Comment on such practice is also made in the foregoing-described publication of the Printing Board on page 15 thereof, a copy of which comment is hereto attached.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

Enclosures

TOWNSHIPS: Powers of Township Trustees. §349.43, 1958 Code of Iowa. The power of the Township Trustees does not exceed the authority vested by the electorate, and the Township Trustees do not have authority to lease a part of the premises erected for housing fire equipment to the United States for use as a post office.

March 30, 1962

Mr. Howard D. Hamilton
Webster County Attorney
303 Snell Building
Fort Dodge, Iowa

Dear Mr. Hamilton:

This will acknowledge receipt of yours of the 1st, inst., in which you submitted the following:

> "Do Township Trustees have the authority to construct a building for the purpose of housing fire equipment and lease part of such space to the United States Government to be used as a post office?
>
> "Section 359.42 of the Code authorizes the trustees to 'provide housing' for fire apparatus or equipment. The trustees anticipate constructing the building within a town in the township and would like to construct the same to enable the fire department to expand if necessary. Until such expansion may become necessary, they anticipate leasing some of the premises for a post office. The trustees are presently levying 1½ mills in the township pursuant and by virtue of an election having been held authorizing this levy. There is no problem regarding a bond issue."

In reply thereto, I would advise you that the township trustees are not an agency of general powers, but on the other hand, their powers are specifically prescribed. Thus, the section referred to bestows authority to provide housing for fire

equipment, and so forth. The trustees are authorized, under the provisions of §359.43, to levy as follows:

> "The township trustees may levy an annual tax not exceeding one and one half mill on the taxable property in the township, without the corporate limits of any city or town which may be wholly or partially within the limits of the township, for the purpose of exercising the powers granted in section 359.42, when so authorized by an affirmative vote equal to at least sixty percent of the total vote cast for and against a proposal therefor at an election held pursuant to section 359.44."

This section was amended by Chapter 67, paragraph 1, Acts of the 58th G.A. in the respect that is ineffective of the question here submitted.

Thus, the trustees were authorized under the foregoing §359.43 to exercise the powers conferred on them by the provisions of §359.42. This power to levy the tax may be exercised by them after the election by an affirmative vote of sixty per cent upon the proposal. The power of the Board does not exceed the authority vested in it by the electorate. This power is limited to the provisions of §359.42 and does not include the power in the trustees to lease a part of the premises to be erected for housing fire equipment.

The answer to your question is in the negative.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

ELECTIONS -- Constitutional amendment. Chapter 343, Acts of the 59th General Assembly. The same judges and clerks shall perform the necessary duties in the primary election and in the special election concerning the proposed constitutional amendment. A qualified voter with no party affiliation is eligible to vote on said Constitutional amendment.

Mr. Harry Perkins
Polk County Attorney
Room 406 Court House
Des Moines, Iowa

Dear Mr. Perkins:

This will acknowledge receipt of yours of the 21st, ult., in which you submitted the following:

> "At the same time the Primary election is held on June 4, 1962, there will be submitted to the people a question concerning revision of the Iowa Constitution concerning selection of Supreme and District Court Judges. The Auditor of Polk County, Iowa has two questions concerning this election:
>
> "1. Will the same judges and clerks be able to perform their necessary duties in both the Primary Election and in the separate election on the matter of the proposed Constitutional Amendment?
>
> "2. Will the otherwise qualified voter who has no party affiliation be permitted to vote on the matter of the proposed Constitutional Amendment?"

In reply thereto, I advise you as follows.

In answer to your question 1., I would advise that the same judges and clerks shall perform the necessary duties in both the foregoing described primary election and the special election concerning the proposed constitutional amendment.

In answer to your question 2., I would advise that the qualified voter with no party affiliation is eligible and is entitled to vote on the matter of the proposed constitutional amendment at the special election to be held on June 4, 1962. In this connection, I enclose copies of opinions issued by this Department, one to Martin D. Lair, Scott County Attorney, dated January 5, 1962, and one to Melvin Synhorst, Secretary of State, dated January 8, 1962.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

Enclosures

COUNTIES AND COUNTY OFFICERS. Statutory meeting of the Board of Supervisors. Section 331.15, 1958 Code of Iowa. The regular statutory meeting of the Board of Supervisors prescribed by §331.15, 1958 Code of Iowa, as the second secular day of January of each year, is a regular meeting of the Board and continues until the next statutory meeting, and a petition filed at the time of the said regular meeting is entitled to action by the Board.

March 13, 1962

Mr. Rex Schrader
Jones County Attorney
Monticello, Iowa

Dear Mr. Schrader:

This will acknowledge receipt of yours of the 26th, ult., in which you submitted the following:

> "A petition under Section 331.8 of the 1958 Code of Iowa was filed with the Jones County Board of Supervisors on January 9, 1962 requesting that the County be divided into five districts for the purpose of electing a board of supervisors. Section 331.15 discusses meeting dates of the board of supervisors. This petition was not filed at the time of the first secular day in January, 1962, but was filed at the time of the second Tuesday in January and the second Tuesday of each month is when the board is in session generally.
>
> "My question is whether or not the petition was timely filed and whether the board can act on such petition when the same was not filed and no action taken on the first secular day in January, 1962.

In reply thereto, I am of the opinion that the reguler statutory meeting prescribed by §331.15, Code of Iowa, as the second secular day of January of each year is a regular meeting of the Board of Supervisors, at which petitions for action by the Board, in accordance with the provisions of §332.7, Code of Iowa, are presented, and such petitions, if and when filed

at any time within the period of that meeting, shall be entertained by the Board, if they otherwise comply with the provisions of the Statute. Under authority, the power of the Board of Supervisors to hold meetings is restricted to regular or special sessions. This is described in the case of Butterfield v. Twichler, 113 Iowa 328 at page 330 in terms as follows:

> "The board of supervisors can meet but in regular or special session. A special meeting can be held only after notice published in two newspapers or posted for one week at the door of the court house. Section 420, Code. If the board at a regular meeting should dispatch all business pending before it, and then learn of some new matter demanding immediate attention, it could not lawfully dispose of the same, for the regular meeting would stand adjourned by operation of law, on the completion of the business actually before it. There would be nothing to do but await the call of a special meeting, or delay the matter until the next regular meeting, and in either case public interests might seriously suffer. So, too, if the members of the board, when taking an adjournment, suppose there is some pending business, and transact business thereafter, their acts will be void, if they are mistaken in the matter, for the adjourned session would not be a lawful meeting. The only reason for requiring statements of consent to be canvassed at a regular meeting of the board is to secure publicity in the proceeding, but this is equally well assured where an adjournment to a day certain is entered upon the records of the board.
>
> "It is true the Ellis Case announces a rule of procedure, and has stood for many years. For these reasons we should be slow to interfere

> with it. But we are led to believe that the rule of this case has not been generally recognized by the tribunals for whose government it was made, and we are sure that its reaffirmance now would lead to confusion in business, and perhaps to serious public loss. For these reasons we decline to follow it, and must hold that the adjourned meeting of the board, on December 26, was a part of the regular November meeting, and the action of the board was therefore legal and valid. We may say here that the authority of the Ellis Case has been impliedly questioned by this court in Railroad Co. v. City of Council Bluffs, 109 Iowa 425, in which it was held that, for the purpose of a city council rescinding its action in a certain matter, an adjourned meeting would be deemed a continuation of a previous regular meeting."

The extent of the meaning of a regular meeting of the Board of Supervisors was stated in the case of Beatie v. Roberts, 156 Iowa 575 at page 579, where it is said:

> "The law in fixing the time for the first session of the year necessarily defined the limit beyond which the session previous might not extend. In other words, each session of the board necessarily terminates prior to the day fixed by the statute for another meeting."

Under the provisions of §331.15, Code of Iowa, the next meeting after the January meeting is the first Monday in April.

By reason of the foregoing, I am of the opinion that the statutory January meeting of the Board is a regular meeting of the Board of Supervisors and the filing of the petition was timely and entitled to action by the Board.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS: Use of court house by city -- The county has no authority to grant to the city the use of the court house grounds by lease or otherwise for a comfort station for use by the public.

April 19, 1962

Mr. Walter L. Saur
Fayette County Attorney
22 East Charles
Oelwein, Iowa

Dear Mr. Saur:

Reference is herein made to yours of the 16th, ult., in which you submitted the following:

> "Can the Board of Supervisors of Fayette County, Iowa grant to the City of West Union, Iowa the right to use a portion of the Court House grounds for the purpose of erecting and maintaining a Comfort Station for use by the public? The Deed to the County conveying the court house grounds contains the following restrictions:
>
> 'Public Square is 400 feet square and is appropriated by the proprietors of the use of Fayette County for public buildings. Provided the County Seat should be located in West Union and if the County Seat should not be located in West Union or be removed from it, then said square to be for the use of the village.'
>
> "Perhaps the following references to the 1958 Code of Iowa and Supreme Court Decisions will aid you in your research of this question:
>
> 'Section 332.3(13). When any real estate buildings, or other property are no longer needed for the purposes for which the same were acquired by the county, to convert the same to other county purposes or to sell or lease the same at a fair valuation.

'Section 332.3(16). To permit any person to use any portion of the lands owned by the county for ornamental purposes, or for the erection of any monument or fountain under such restrictions as the board may from time to time enact, when such use will not interfere with the use for which such real estate was originally acquired by the county.

'Section 332.3(17). To lease or sell real estate owned by the county and not needed for county purposes.

"A county is a political corporation invested with certain limited and specified powers, which are divided among and are to be exercised by a class of agents or county officers appointed for that purpose. Their duties are not only defined, but the mode of performing them is often prescribed by law, and this being done, the power must be exercised precisely as it is given. Hull v. Marshall County, 12 Iowa 342.

"Counties are recognized as quasi corporations, and it is universally held that the Board of Supervisors of a county has only such powers as are expressly conferred by statute or necessarily implied from the power so conferred.

"In Hilgers v. Woodbury County, 200 Iowa 1316, 206 NW 660, 661, the Iowa Court says: 'The authorities are not uniform on the question of the right of public officials to rent a portion of a public building for a private use, but we are satisfied that the greater weight of authority and the better reasoning is to the effect that the Board of Supervisors has no power of a legislative grant of such power.' See also State (ex.rel. Scott) v. Hart, 144 Ind. 107, 43 NE 7, 33 L.R.A. 118. McPherson v. Foster Brothers, 43 Iowa 48.

"The case of Borough of Henderson v. County of Sibley, 28 Minn. 515, 11 NW 91, involved the validity of a contract by the county with the

> Borough of Henderson for the use of a part of the county courthouse for a City Hall, and it was held that the contract was beyond the powers of the county commissioners, the court says 'such objects are foreign to the purposes for which the counties are organized, and if permitted, would open the door to entanglements and abuses against which the public should be, and is, by law protected.'
>
> "As to use of county property, see the following:
>
> "The Board of Supervisors does not have power to lease a portion of courthouse to private company. OAG 1940, p. 269.
>
> "Board of Supervisors had authority to grant a privilege for the erection of a temporary structure on the courthouse grounds for a public purpose, provided that the manner in which the structure was erected, its location and use should not interfere with the public business transacted in the courthouse, but such right, if granted, is merely a naked privilege, subject to revocation at any time that the public interests might demand or the Board of Supervisors might deem advisable, since the Board had no authority to bind the county for any definite length of time. OAG 1910, p. 158.
>
> "See also State ex. rel. Wadsworth v. Board of Supervisors of Linn County. 1943, 232 Iowa 1092, 6 NW 2d 877. (See Chapter 332 Iowa Code Annotated p. 137)"

In reply thereto, I would advise that in a comparable situation the Department, in an opinion issued April 27, 1953 to K. L. Kober, Black Hawk County, Waterloo, ruled that leasing the court house grounds for city purposes to the city exceeded

the authority of the Board of Supervisors. A copy of this opinion is hereto attached.

Very truly yours,

OSCAR STRAUSS
First Assistent Attorney General

OS:la

Enclosure

April 27, 1953.

Mr. K. L. Kober,
County Attorney,
Waterloo, Iowa.

Dear Mr. Kober:

I have yours of the 22nd inst. in which you submitted the following:

> "Can the Board of Supervisors of Black Hawk County, Iowa, lease to the City of Waterloo certain parking space adjacent to the County Courthouse, Waterloo, Iowa. The City of Waterloo would install meters and police parking space with a percentage of the income from the parking maters to accrue to Black Hawk County.
>
> "Subsections (13) and (17) of the Section 332.3 of the 1950 Code of Iowa grant the Board of Supervisors power to lease real estate where the county property is no longer needed for the purposes for which the same was acquired or where the property is no longer needed for county purposes. However, the property is now used for parking purposes, and the use would not change except that the same would be under police regulation by the City of Waterloo with parking meters installed thereon.
>
> "The case of Hilgers vs. Woodbury County 200 Iowa 1318 held that the power to rent a portion of the courthouse could not be implied from the power granted the Board of Supervisors to have general management and care of county property.
>
> "Although this case did not involve a rental to another governmental body, yet it would seem to infer that the Board of Supervisors only have to power to lease as specifically set out under the provisions of Section 332.3 of the 1950 Code of Iowa, subsections (13) and (17)."

In reply thereto I would advise you that leasing the described property by the board of supervisors to the

City of Waterloo would amount to transferring jurisdiction over its property currently being used by the county for its purposes to the city for its purposes. The board of supervisors is clothed with no such authority over county property that is needed for county purposes. The power of the board of supervisors to lease arises from Subsections 13 and 17 of Section 332.3, neither of which would authorize the proposed lease.

Yours very truly,

OS:fh

OSCAR STRAUSS,
Assistant Attorney General.

TAXATION: Exemption as fraternal benefit corporation. Where the BPOE, a fraternal benefit society, is the lessee of property owned by Elks Building Corporation and pays rent to such corporation for its use, the Building Corporation is not entitled to exemption as a fraternal benefit corporation.

Mr. John F. Boeye
Montgomery County Attorney
209 Coolbaugh Street
Red Oak, Iowa

Dear Mr. Boeye:

Reference is herein made to yours of the 7th, inst., in which you submitted the following:

> "I am enclosing herewith a request made by the Montgomery County Assessor for the Board of Review now in session, of Montgomery County, Iowa.
>
> "The facts are fairly well set out in the letter, although it should be understood that the Elks Building Corporation is a separate entity from the benevolent and protective order of the Elks, who, according to the records available to my office, have purchased a federal retail liquor sales permit.
>
> "The B.P.O.E. pay rent to the Elks Building Corporation. The lodge rooms are on the second floor and can be reached by separate entrance, although it is true that it is necessary to pass over the lot to reach the lodge rooms. The question set forth in the accompanying letter fairly well described the problem involved.
>
> "It is my understanding that throughout the State of Iowa Assessors have divided buildings for the purpose of obtaining the tax exempt qualifications

> for fraternal and religious organizations. Would appreciate your comment and opinions at your earliest convenience."

together with accompanying letter to you of the Clerk of the County Board of Review, a copy of which follows:

> "The Montgomery County Board of Review respectfully request an opinion on the following matter:
>
> "The Elks Building Corporation, a fraternal and benevolent society, requests tax exemption on their property in Red Oak, except for one-half of the basement floor. Said claim is based on the provisions of Ch 427.9 Code of Iowa. The one-half of the basement floor upon which exemption is not claimed is the location of a Federal Retail Liquor Sales Permit. It is one of several rooms within the building and can be reached from an adjoining room or from an outside entrance. It cannot be reached without passing over the lot or through that portion of the building being considered for tax exemption. Chapter 427.1(26) specifically prohibits granting exemption to any property which is the location of a Federal Retail Liquor Sales Permit.
>
> "Our question is this: does the one-half of the basement floor constitute a separate location or is it a part of the location upon which they request partial exemption?"

In reply thereto, I advise as follows: It appears from the foregoing letter that:

(1) The Elks Building Corporation is the owner of the property and the organization that is making claim to the exemption.

(2) The B.P.O.E. is a fraternal benevolent society and is the lessee of the property which the Building Corporation owns and pays rent to the Elks Building Corporation for the use thereof.

(3) The B.P.O.E. has purchased the Federal Retail Dealers Liquor Permit covering space in the basement of the building.

The relevent statute, so far as applicable, is §427.1(9), Code of 1962, which designates the property and buildings entitled to exemption because of the following uses:

> ". . . literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies . . . "

Specifically, such section provides:

> "Property of religious, literary, and charitable societies. All gounds and buildings used by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used with a view to pecuniary profit. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment."

However, as a prerequisite to the granting of any exemption, the organization or society so claiming, according to §427.1(24), must file with the Assessor, not later than February 1 in the year in which the exemption is requested, a statement describing the nature of the property upon which the exemption is claimed, setting out any uses thereof and the income derived therefrom by way of rent, leases or other uses not solely for appropriate

object of the organization. The foregoing numbered statute further directs the Assessor in arriving at valuations:

> ". . . In any case where a portion of the property is used regularly for commercial purposes no exemption shall be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. No exemption shall be granted upon any property upon or in which persistent violations of the laws of the state of Iowa are permitted. Every claimant of an exemption shall, under oath declare that no such violations will be knowingly permitted or have been permitted on or after January 1 of the year for which a tax exemption is requested. Claims for such exemption shall be verified under oath by the president or other responsible heads of the organization."

In the foregoing situation, I am of the opinion (1) that the Elks Building Corporation, not qualifying as a fraternal benevolent society, is not entitled to the claimed exemption. (2) In view of the foregoing conclusion, answer to your specific question respecting the effect of the existence of a Federal Retail Liquor Dealers Permit is not required.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS: Publication of proceedings of Board of Supervisors. Under §349.18, Code of 1962, the County Auditor is required to furnish a copy of proceedings of meeting of Board of Supervisors, same being an official document. This copy, if changed by the official newspaper or its editor in any respect, ceases to be an official copy of the proceedings.

May 31, 1962

Mr. Joseph H. Sams
Mitchell County Attorney
Osage, Iowa

Dear Mr. Sams:

Reference is herein made to yours of the 3rd, inst., in which you submitted the following:

> "The County Auditor has furnished the official newspaper proceedings of the Board of Supervisors as provided by law, together with the bills allowed. Wherever practical, the Auditor has used abbreviations.
>
> "Without consulting the Auditor, the newspaper in many instances, has changed the material furnished by the Auditor and when challenged has replied that such abbreviations are prohibited by law. The net effect is to cause considerable extra space and consequent expense of printing, and of course the matter then is not printed as submitted.
>
> "The Auditor does not quarrel with the law as to abbreviations, but is of the opinion that neither the newspaper nor its editor has the power to change material furnished as official matter, nor should either usurp powers of adjudication properly held by official bodies.
>
> "Who should be the judge?"

In reply thereto, I would advise you that while the statute, §349.18, Code of 1962, requires of the County Auditor, with respect

to the proceedings of each regular, adjourned, or special meeting of the Board of Supervisors, that he "shall furnish a copy of such proceedings to be published, within one week following the adjournment of the Board.", the copy of such proceedings to be furnished by the County Auditor is an official document. However, this copy, when and if changed by the newspaper or its editor in any respect, ceases to be an official copy of the proceedings.

A copy of such proceedings should be published in the form submitted by the Auditor to the official paper.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

CITIES AND TOWNS: Authority to enter into agreement. §358B.3. There is no authority in the City of Newton to enter into any agreement with the board of trustees of the County Library District to be included in a county library district under the provisions of §358B.3, Code of 1962.

May 17, 1962

Mr. Don C. Sallsbury
Jasper County Attorney
Newton, Iowa

Dear Mr. Sallsbury:

This will acknowledge yours of the 14th, inst., in which you submitted the following:

> "I have been requested to give an opinion as to whether or not and if so how the City of Newton, Iowa, which has and is maintaining a tax supported city library may be included in the Jasper County Library District.
>
> "The last paragraph of Section 358B.2 of the 1962 Code of Iowa provides as follows, to-wit:
>
> 'After the establishment of a county library district other areas may be included by mutual agreement of the board of trustees of the county library district and the governing body of the area sought to be included.'
>
> "Does the word 'areas' referred to in said paragraph mean and include the city of Newton, Iowa and therefor provide the method of accomplishing the foregoing question?
>
> "The trustees of the County and City libraries are meeting on the evening of May 23, 1962 and if at all possible would like to have an answer to the foregoing question at that time."

In reply thereto, I advise as follows:

Assuming (without agreeing) that there is such an agency as a governing body of an area, I am of the opinion that while the paragraph quoted by you invests the county library trustees with power to enter such an agreement, it does not invest the City of Newton with such authority.

Reasonable search does not disclose any such authority in the City of Newton.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

STATE OFFICERS AND DEPARTMENTS. Apportionment of Road Use Tax. Section 2, subsection 2, Chapter 168, Acts of the 59th G.A. Apportionment of the Road Use Tax moneyto the secondary roads is set out in Subsection 1 of §2, Chapter 168, Acts of the 59th G.A. as the statutory duty of the Treasurer of State.

May 4, 1962

Honorable M. L. Abrahamson
Treasurer of State
L O C A L

Attention: Charles R. Dayton
Deputy Treasurer

Dear Mr. Abrahamson:

This will acknowledge receipt of your letter of April 12, 1962, in which you submitted the following:

> "We respectfully request a clarification and written ruling in regard to the exact meaning and the placing of responsibility of Section 2, subsection 1, of Chapter 168 - Laws of the 59th General Assembly.
>
> "More specifically, it is a known fact that the Treasurer of State is responsible for the apportionment monthly of 30% of the Road Use Tax Fund to the Secondary Road Fund on an area basis. Our question being at this moment, what department is responsible for the apportionment among the counties in the ratio of need, as set out in subsection 1 of Section 2, Chapter 168 - Laws of the 59th General Assembly."

In reply thereto, I would advise you that apportionment of the Road Use Tax money to the Secondary Roads is set out

in subsection 1 of §2, Chapter 168, Acts of the 59th General Assembly as the statutory duty of the Treasurer of State.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES AND COUNTY OFFICERS. Residence for Steward of County Home. There is no statutory authority in the Board of Supervisors to provide the steward of the county home with a separate residence or to expend money for such purpose.

June 21, 1962

Mr. Harry Perkins
Polk County Attorney
Room 406 Court House
Des Moines, Iowa

Dear Mr. Perkins:

Reference is herein made to yours of the 5th, inst., in which you submitted the following:

> "There seems to be a possible need for a new residence at the County Farm for the Steward.
>
> "I would like, therefore, an Attorney General's Opinion as to whether or not the Board of Supervisors can legally spend money for this purpose, and if so, the amount and the procedure as to whether it can be budgeted, or if a public election is necessary on the question."

In reply thereto, I would advise you that I find no statutory authority in the Board of Supervisors to provide the steward of the county home with a separate residence, nor do I find any authority to expend money for such purpose.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

CORPORATIONS: Perpetual care cemetery -- §§566A.1, 566A.3, Code 1962. A cemetery association incorporated under Chapter 504, Code 1962, operating a perpetual care cemetery is included within the provisions of Chapter 566A and must establish a minimum perpetual care and maintenance guarantee fund of $25,000 in cash as required by §566A.3.
(Bump to Schroeder, Jackson Co. atty., 7/17/62) #62-7-1

July 17, 1962

Mr. Asher E. Schroeder
Jackson County Attorney
Maquoketa, Iowa

Dear Mr. Schroeder:

This is in response to your opinion request of April 2, 1962, in which you state:

"We have in Jackson County a Cemetery Association, incorporated under Section 504 of the Code of Iowa. This group was set up to enable them to more efficiently operate a cemetery that had previously been cared for solely by the township trustees. This group offers perpetual care. It is neither a church nor a religious group but simply an organization of persons who have friends and relatives buried in the cemetery and who are interested in seeing that it is well kept. At this time the trustees are turning over to the organization tax money for maintenance of the cemetery as provided in Section 359.33.

"It has been brought to my attention that Chapter 556A requires a perpetual care and maintenance guarantee fund of $25,000.00, when a cemetery is operated as a perpetual care cemetery. It goes on to provide for other requirements in this regard.

"In 566A.1 certain organizations are exempt from the provisions of this Chapter. The question that I have is whether or not this nonprofit organization set up in this instance under Chapter 504 of the Code of Iowa, fails within this exception. Also, whether or not the township trustees' participation through their money contribution brings this particular cemetery under the exception set forth, that is 'other political subdivisions of the State of Iowa owning, maintaining, or operating cemeteries.'"

#62-7-1

Section 566A.1, Iowa Code, 1962, provides:

"Any corporation or other form of organization organized or engaging in the business under the laws of the state of Iowa, or wheresoever organized and engaging in the business in the state of Iowa, of the ownership, maintenance or operation of a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations which are churches or religious or established fraternal societies, or incorporated cities or towns or other political subdivisions of the state of Iowa owning, maintaining or operating cemeteries, shall be subject to the provisions of this chapter."

This section is sufficiently broad to include a cemetery association incorporated under Chapter 504 of the Iowa Code, thereby making the $25,000 perpetual care and maintenance guarantee fund established in §566A.3 applicable to such an association which desires to operate a perpetual care cemetery.

A cemetery association such as the one in question cannot be included within the "political subdivision" exception of §566A.1 even though the township trustees have elected to levy the tax allowable by §359.33 to aid in improving and maintaining the cemetery which they operate. Boston Elevated Ry. Co. v. Welch, 25 F. Supp. 809, 810 (D. Mass. 1939). The levying of this tax to aid in the operation of such a cemetery is subject to the discretion of the township trustees, the exercise of which has no effect upon the legal status of the cemetery association in question. 1940 O. A. G. 365.

Very truly yours,

W. N. BUMP
Solicitor General

WNB:DB:ks

ELECTIONS: Submission of two propositions on public measures on same ballot, §49.48, 1962 Code of Iowa. Two propositions on public measures may be voted upon by the electors even if inconsistent, if the purpose of both is single and not dual and the voter may exercise free choice of one or all.
(Strauss to Akers, Jul. 26th., 7/26/62) #62-7-2

July 26, 1962

Honorable C. B. Akers
Auditor of State
L O C A L

Attention: Earl C. Holloway
Supervisor of County Audits

Dear Sir:

This will acknowledge receipt of yours of the 13th, ult., in which you submitted the following:

> "We are enclosing a copy of the County Jail Public Meesures Ballot showing the official returns of votes cast in the Special Election held in Clinton county, June 4, 1962.
>
> "As you will note, the Bond issue question did not receive the 60% 'Yes' majority necessary and was therefore defeated. However, the question of using funds on hand, which required only a majority, carried. (345.1)
>
> * * *
>
> "Does this authorization earmark this fund for this one purpose only, or can they ignore it and consider the $50,000.00 as an unexpended balance on hand when making the levy for the County General Fund."

In reply thereto, I would advise you as follows:

There is no doubt of the authority of the Board of Supervisors to submit to the electorate more than one public

#62-7-2

measure on the same ballot, see §49.48, Code of 1962. However such submissions may not be dual propositions "that defeat the right of the voter to express choice or preference".

The propositions as submitted are these:

> "Shall the County of Clinton, in the State of Iowa, erect and equip a new County Jail in said County and borrow money by the issuance and sale of bonds in the sum of Two Hundred Twenty-six Thousand Dollars ($226,000) to pay the cost thereof, to that amount, and shall a tax be levied upon all the taxable property within said County from year to year, at a rate not exceeding three quarters of one mill in any one year, in addition to all other taxes, commencing with the levy for the year 1962, to pay the principal of and interest on said bonds until the same are fully paid?"
>
> "Shall the Board of Supervisors of Clinton County, Iowa, be authorized to use the sum of $50,000 now on hand in the general fund of said County for the purpose of erecting an enlarged county jail in said County?"

The foregoing propositions may be inconsistent and still may not be void by reason of their dual character. It appears that they are inconsistent by reason of the fact that the voter could vote "yes" to both propositions with the result that the county would be authorized both to erect and equip a new county jail by the issuance of bonds and the Board of Supervisors could also use $50,000 on hand for the purpose of erecting an enlarged county jail. However, this inconsistency is not a bar to the validity, according to opinion of this Department appearing in 1938 OAG 841, 843, where it is stated:

"However, in the instant case we are not confronted with a union of two distinct objects in a single proposition, but rather the submission of two separate and distinct propositions, one, in event of a favorable vote, authorizing the issuance of bonds for the erection and equipping of a new court house, the other if the vote be favorable, authorizing the issuance of bonds for the remodeling of the existing court house, printed upon a single ballot and submitted in the same election. Now, it is apparent upon the face of these two distinct and separate propositions that there is an inconsistency in the means of accomplishing the objective of providing ample court house facilities for Cerro Gordo County. Nevertheless we submit that if there is not such inconsistency or dissimilarity of object in a single proposition for the 'purchase or erection' of a utility, the City of Keokuk case, supra, as would render the submitted proposition dual and, therefore, bad, then a fortiori two separate and distinct propositions on a single ballot, though inconsistent, is not fatal to the validity of an election wherein such propositions are submitted as seperate and distinct public measures.

"As to either or both propositions, the elector has an absolute, free choice. He may express his vote for or against either or both, and want of that opportunity appears to be the reason why the courts have condemned the incorporation of two distinct objects in a single public measure. . . ."

* * *

"It is accordingly the opinion of this department that (1) several distinct public measures may be printed on one ballot, and, (2) that inconsistency between the several propositions is no bar if each is independent of the other so as to enable the voter to indicate his choice on one or all."

In view of the foregoing, I am of the opinion that the $50,000 voted upon favorably by the electorate can only be used as authorized by the electorate.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

COUNTIES: Domestic Animal Fund, Ch. 352, Code of 1962. The domestic animal fund created by Ch. 352, Code of 1962, is not available to an owner of domestic animals or fowls injured or killed by foxes.
(Bump to Smith, O'Brien Co. Atty., 8/10/62) #62-8-3

August 10, 62

Mr. R. T. Smith
O'Brien County Attorney
Primghar, Iowa

Dear Mr. Smith:

This is in response to your letter of July 9, 1962, in which you requested our opinion on the following situation:

> "A claim has been filed with the O'Brien County Board of Supervisors against the Domestic Animal Fund for the killing and injury of chickens by foxes.
>
> "***
>
> "The question is this: Does the word 'dogs', as used in §352.1 embrace foxes. In other words is the term 'dogs' as used in the Statute a generic term. ..."

Code §352.1, 1962 Code of Iowa, provides:

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

It is clear that the word "fox" does not appear in this section and if foxes are to be included some implication for doing so must be found. The original enactment establishing the Domestic Animal Fund was 32 G.A., Ch. 20 (1907). Section 3 of that Act created the fund out of fees to be collected from the issuance of dog licenses. Section 4 of the Act provided that claims could be filed for damage caused "... by the killing or injury of any domestic animal or fowl by dog, dogs or wolves ..." In 1924, present §352.1 was enacted by 40 G.A., Ex. Sess., H.F. 71, §85.

#62-8-3

Zoologically, dogs, wolves, foxes and jackals are all chordate, vertebrata, mammalia, carnivora, canidae, but they vary in genus and specie. Morgan, Kinship of Animals and Man, McGraw-Hill (1955). It is well known that jackals are oriental animals which leaves dogs, wolves and foxes as the only members of the family canidae in this part of our country. It is likewise well known that all three exist in Iowa. If the terms of §352.1 were intended to be used in a zoological sense, foxes are clearly not included. If only the ordinary usage of the words was intended, it is clear that a fox is neither a wolf nor a dog.

It is my opinion that the rule inclusio unius est exclusio alterius is particularly applicable to §352.1 and foxes are not included thereunder.

Sincerely yours,

WNBUMP
la

STATE OFFICERS AND DEPARTMENTS: State Traveling Library, levy for library millage, §378.11, §378.15, § 24.2(2) and § 24.2(3), 1962 Code of Iowa (1) Sec. 378.15 provides power of levy of not more than one mill, meaning any millage not exceeding one mill. (2) Sec. 278.11 and Sec. 378.15 confer power of certifying and levying upon Board of Supervisors and not Board of Library Trustees, which is not a levying board under Sec.24.2(2) nor a certifying board under Sec.24.2(3).

August 10, 1962

Miss Ernestine Grafton, Director
State Traveling Library
Historical Building
Des Moines 19, Iowa

My dear Miss Grafton:

This will acknowledge receipt of yours of the 3rd, inst., in which you submitted the following:

> "In confirmation of our conference today, I am writing to ask for a written opinion on the matter of County Board of Supervisors authority to set County Library Contract Taxes and Appropriations. Does Code section 378.15 mean that 'not more than one mill' is one mill only? Does it mean any millage up to one mill? Does Code section 378.11 and 378.15 say that the millage shall be set by the Board of Supervisors? In other words, the Library Board of Trustees does not have authority to set a library millage.
>
> "In line with this last question, would you also quote the section of the Code which states that a Library Board is not a taxing body and why."

In reply thereto, I advise as follows:

(1) Section 378.15, Code of 1962, which provides power of levy of not more than one mill, means any millage not exceeding one mill.

(2) Section 278.11 and Section 378.15, Code of 1962, confer the power of certifying and levying upon the Board of Supervisors and not upon the Board of Library Trustees.

(3) The Library Board has no power to levy a tax because it is not a levying board within the terms of §24.2(2), nor a

certifying board within the terms of §24.2(3). The power to levy a tax is restricted to a board elected by the people. See State v. Mayor, et al., 103 Iowa 76.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

STATE OFFICERS AND DEPARTMENTS: Budget and Financial Control Committee -- Sections 6.5 and 6.6, Acts of the 58th G.A. Excess appropriated funds cannot be used by Committee for new construction which does not constitute repairs or a supplement to a prior appropriation.

August 7, 1962

Mr. H. Dwaine Wicker, Director
Iowa Legislative Fiscal Director
L O C A L

Dear Mr. Wicker:

Reference is herein made to yours of the 1st, inst., in which you submitted the following:

> "***
>
> "It has been determined by the Board of Regents that there is an excess of funds in the appropriation of $1,418,000.00 for the 'Pharmacy building without equipment', made by Chapter 6.1 of the 58th General Assembly. The Board of Regents has now requested approval, by the Budget and Financial Control Committee, to transfer $60,000.00 for the construction of a botany greenhouse on the roof of the University of Iowa Chemistry Building.
>
> "I respectfully request an opinion as to whether it is within the perogative of the Budget and Financial Control Committee to approve such a transfer in view of the above sections."

In reply thereto, I would advise as follows:

It appears from the foregoing that there is a surplus of $60,000 resulting from previous appropriation of $1,418,000 for the pharmacy building without equipment. Sections 6.5 and 6.6, 1962 Code of Iowa, provide:

> "Sec. 5. Upon the completion of any project as set forth in this act, any unobligated balance remaining may be used for any repairs as needed at the respective institution and to supplement at such institution any current or prior appropriations for buildings, repairs, improvements, replacements, alterations and equipment.
>
> "Sec. 6. Before any of the funds hereinabove appropriated shall be expended, it shall be determined by the state board of regents, with the approval of the budget and financial control committee, that the expenditure shall be for the best interests of the state."

According to the terms of §6.6 of the 58th G.A., this balance of $60,000 can be devoted to supplementing a current or prior appropriation for buildings, repairs, improvements, etc. Supplementing a previous appropriation is one thing, and using the excess money for new construction is another. The Committee may act upon a request to supplement a prior appropriation. It has no power to act upon a request to use such balence to construct a new building for which no previous appropriation has been made.

Where the request for transfer of excess appropriated funds is for new construction and not for repairs or to supplement a prior appropriation, the Committee is without power to act.

Very truly yours,

EVAN HULTMAN
Attorney General

EH:OS:la

STATE OFFICERS AND DEPARTMENTS: Authority of Executive Council to purchase new and unused equipment and supplies. The Executive Council has the authority to purchase new and unused furniture, office equipment and supplies, but has no such power to purchase used equipment and supplies.

August 3, 1962

Mr. Gary Gill, Secretary
Executive Secretary of Iowa
L O C A L

Dear Mr. Gill:

This will acknowledge receipt of yours of the 25th, ult., in which you submitted the following:

> "Presently there is a request before the Executive Council to buy used office equipment at reduced costs. There have been a number of requests in the past.
>
> "The question arose as to whether the Executive Council has statutory authority to approve the purchase of used equipment."

In reply thereto, I advise as follows:

The Executive Council has had statutory powers for many years to purchase the named equipment and other equipment and supplies. In the performance of such authority the Council has confined itself during the years to the purchase of all new and unused equipment and supplies. Nonaction by the Council by way of failure to purchase used equipment is indicative of the lack of any statutory power to make purchase of such used equipment This has the support of the following statement from Sutherland Statutory Construction, Third Edition, Volume 2 at page 519, paragraph 5106, where it is said:

> "Non-action by administrative officers may be indicative of a lack of statutory power. Thus it has been said by the United States Supreme Court, 'Authority actually granted by Congress, of course, cannot evaporate through lack of administrative exercise. But just as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.'"

Consequently, the Executive Council has the authority to purchase new and unused furniture, office equipment and other equipment and supplies, but has no such power to purchase used equipment and supplies.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

MOTOR VEHICLES: Disposal of abandoned vehicles -- §§321.85 to 321.91, Code 1962. The procedures set forth in §§321.85 to 321.91, inclusive, relating to abandoned motor vehicles, are inapplicable to the situation where a private individual is in possession of such a vehicle.

September 11, 1962

Mr. William C. Ball
Black Hawk County Attorney
Suite 201, First National Building
Waterloo, Iowa

Dear Mr. Ball:

This is in response to your opinion request in which you state:

"Section 321.85 of the 1958 Code of Iowa sets forth certain procedures for the disposal of stolen or abandoned motor vehicles, seized by peace officers in the course of their duties.

"In the course of my duties as County Attorney I have frequently been confronted with the situation of a private individual having possession of an abandoned vehicle, there being no evidence, however, that this vehicle was stolen or the serial or engine numbers altered, defaced, or tampered with as set forth in Section 321.84 of the 1958 Code of Iowa.

"I find in searching the Code no provision for disposal of abandoned vehicles by a private party. My question is whether the procedures under Sections 321.85, 321.86, 321.87, 321.88, 321.89, 321.90 and 321.91 apply to the situation where a private individual is in possession of an abandoned motor vehicle.

"Further the question arises whether or not it would be the duty of the County Attorney and/or the Sheriff to proceed under Section 321.85 to seize an abandoned vehicle and dispose of it as set forth in the preceding sections."

#6V 9-3

Section 321.85, Iowa Code 1962, provides in pertinent part:

> "Whenever any motor vehicle ... be abandoned and is not claimed by the owner within three days, then the officer having same in his custody must, on such date by certified mail, notify the department that he has such a motor vehicle in his possession, giving a full and complete description of same including all marks of identification, factory and serial numbers." (Emphasis added)

The terms "custody" or "possession" as used in §321.85 require that the peace officer have, at least, temporary physical control. State v. Johnson, 140 Conn. 560, 102 A. 2d 359, 362 (1954); Goodrich Silvertown Stores v. Collins, 167 Ore. 40, 115 P. 2d 332, 335 (1941); Monroe Cty. Motor Co. v. Tennessee Odin Ins. Co., 33 Tenn. App. 223, 231 S. W. 2d 386, 395 (1950). Since in the situation presented herein the peace officer is at no time in temporary physical control of the motor vehicle, §321.85 is inapplicable.

Section 321.84 will not authorize the seizing of such a vehicle since that section only applies when a peace officer finds a motor vehicle, the serial or engine number of which has been altered, defaced, or tampered with and the officer has reasonable cause to believe that the vehicle is being wrongfully held.

From this it becomes apparent that the procedures set forth in §§321.85 to 321.91 inclusive do not apply to the situation when a private individual is in possession of an abandoned motor vehicle.

Very truly yours,

BRUCE M. SNELL, JR.
Assistant Attorney General

BMS:DEB:bl

STATE OFFICERS AND DEPARTMENTS: Peace Officers Retirement Fund, Chapter 97A, 1962 Code of Iowa. Upon separation from the Retirement System, the contributions made by the employee are payable on demand without interest.

September 4, 1962

Mr. Carl H. Pesch, Commissioner
Department of Public Safety
L O C A L

Dear Mr. Pesch:

Reference is herein made to yours of July 31, 1962, in which you submitted the following:

> "Four of our former Highway Patrolmen have voluntarily enlisted in the military service of this country and have now been in military or federal service longer than the four year limitation set forth in Chapter 97A.9, Code of 1958, as repealed by Chapter 114 of the Acts of the 58th General Assembly effective July 4, 1959 and approved February 18, 1959. Section 97A.6(10) states that the accumulated contribution shall be paid on demand, however, no demand for payment has been made to date by any of the above mentioned Highway Patrolmen.
>
> "Inasmuch as the legislature deleted these patrolmen from membership in the retirement system by the above mentioned act, I respectfully request your opinion as to whether interest on their accumulated contribution should be continued, or shall the accumulated contribution as of July 4, 1959 be set aside in a reserve fund to await their demands without interest."

I would advise that §97A.6(10) provides, with respect to the fund described by you, the following:

> "97A.6 Benefits.
> ***
> "10. Return of accumulated contributions. Should a member cease to be a peace officer in the division of highway safety and uniformed

> force or the division of criminal investigation and bureau of identification in the department of public safety except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.
> ***"

This money, together with the contribution made by the State (see §97A.10) constituted part of the annuity savings fund of the peace officers retirement system. However, upon separation of the described patrolmen from this system as members thereof and with the withdrawal of the contribution made by the State to this fund credited to the patrolmens' accounts (see §97A.10) the monies remaining being the contribution made by the member himself, no longer has statutory status entitling it to investment or the avails of any investment.

Therefore, I am of the opinion that according to the statute the patrolmen referred to are entitled to this accumulated fund without interest upon demand. A deposit in a reserve fund pending this demand is proper.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

MOTOR VEHICLES, Certificates of Title, §321.123, 1962 Code of Iowa. The Department of Public Safety has no authority, express or implied, to issue "permissive" certificates of title for trailers which are declared exempt from the certificate of title laws by §321.123, 1962 Code of Iowa.

September 4, 1962

Mr. Carl Pesch, Commissioner
Department of Public Safety
L O C A L

Dear Mr. Pesch:

This is in response to your opinion request in which you state:

> "This department has issued through its motor vehicle division Policy Letter No. 2, a copy of which is attached hereto. You will note that this policy letter restates Section 321.123, Code 1958, as amended by the 58th General Assembly. You will note the language stated therein indicates that those trailers shall be exempt from a certificate of title and lien provisions of this chapter.
>
> "My question is, 'may this department, either through its motor vehicle division or through the county treasurers issue "permissive" titles?' This problem has been brought to my attention by trailer rental manufactures who feel that a permissive title would increase trailer sales in this state and would also increase trailer registrations. The type trailer to which I make reference is of the U-Haul type."

It is a well-known rule that an administrative agency is vested only with those powers which are expressly conferred on them by statute or which can fairly be implied from the express powers actually given. E.g., Merchants' Motor Freight, Inc. v. State Highway Commission, 239 Iowa 888, 32 N.W. 2d 773 (1948);

#62-9-1

State v. F. W. Fitch Co., 236 Iowa 208, 17 N.W. 2d 380 (1946).

Since the Legislature has conferred no power upon the Department of Public Safety to issue "permissive" certificate of title in the instance in question, no such power exists.

Very truly yours,

BRUCE M. SNELL, JR.
Assistant Attorney General

BMS:DEB:le

COUNTIES AND COUNTY OFFICERS: Domestic Animal Fund, Ch. 352, 1962 Code of Iowa. The Board of Supervisors has no jurisdiction of a claim filed against the Domestic Animal Fund lacking the verified signature of the claimant and the affidavit of two witnesses, and the filing of an amended claim more than two years later verified by the claimant and b two witnesses would not confer jurisdiction.

Oct. 18, 1962

Mr. Howard B. Wenger
Fremont County Attorney
Martin Building
Hamburg, Iowa

Dear Mr. Wenger:

Reference is herein made to yours of recent date, in which you submitted the following:

> "I would appreciate your opinion concerning the validity of a claim filed with the County Auditor under the Domestic Animal Fund, Chapter 352 I.C.A. The facts in our particular case are as follows.
>
> "On January 1, 1960, the claimant lost eight cows which he claims were chased 'by dogs from the pasture where they were kept through a fence and over a steep bank in a marshy ravine where they mired down and died.' On Monday, January 4th, the claimant reported his loss to the Board of Supervisors and on Tuesday, January 5th, the board went down to the farm of claimant and viewed the same. At that time the county board made no statement or decision concerning the loss but advised the claimant that he would have to file a verified claim supported by affidavits of two disinterested witnesses before they could consider the matter, and they provided the claimant with a printed claim blank to be used by him for this purpose.
>
> "On January 7, 1960, the claim was filed, however, the signature of the claimant was not notarized, although the form provided blanks for a notary public to acknowledge claimant's signature, and further the claim lacked the affidavits of the two witnesses, although the blank itself provided space for the affidavits and the appropriate lines for signatures of the witness and notary.
>
> "The claim was rejected by the board on December 19, 1960. There is nothing at this time to indicate why

the board rejected the claim, however, attached to the rejected claim is a short opinion by the county attorney stating that the claim was improper for the reason that the same was not verified as required by Section 331.21 I.C.A. and thus could not be allowed by the board.

"On June 29, 1962, the claimant, through his attorney, petitioned the board to reconsider the claim and set a date when the matter could be presented to the board. The petition alleged that the witnesses attempted to verify the claim at a time after it was filed but were advised it was too late for them to sign same.

"Because of prior rulings of the attorney general stating that witnesses should be permitted to verify claims filed under this section even after the ten day period within which the claim is filed, and because of the ruling in the case of Wisdom vs Board of Supervisors of Polk County, 19 NW 2d 602, 236 Iowa 669, the present board met with the claimant and his witnesses. The facts show that the witnesses did not come into verify the claim until sometime in the month of December 1960, however, there was no evidence to indicate whether this was prior to the time the claim was rejected by the board or subsequent to said time. It is also undisputed that claimant himself at no time during the year 1960 made any attempt to have his signature verified.

"On August 10, 1962, the claimant filed an amended claim which was duly verified by him and also by two witnesses.

"Under the facts as stated above: (1) Does the Board of Supervisors have the right to consider the merits of the amended claim? (2) If they should consider the claim and same would be allowed, out of what fund would same be paid?"

In reply thereto, I would advise as follows:

(1) It is stated in the report of this Department appearing in 1944 OAG 133 the following:

"Section 5124, with respect to unliquidated claims generally, regulates the form and the manner in which

> said claims shall be presented and provides specifically that the claims shall be duly verified by affidavit of the claimant, and no action shall be brought against any county on any such claim until the same has been so filed and payment thereof refused or neglected. Such presentation under that Section in the form prescribed is a condition precedent to an action against the county and is jurisdictional. State ex rel. Fletcher v. Naumann, 213 Iowa 418. ..."

(2) This claim, as originally presented, was defective in that claimant failed to verify it and jurisdiction to adjudicate the claim never attached.

(3) The filing of the amended claim on August 10, 1962, more than two years after the filing of the original claim, verified by both the claimant and the witnesses, did not confer jurisdiction upon the board.

(4) The board has no power to consider or act upon the amended claim.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

SCHOOLS: Disposition of property-§297.22
The daily average attendance in the school district is a condition precedent to the authority of the school board to dispose of property without the vote of the electors.

October 16, 1962

Mr. Gordon L. Winkel
Kossuth County Attorney
Box 405
Algona, Iowa

Dear Mr. Winkel:

This is to acknowledge receipt of your request for an opinion, wherein you state:

> "We have had a question arise in the County with respect to the interpretation to be placed upon Section 297.22, particularly with respect to Subsections 1 to 4 thereof.
>
> "Our question is whether, for example, in Subsection 1 the reference is to 200 in the School District or an attendance of 200 in the high school. Your early opinion will be appreciated inasmuch as we have several matters now pending which hinge upon the proper interpretation thereof."

Section 297.22, Code 1962, authorizes a school district, under certain conditions, to sell, lease, or dispose of property belonging to the school corporation. An examination of the section discloses that there are four different conditions upon which the school district may dispose of property without the vote of the electors as provided in Section 278.1, Code 1962.

In subsections 1 through 3 there are three conditions precedent which must exist before the board of directors can dispose of property for the school corporation. One condition is that the property to be disposed of must be of a value less than stated in the section. Another

condition precedent to the right of a school district to dispose of property is that the school district must maintain a high school. The third and final condition is that the average daily attendance in the school district in the preceding year must be of a certain size.

Under subparagraph 4 thereof, there is only one condition precedent to the right of the school board to dispose of property. If the property to be disposed of is $500 or less, then the school district has the right to dispose of property even though it does not maintain a high school and there is no restriction as to the average daily number of students within the school district.

Therefore, it is our considered opinion under Section 297.22(1), Code 1962, that the average daily attendance in the year preceding refers to the attendance in the school district and not the average daily attendance in the high school.

Yours very truly,

Theodor W. Rehmann, Jr.
Assistant Attorney General

TWR/ch

COUNTIES AND COUNTY OFFICERS: County Hospital Depreciation Fund, §§347.12, 347.14, 347.14(11), 1962 Code of Iowa. A County Hospital Depreciation Fund may be established by the Board of Hospital Trustees by proper resolution, in which the County Auditor has no part. Government bonds acquired by the trustees as part of the Depreciation Fund shall be deposited to the County Treasurer under §347.12, Code of 1962. (Strauss to Bedell, Dickinson Co. Atty., 11/26/62) #62-11-4

November 26, 1962

Mr. Jack H. Bedell
Dickinson County Attorney
Antlers Hotel Building
Spirit Lake, Iowa

Dear Mr. Bedell:

Reference is herein made to yours of the 1st, inst., in which you submitted the following:

> "I respectfully request your official opinion as to an interpretation of Section 347.14 subsection 11 in regard to the depreciation fund of a county public hospital.
>
> "The trustees of the Dickinson County Memorial Hospital are desirous of creating a depreciation fund, and it is my understanding that under the above quoted section said fund may be placed in United States Government Bonds. In the last portion of subsection 11 of Section 347.14 of the Iowa Code, we find the following: 'such investment when so made shall remain in said United States Government Bonds until such time as, in the judgment of the board of trustees, it is deemed advisable to use said funds for hospital purposes.'
>
> "My question pertains to the definition of 'hospital purposes'.
>
> "The Dickinson County Treasurer received a letter from the State Auditor's office over the signature of Earl C. Holloway, cautioning that the trustees could use this fund for hospital purposes only and that it could not be used as part of the maintenance fund. Before this fund is officially created, the trustees would like to know whether or not this fund can be used for replacement of equipment, additions of equipment, redecorating, remodeling of rooms within the hospital, repairs to the hospital and its equipment, expansion of the hospital facilities, additional partitions and equipment. I can find nothing in the Code that spells this out, and I am not certain as to the distinction between the maintenance fund and the words as used in the Code 'hospital purposes'.

#62-11-4

> "There is also some question as to whether or not the establishment of this fund requires the approval of the Auditor's office or whether the trustees merely establish the fund and then purchase the bonds to be either held by the trustees or the county treasurer. I would appreciate it if you would give me your opinion as to what procedure should be followed in this respect."

(1) Insofar as your question 1 is concerned, as to the definition of hospital purposes as used in §347.14(11), 1962 Code of Iowa, I would advise that this has had the previous consideration of the Department, and in an opinion issued August 24, 1962, it was held:

> "No. 2; insofar as this question is concerned, I am of the opinion that Section 347.14(11) makes creation of the Depreciation Fund discretionary with the board of trustees, and also grants the board of trustees discretion as to how the fund is to be used. In that aspect, it may be transferred to the hospital fund, and such moneys in the fund can be, at the discretion of the hospital trustees, used for hospital purposes. This fund should be regarded, for the purposes set out in your letter, as an unappropriated fund within the terms of Section 347.7, and is available without submission to the electors."

(2) Insofar as the establishment of the fund is concerned, and the auditor's power of approval thereof, I would advise that it is within the power of the Board of Hospital Trustees to establish the depreciation fund by proper resolution. This power is exercised by the hospital trustees, in the exercise of which the county auditor has no connection.

(3) Insofar as concerns the question of who takes possession of such bonds as may be a part of the depreciation fund, I would advise that it is provided by §347.12, Code of 1962, that "the county treasurer shall receive and disburse all funds under the control of said board of trustees." This statute includes within its terms any bonds that may be purchased under the authority of §347.14.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

INSURANCE: Premium tax on accumulated dividends -- §432.1, 1962 Code of Iowa. Premium tax is not assessable on use of accumulated dividends to purchase fully paid policy. (Bump to Insurance, Comm. of Ins., 11/21/62) #62-11-1

November 21, 1962

William E. Timmons
Commissioner of Insurance
State of Iowa

Dear Mr. Timmons:

This is in reply to your recent inquiry, in which you raised the following questions:

"(1) Under the provisions of Section 432.1, are the accumulated dividends applied to purchase paid up insurance, 'premiums received during the calendar year', and as such, subject to the two percent tax?

"(2) In the event your answer to our first question is in the affirmative, what additional tax liability exists for companies that have submitted their 1961 tax return and payment without including the tax on dividends used to pay up policies? These companies have received the Certificate of Authority required for their continued operation in Iowa during 1962. For your guidance, we enclose a copy of the application for Renewal of Certificate of Authority and Premium Tax Return form used by all companies."

Section 432.1 of the Iowa Code (1962) provides:

"Tax on gross premiums. Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, county mutual associations and nonprofit hospital and medical service corporations, shall, at the time of making the annual statement as required by law, pay to the treasurer of state as taxes, an amount equal to the following:

#62-11-1

> "1. Two percent of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance."

It is clear from Section 432.1 that the premium tax is levied on the "gross amount of premiums received during the preceding calendar year." Section 432.1 is substantially a consolidation of former sections 7021, 7022 and 7025 of the Code of 1939, all of which contained the same taxing phrase. The rule that taxing power should be strictly construed against the taxing body is equally applicable to insurance premium taxes. Iowa Mutual Tornado Ins. Ass'n. v. Fischer, 245 Iowa 951, 65 N.W. 2d 162 (1954).

Prior Iowa decisions have held that the tax base under the premium tax statutes is the total amount of the premium due under the insurance contract for the year. Normally, this contract amount is in excess of the amount actually required to pay for the insurance, itself. If a dividend is declared, which is basically a return of the excess portion, it may be used either in reduction of a subsequent premium payment or to buy additional insurance, and in either case no further tax is assessed. This result follows because the insured has paid a contract amount which has been fully taxed, and by the dividend adjustment he will obtain the correct amount of insurance coverage for the premiums he has actually paid. Mutual Benefit Life Ins. Co. v. Fischer, 236 Iowa 40, 17 N.W. 2d 847 (1945); Prudential Ins. Co. v. Green, 231 Iowa 1371, 2 N.W. 2d 765 (1942); New York Life Ins. Co. v. Burbank, 209 Iowa 199, 216 N.W. 742 (1929).

The tenor of the prior decisions of the Iowa Supreme Court, cited next above, is that the levy is to be made on the annual contract premium. The provisions of the insurance contracts here involved allow the insured, at his option, to change his policy to a paid-up one when the cash surrender value plus his accumulated dividends equal the

amount of a net single premium for the policy at the insured's attained age. It is clearly a contract right, which, when elected by the insured, destroys all future obligations to pay annual premiums. There are no annual contract premiums and no "gross amount of premiums" left to be collected.

The answer to the first question you have raised is that there is no premium tax assessed upon the accumulated dividends used to purchase paid-up insurance. In view of the result, no answer is required to the second question.

Sincerely yours,

WNBUMP:mch

COUNTIES AND COUNTY OFFICERS: Secondary Road Fund. The secondary road fund is not available for the payment of insurance premiums ~~on insurance covering secondary road employees. 1928 OAG 353 con-~~ firmed. (Strauss to Williamson, Adair Co. Atty., 11/21/62) #62-11-2

November 21, 1962

Mr. Clare H. Williamson
Adair County Attorney
Post Office Box 25
Greenfield, Iowa

Dear Mr. Williamson:

Reference is herein made to yours of the 31st, ult., in which you submitted the following:

> "I have been requested by the County Auditor and County Engineer of Adair County, Iowa, to write you for an opinion as to whether or not it would be permissible to pay workmen's compensation insurance premiums on county secondary road employees out of the secondary road fund. A 1928 Attorney General's Opinion at page 353 apperently states that this cannot be done, however, our County Auditor advises me that a State Auditor advised him that the payments could be made out of Secondary Road Funds under the broader provisions of 309.9 of the 1962 Code of Iowa, formerly 309.10."

In reply thereto, I advise ~~your inquiry~~ that the 1928 opinion to which you refer is as applicable to the present situation as it was to the situation then submitted, and it is, therefore, now confirmed.

Therefore, the secondary road fund is not available for the payment of insurance premiums on county secondary road employees.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

#62-11-2

COUNTIES AND COUNTY OFFICERS: Benefited Fire Districts, §§357A.1, 357A.3 and 357A.4, 1962 Code of Iowa. The establishment of a benefited fire district under Chapter 357A, Code of 1962. In determining the boundaries of such district, jurisdiction of the Board of Supervisors to act thereon is confined to the proposed boundaries as defined in the petition to the Board. (Strauss to Bainter, Henry Co. Atty., 11/21/62)
#62-11-3

November 21, 1962

Mr. Harlan W. Bainter
Henry County Attorney
118½ South Main
Mt. Pleasant, Iowa

Dear Mr. Bainter:

This will acknowledge receipt of yours of the 23rd, ult., in which you submitted the following:

> "Inquiry has been directed to me by the Henry County Board of Supervisors, as well as by an Attorney; namely, John W. Carty, Winfield, Iowa, with regard to a problem which has arisen in the creation of a benefited fire district in both Henry and Louisa Counties. Petitions were circulated in the intended areas and the same were presented to a special meeting of the joint Boards of Supervisors of the two counties involved. A number of interested persons who had learned of the meeting and who desired to be included in the district appeared at this meeting, and the question was raised as to whether or not the boundary lines of the proposed district could be expanded to include additional territory not originally included in the proposed district as set out in the petition.
>
> "The specific question I am submitting is as follows:
>
> "Under the provisions of Chapter 357A of the Code of Iowa for 1962, and particularly under the provisions of Section 357A.8, may a Board of Supervisors (or a joint Board in an applicable situation) include territory in a benefited fire district which was not originally included in the district as described in the petition, and if so, under what terms and conditions?"

In reply thereto, I advise you that the only jurisdiction conferred upon the Board of Supervisors to establish a fire district

under Chapter 357A is §357A.1, providing the petition to the Board shall, among other things, provide "the approximate district to be served" and §357A.3, which provides for notice of hearing upon the foregoing petition in the following terms:

> "Notice of hearing. When the board of supervisors receives a petition for the establishment of a benefited fire district, a public hearing shall be held within twenty days of the presentation of the petition. Notice of hearing shall be given by posting bills in three public places within the district. The last publication or posting shall be not less than one week before the proposed hearing."

Finally, as quite determinative of this situation, is §357A.4, which describes the action of the Board of Supervisors in these terms:

> "Action of the board. On the day fixed for such hearing, the board of supervisors shall by resolution establish the benefited fire district or disallow the petition. For adequate reasons the board of supervisors may defer action on such petition for not to exceed ten days after the first day set for a hearing."

Obviously, it is the power of the Board to disallow the petition as presented, with the territory to be included therein described, or to establish the district as petitioned for. There is neither express nor implied power within the Board to extend the boundary of a proposed district as part of its decision of establishment. Its power is to establish the district as stated in the petition, and not to establish the district with the district described in the petition supplemented by additions thereto.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

SCHOOLS: Discipline, Sec. 285.1. A school district may punish unruly pupil by keeping him after school even though said pupil will miss transportation provided by school district. School district is not responsible for providing other transportation after disciplinary action is completed.

December 17, 1962

Mr. Robert Maddocks
Wright County Attorney
Clarion, Iowa

Dear Mr. Maddocks:

This is to acknowledge receipt of your request for an opinion in which you state as follows:

> "A teacher in a school in Wright County has had disciplinary problems with one of the rural pupils and as a result has kept the pupil after school has been dismissed. This child then misses the school bus.
>
> "1. May an Iowa Public School teacher discipline an unruly pupil by keeping him in after school is dismissed, even though to do so would mean that said pupil would miss the transportation provided to transport said pupil to his home.
>
> "2. In the event number 1, supra, is answered (in the affirmative), then and in that event, is the school responsible to see that the purll is transported to his home after the punishment has been completed." (Parenthesis added)

The conduct of pupils directly relating to and affecting the management of the school and its efficiency is within the proper regulation of the school authorities. Kinzer v. Independent School District, 129 Iowa 441, 105 N.W. 686. The school authorities are necessarily invested with a broad discretion in the management of pupils with which the courts will not interfere unless it has been illegally or unreasonably used. 47 Am. Jur. Schools Section 167, page 423. Thus, in answer to your first question, a school teacher may impose such disciplinary measures upon a pupil, such as keeping him after school, if said pupil is unruly.

69-12-3

Section 285.10, Code 1962, provides in pertinent part:

> "The powers and duties of the local school boards shall be to:
>
> "1. Provide transportation for each pupil who attends public school, and who is entitled to transportation under the laws of this state.
>
> " *** "

In the case of Flowers v. Ind. Sch. Dist. of Tama, 235 Iowa 332, 16 N.W. 2d 570, the Supreme Court said that the provisions of the statute to provide transportation for children to and from school was mandatory but within limits so as not to afford an unnecessary burden to the school district and to provide transportation as nearly complete as reasonably possible. Thus, the discretion of the board under a certain set of facts will not be interfered with by the Court if it imposes no unreasonable result.

Therefore, in answer to your second question, the above quoted section is not applicable to those pupils who are retained after the normal class hours for disciplinary measures, and the school is not responsible to see that the pupil is transported to his home after the disciplinary action has been completed.

Yours very truly,

Theodor W. Rehmann, Jr.
Assistant Attorney General

TWR/ch

MOTOR VEHICLES: Operator's License -- §§321.196, 321.197 and 321.198, 1962 Code of Iowa. Department of Public Safety has no authority to grant extensions of Iowa operator's licenses except to qualified military personnel under §321.198. (Snell to Pesch, Comm. Public Safety, 12/14/62) #62-12-2

December 14, 1962

Mr. Carl H. Pesch
Commissioner
Department of Public Safety
L O C A L

Dear Mr. Pesch:

This will acknowledge receipt of your request dated May 4, 1962, for an opinion regarding the following factual situation stated in your letter:

> "The Department of Public Safety has been operating pursuant to a policy of issuing temporary extensions of Iowa operator's licenses to Iowa residents who are temporarily residing out of the state. Such an extension is granted to an Iowa resident upon his request and a certificate evidencing such extension, a copy of which is attached hereto, is forwarded to the licensee to be attached to his license.
>
> "* * *
>
> "Said extensions are granted to Iowa residents who are temporarily residing out of the state and who will not return to Iowa until after the expiration date of their license. An example of a person in this situation is an Iowa resident who is employed by an Iowa Congressman or Senator in Washington, D.C., or the wife of a serviceman stationed overseas but still claims Iowa as her permanent residence.
>
> "The extensions which this department has been granting are without fee and are normally for a period of 6 months. However, the extension period is not limited to 6 months and occassionally it will be granted for a longer duration. It has been conservatively estimated that this department has been issuing approximately 500 of said extensions each month.
>
> "I respectfully request your opinion on the following questions:

#62-12-2

"1. Does the Commissioner of Public Safety have the authority to grant a temporary extension of an Iowa operator's license to an Iowa resident temporarily residing out of the state without charging a fee for such extension?

"2. If your answer to question #1 is in the negative, may such an extension be granted if a fee is charged and would such fee need to be the full fee charged for the renewal of an operator's license?

"3. If your answer to either question #1 or #2 is in the affirmative, may such extension be granted for any period up to 2 years?

"4. If it is within the authority of the Commissioner to issue such an extension, is it necessary that the licensee submit to a vision test, and if so, will a certificate of such vision test, administered by a competent person outside the state of Iowa, be sufficient?"

As noted by you in your letter, the general provision which sets the expiration date for an operator's license is §321.196, 1962 Code of Iowa. That statute provides that each operator's license issued after July 5, 1948, shall expire two years from the licensee's birthday anniversary occurring in the year of issuance.

Section 321.198 provides for an extension of a valid operator's or chauffeur's license held by any person at the time of entering the military service of the United States or of the State of Iowa subsequent to September 19, 1940. There is no extension provided by this section to persons other than those in the military service who qualify thereunder. Moreover, I am unable to find any statutory authority for issuing the temporary extensions of operator's licenses described in your letter. For these reasons, it is my opinion that extensions of Iowa operator's licenses, except as allowed to persons in the military service under §321.198, are beyond the power of the Department of Public Safety to grant.

Very truly yours,

BRUCE M. SNELL, JR.
Assistant Attorney General

BMS:hc

COUNTIES AND COUNTY OFFICERS: Incompatibility of County Attorney and Member of Soldier's Relief Commission. The offices of County Attorney and member of the Soldier's Relief Commission are incompatible, and in addition, the County Attorney is disqualified from occupying those two offices at the same time. (Strauss to Allen, Monona Co. Atty-elect, 12/11/62) #62-12-1

December 11, 1962

Mr. Sewell L. Allen
Monona County Attorney Elect
Onawa, Iowa

Dear Mr. Allen:

Reference is made to yours of the 19th, ult., in which you request an opinion as to whether the offices of member of the Soldier's Relief Commission and County Attorney are incompatible.

In reply thereto, I would advise you as follows:

(1) The members of the Soldier's Relief Commission are county officers and the County Attorney, therefore, is their advisor and has the duty of rendering opinions to such commissioners. There is potential conflict in the performance of your duty as County Attorney and your duty as a member of the Soldier's Relief Commission.

(2) For the following additional reason the County Attorney is disqualified from occupying at the same time the office of Soldier's Relief Commission member. The County Attorney is paid a fixed salary, and such compensation, generally speaking, is payment in full for all services to the county, unless provided otherwise by statute. In respect to the foregoing, it is said in an opinion of this Department, appearing in 1922 OAG 285, the following:

> "The county attorney of a county is not precluded from acting as an administrator or as an attorney for an estate in probate court, nor is he prohibited from receiving fees as such. Such work is personal

#62-12-1

and not work performed in the exercise of his duties as a public official. This statement is inserted in order that there may be no misunderstanding relative to this opinio .

"With the explanation contained in the preceding paragraph we will now consider the specific proposition submitted by you upon the assumption that the services rendered by the county attorney and for which compensation is claimed were rendered for the benefit of the county.

"It is unnecessary to set forth the statutes relating to the duties of a county attorney or to the provisions of the statute relative to his salary. Suffice it to say, that the duties of a county attorney include services of every kind for the benefit of the county or the several offices in the county government. Services for the collection of money due the county is clearly within the duties of the county attorney whatever may be the source from which the money is due. It is a well established rule of law that public officials are only entitled to such compensation for the performance of their prescribed duties as is fixed by statute, and that where a salary or other fixed compensation is provided for such official, and no other fees or compensation is provided by statute, then such salary or fixed compensation includes within itself all compensation to be paid for the performance of such duties.

"See in this connection the following cases: Moore vs. Independent District, 55 Iowa 654; McNider vs. Sirrien, 84 Iowa 745; Guanella vs. Pottawattamie County, 84 Iowa 36; Ryce vs. Osage, 88 Iowa 558; Sprout vs. Kelly, 37 Iowa 44; State vs. Adams (No. App.) 72 S.W. 656; Wood vs. Board of Commissioners, 25 N.E. 188; Tuall vs. County Commissioners, 4 Ohio Dec. 318; McGovern vs. Board of Commissioners, (Volo) 131 Pac. 274; Troup vs. Morgan County, (Ala.) 19 So. 504; DeBolt vs. Trustees of Cincinnati Twp., 7 Ohio S.R. 237. See also: Burlingame vs. Hardin County, 180 Iowa 919."

These offices are incompatible, and the County Attorney is disqualified.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la

STATE OFFICERS AND DEPARTMENTS; ~~SCHOOLS~~ Incompatibility of State Senator and member of Community School District Board, ~~§§21 and 22 Art. III, Constitution of Iowa~~ The office of Senator in the General Assembly and membership on Board of Directors of a Community School District are incompatible. However, there is neither Constitutional nor statutory bar to such occupancy. (Strauss to Doran, St. Sen.-elect, 12/7/62) #62-12-5

December 7, 1962

Honorable A. V. Doran
State Senator Elect
Third Floor, Boone National Building
Boone, Iowa

My dear Mr. Doran:

This will acknowledge receipt of yours of the 17th, ult., in which you advise that you were elected Senator from the Thirty-First District, and advise further that you are a member of the board of directors of the Boone Community School District, which term of office will not expire until the fall of 1963. You question whether there is either constitutional or statutory law or incompatibility preventing you from holding both offices.

In reply thereto, I would advise as follows:

(1) The office of director of a community school district is not a lucrative office or one held for profit. A member of the Legislature is, therefore, not barred by §§21 and 22 of Art. III of the Constitution from holding both offices, that is member of the Legislature and director of the Community School District.

(2) There appears to be incompatibility in the holding of such office by a member of the Legislature at the same time. There is potential conflict between the duties to be performed by you as a member of the Legislature and your duties to be performed as a member of the local school board.

#62-12-5

(3) I find no statutory bar to such occupancy.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:le

STATE OFFICERS AND DEPARTMENTS: State Treasurer - Transfer of funds to Public Safety Dept., $422.62, 1962 Code of Iowa. (1) The opinion of the Department issued September 27, 1961 is verified to the extent of holding Chapter 230, Acts of the 59th G.A., now part of $422.62, Code of 1962, a permanent law and, therefore, authority to transfer $425,000 to the Motor Vehicle Registration (Division) of the Department of Public Safety is a continuing one and does not terminate on June 30, 1963. (2) Any unexpended balance of the composite amount of $850,000 allocated during the biennium is to be credited to the road use tax fund at the end of the current biennial period and thereafter at the end of future such periods. (3) The registration plates for each year after and including 1963 shall have reflectorized surface.

Mr. Carl H. Pesch, Commissioner
Department of Public Safety
L O C A L

(Attorney General's Opinion, 12/28/62) #62-12-4

December 28, 1962

Dear Mr. Pesch:

Reference is herein made to your letter of recent date in which you submitted the following:

> "Section 422.62, 1962 Code of Iowa, reads as follows: 'Annually on November 1st of each year, the Treasurer of State shall transfer $425,000 to the division of Motor Vehicle Registration of the Department of Public Safety for the purpose of purchasing supplies, materials and the cost of manufacturing of motor vehicle registration plates at the Prison Industries. The border and message on all such motor vehicle registration plates, beginning with the plates for the year 1963, shall have a reflectorized surface. Any amount unexpended for this purpose at the end of the biennial period shall be credited to the road use tax fund.' My questions are these:
>
> "1. Will the authority for transfer by the Treasurer of State end on June 30, 1963, or is this procedure of transfer permanent in nature unless otherwise amended by the General Assembly?
>
> "2. There have been transfers made on November 1, 1961 and on November 1st of this year. Does this mean that whatever is unexpended from the composite amount, or $850,000, be credited to the road use tax fund at the end of the current biennial period? In other words is the transfer made by the Treasurer on each November 1st of each biennial period to be considered completely in determining what unexpended balances, or unexpended balance shall be credited to the road use tax fund?

#62-12-4

> "3. Does this law now provide that registration plates for each year after and including 1963 shall have a reflectorized surface as specified therein so that additional legislation will not be needed to continue this program?"

There is a clue in the statute involved herein of the character of this statute, whether temporary or permanent. This is clearly evidenced in the following language:

> "The border and message on all such motor vehicle registration plates, beginning with the plates for the year 1963, shall have a reflectorized surface."

It would seem highly superfluous to have defined the word "beginning" as used in the foregoing statute because of its common meaning. Its dictionary meaning is this:

> "beginning n. 1. The commencement; the start. 2. A point in space or time at which a thing begins. 3. One of the earliest acts or products of something which has a history; as, the <u>beginnings</u> of English poetry. 4. The first cause; origin; as, God is the <u>beginning</u> of all things."

Thus, the year 1963, as used therein, concerns not the specific year 1963, but that date is the beginning of a period. If the Legislature had intended to confine the direction of the statute quoted to the year 1963, it would have stated: "The border and message of such motor vehicle plates for the year 1963 shall have a reflectorized surface." This interpretation of this sentence explains the legislative intent of the entire statute. Because of the allocation of $425,000 annually for the purposes, among other things, to be used in paying "the cost of manufacturing motor vehicle registration plates at the Prison Industries", it is

obvious that as the statute involved now stands it cannot be part permanent and part temporary. Therefore, in answer to your questions, I advise that:

(1) The authority to transfer does not terminate on June 30, 1963, and to make its termination date June 30, 1963, legislation would be required.

(2) The unexpended balance of the composite amount of $850,000 is required to be credited to the road use tax fund at the end of the current biennial period, and thereafter at the end of future such periods.

(3) In answer to question 3, the registration plates for each year after, and including, 1963, shall have reflectorized surface as specified in the statute. Additional legislation will, therefore, not be required.

Very truly yours,

OSCAR STRAUSS
First Assistant Attorney General

OS:la