COMPLIMENTS OF

GEORGE T. SIMPSON

ATTORNEY GENERAL

Clifford L. Hilton

Assistant Attorney General

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF MINNESOTA

FOR THE PERIOD ENDING
DECEMBER 31, 1910

GEORGE T. SIMPSON, Attorney General

SYNDICATE PRINTING COMPANY
MINNEAPOLIS, MINNESOTA
1910

ATTORNEY GENERAL'S OFFICE.

GEORGE T. SIMPSON	*Attorney General*
CLIFFORD L. HILTON	*Assistant Attorney General*
GEORGE W. PETERSON	*Assistant Attorney General*
LYNDON A. SMITH	*Assistant Attorney General*
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DAISY G. STRUTZEL	*Stenographer*
EDNA G. LIENLOKKEN	*Stenographer*
SADIE H. YOUNG	*Special Stenographer*

ATTORNEYS GENERAL OF MINNESOTA.

Territorial.

LORENSO A. BABCOCK: June 1, 1849 to May 15, 1853.
LAFAYETTE EMMETT: May 15, 1853 to May 24, 1858.

State.

CHARLES S. BERRY: May 24, 1858 to January 2, 1860.
GORDON E. COLE: January 4, 1860 to January 8, 1866.
WILLIAM COLVILLE: January 8, 1866 to January 10, 1868.
F. R. E. CORNELL: January 10, 1868 to January 8, 1874.
GEORGE P. WILSON: January 9, 1874 to January 10, 1880.
CHARLES M. START: January 10, 1880 to March 11, 1881.
W. J. HAHN: March 11, 1881 to January 5, 1887.
MOSES E. CLAPP: January 5, 1887 to January 2, 1893.
H. W. CHILDS: January 2, 1893 to January 2, 1899.
W. B. DOUGLAS: January 2, 1899 to April 1, 1904.
W. J. DONAHOWER: April 1, 1904 to January 2, 1905.
EDWARD T. YOUNG: January 2, 1905 to January 4, 1909.
GEORGE T. SIMPSON: January 4, 1909 to .....

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LETTER OE TRANSMITTAL

State of Minnesota,
Attorney General's Office,
Saint Paul.

Hon. Adolph O. Eberhart, Governor.

Sir: I have the honor to transmit herewith the biennial report of this office for the years 1909-1910. Therein as provided by law, there is set out the number, character and result of all actions and proceedings in which I have appeared for the state, the expense incurred by the state in each, and the amount of fines, penalties and other moneys collected, together with the opinions of general interest given out by me and my assistants during such time.

Under the statute the attorney general is authorized to make such recommendations for the amendment of the laws as he may deem necessary or proper, and you will also find therein a statement of my views in relation to the latter.

RECOMMENDATIONS FOR AMENDMENT OF LAWS.

While it may be said without fear of contradiction that the laws now upon the statute books of the state of Minnesota are in advance of those of many other states, yet I am convinced that in certain particulars amendment of the same is necessary and proper. The state, particularly in the northern part, is rapidly developing and new conditions as they arise must be met with adequate provisions of law.

IRON ORE AND TIMBER LANDS.

The great problem in a material way confronting the people of Minnesota at the present time is the proper development and sale of its lands, the conservation of its timber, and the management of its iron ore interests.

It is the owner at the present time of about two million acres of land, in part covered with merchantable timber of various kinds. It is also the owner of a vast deposit of iron ore, some of which it has leased and which is being mined under such leases. That some of the state land, as yet unsold, is underlaid with iron ore is the judgment of those best informed. That most of the state land is covered with timber of various kinds is known to everybody. That some of this land, indeed, most of it, is fit for agriculture is probably true; but on all of these matters of vital interest to the people of this state, the state and none of its officers have definite knowledge or informaion, nor does the state law provide means for ascertaining the same. Yet the value of this land varies not only with the present character of the timber, or want of timber thereon, and the present use to which the same can be put, but also with the future possibilities at present latent therein. And while it is true that the present sale of iron ore is upon a fixed basis, and one which cannot now be changed as to the greater part of the now known ore body, yet the same rule does not apply to the sale of state lands or to the disposition of state timber, nor to that part of the ore deposit which unquestionably exists in the state, and which is not covered by existing leases. The leasing of iron ore lands being in effect prohibited, and the title thereto in all cases being reserved to the state, the present disposition of the remaining iron ore of the state is not now insistent, but the solution of the problem of the state lands, involving the further one as to whether the cut-over lands shall be reforested or put to agriculture, is a question which in my judgment is before the people of this state at the present time and demands immediate attention and an early solution. Indeed, the whole traditional policy of the state is involved in this question, for the real problem is not what each tract of land, if sold, shall bring to the state, but rather whether the state in the future shall hold its property as it has in the past, unimproved—without roads, without fire protection, a waste, which is in a certain sense a public nuisance and a menace, rather than an aid to the present and future welfare of the state—in the hope of reaping the advantages which will come from improvements made by surrounding settlers, or whether the state shall enter upon a conservative plan for the sale of its land by which settlers may be induced to buy the same, and thus place the same upon the tax rolls of the state.

As to the future sale of the pine timber of the state I believe it would be to the advantage of the state to entirely prohibit the sale of the same, hereafter, except in such an amount thereof as in the

opinion of experts, in the employ of the state, is necessary, and for the protection of that remaining. I believe that the entire body of law affecting this great question and the proper administration of the same is in a general way, archaic, obsolete, and not such as does, or will, conduce to the best interests of the commonwealth and the proper development of its property. In view of the fact that this deparment has recently been instrumental in sustaining the constitutionality of this law in the supreme court of the United States, I believe I am warranted in saying that many features of that act may be fairly considered unjust. For instance, it is a well understood fact that the timber law of this state was passed to meet a condition then existing, but one now which I am glad to say has passed away. But to provide by law that a contractor who has cut timber in good faith and who is unable to remove the same, during the life of his permit by reason of an early season, is guilty of a criminal offense and may be held in treble damages if he removes such timber, is to my mind an unjust provision of law; yet such is the statute of this state. It is neither just to the contractor nor to the state, and is a condition which any business man engaged in a like pursuit could settle quickly and with a due regard for his own rights and those of his contractor; yet in a situation such as I have outlined under the law in question, the state and its officers are absolutely powerless, and the only remedy is an appeal to the courts.

Again, as to state lands, under the laws of this state, the lands are sold by the state auditor at public auction to the highest bidder. Sales are held but once a year in the respective counties. In my opinion this phase of the law requires early amendment. If the State of Minnesota expects to sell its land, and induce settlers to buy the same, in my opinion the law should be so amended as to permit of sales being made every day in the year by the respective county auditors, and upon terms, that while fair not only to the state and the settler, will also be in the nature of inducement to the latter. The state is a great land owner; a great business corporation, engaged in the selling of land. Compare this policy of this great land owner with the policy of any other great land owner likewise engaged in this state, and note the difference. As a business proposition, how much of the land of these other corporations would ever be sold if sales were had in the respective counties but once a year, and if the owner in selling those lands had no information as to the character of the soil upon the same, and what the same would produce; could give no guarantee as to whether public highways were being built or would ever be built into the tract in question, and

could give no assurances that public schools would ever exist upon or near the land in question? Under such circumstances no one would hesitate to say that the sales of such land owner would be at a minimum. Yet the question is often asked why the lands of the state are not being sold, and why the lands of private investors are at a premium on the market.

Assume that a settler in good faith, believing that he was settling upon government land, squats on lands that are ultimately patented to the state after residing thereon, and has become a fixed part of the locality in which he resides, the state acquires title to the property. There is no law upon the statute book of this state which would authorize any administrative officer to compromise or dismiss or otherwise terminate a contest even where, in his opinion, such bona fide settler was justly entitled thereto. The only option the state has is to continue the litigation, and thus either force the settler to leave the land or purchase it from the state as virgin property, and without any compensation for improvements then made thereon. Unquestionably the power should reside in some state officer or some board to meet and solve in a way, fair to the rights of all parties, a situation such as I have just outlined.

Again, as to the ore lands of the state, I believe it to be in consonance with good public policy that there should be more careful inspections of operations under outstanding iron ore leases, and that the rights of the state in a fifty million dollar proposition should not be left to the care and discretion, however efficient, of two or three men.

However, these are but a few of the many changes and amendments which the law of this state applicable to such matters in my judgment demands. There are many others which every thoughtful person conversant with the situation can readily suggest. Yet the law affecting the sale of pine timber should not be repealed without replacing the same with a more just enactment. The law affecting the sale of state lands should not be changed without replacing the same with a better one, and when it may seem advisable to regrant the leasing of iron ore lands, no law should be passed which will not give to the state the benefit of the best thought and judgment upon the subject. However, I think every person will agree that changes in the law of the state applicable to these matters should not be made without great care and without the possession of that broad knowledge which should accompany the same. Yet such knowledge is not easily obtained. It can only be had as the result of painstaking care and investigation, personal inspection

and expert assistance upon the question involved. The various matters are so closely intertwined, the various interests of the state and its citizens, and their respective rights, are questions so intricate that to make any change without great deliberation, even by those best informed, will, of a certainty result in great hardship and loss to the state and its people. It being a matter of law, however, changes may only be made by the legislature, and it therefore follows that that body should be in possession of the requisite facts before attempting the same. Therefore, to the end that the interests of the state may be permanently and substantially preserved, and the rights of all parties protected, I beg to suggest that you recommend to the present legislature the creation of a commission whose duty it shall be, without further compensation, if the executive officers be named as such commission, to acquaint themselves with the conditions as they exist in this state and to prepare and recommend to the legislature of 1913 such changes in the law affecting the lands, the timber, and if it deem wise, the iron ore interests, and such other co-ordinate properties of the state, as may seem to such commission to be expedient in the premises.

INHERITANCE TAX.

The legislature of 1905 passed chapter 288 of the laws of that year, commonly known as the inheritance tax law. Such law has been in operation now for five years and there has been collected under it during that time, and up to July 31, 1910, $1,054,722.82. The law does not impose upon any state officer in terms an obligation to enforce it. All moneys arising therefrom are payable to the state, but it is made the duty of the various county treasurers to attend to its enforcement. I am convinced that by reason of this defect in the law, by reason of under valuation of properties comprising the various estates which have been probated in this state and otherwise, large sums of money are escaping taxation thereunder, and that the state has not received during the time that this law has been in force the amounts that it was actually entitled to thereunder. I therefore beg to recommend that the administrative features of the law be changed and there be created a state officer whose specific duty it shall be to enforce this law according to its terms, who shall have inquisitorial powers and the right to proceed upon his own initiative where he believes the rights of the state are involved, and, in addition thereto, that the present law be amended by giving to the county of the residence of the decedent an arbi-

trary proportion of the amount realized from the tax in each respective case.

STATE OFFICERS.

I desire to recommend the enactment of a law making it a crime for any state officer or state employee to be interested directly or indirectly in any contract in which the state is involved, and providing that such contract shall be absolutely void. A law of this character applies to counties, cities, villages, town and school districts. There is no such law as respects state officers and employees, and I believe it to be to the interests of the state that a law of this character be enacted.

NEEDS OF THE LEGAL DEPARTMENT.

With the abnormal growth of the legal department during the past five years a necessity has arisen for a present increase in the personnel of this department. This necessity has been intensified by the policy which I have pursued during the last two years, but which I believe all persons will agree has been to the best interests of the state.

In the fulfillment of this policy, and in accordance with my agreement with the legislature of 1909, no outside counsel during the last two years have been employed in the conduct of litigation, in which the state was interested, except in those matters which were carried on by special appropriation of the legislature. The work has been done exclusively by the members of this department, but on the other hand during that time the office has collected and paid into the state treasury by litigation and negotiation nearly a million and three-quarters of dollars. It has appeared in and tried approximately two hundred civil actions and proceedings in the state and federal courts, including the supreme court of this state, and the United States circuit court of appeals. Further than this it has written the briefs and argued three great cases involving the affairs of this state in the supreme court of the United States. It has tried fifteen criminal cases in the trial courts, most of them being cases where the defendant was charged with murder, and has prepared the briefs and argued many of like character in the supreme court of this state. It has written over five thousand opinions to state, county, city, town and village officers. The opinion in the John S. Kennedy matter alone has paid in advance the entire expense of this department as now constituted for over fourteen years, and the ad-

ditional income now coming to the state and payable from the estates of decedents dying outside the State of Minnesota, but who own stock in domestic corporations, developed by that opinion, will, within a short time, in my judgment, pay the entire current expenses of this department.

With this great burden of work it is not to be expected that this office, with the force at its disposal, can give to the affairs of the state as distinguished from those of the various counties, cities, towns, villages and school districts, the care and consideration to which the former are justly entitled. I do not believe that anything has been neglected in the past, but I do believe that it would be to the best interests of the state in the future if more care and consideration could be given to the matters which ultimately reach this office from the various departments of state. Otherwise the department will not entirely fulfill the purposes of its creation.

It is therefore my opinion that the number of assistant attorneys general should be increased, and I therefore beg to recommend that the same be done. I would suggest that the clerkship in this office be abolished and that position raised to the status of an assistant attorney general, with salary to compensate, and that in addition the appointment of one additional assistant attorney general be authorized.

Finally, I desire to recommend that the salaries of the assistant attorneys general be each increased to $4,500 per annum. Under the practice which I have mentioned with reference to outside counsel, it goes without saying, on the record of the department for the past two years, that these men have easily earned such increased salary. No change will be made during the ensuing two years as to outside counsel unless the coming legislature otherwise directs, yet with the steady development of the state, new and important questions are continually arising, and must be solved in a way fair to the people of the state, and particularly toward the state itself. With the increased cost of living, with the salaries of the assistant attorneys general at $3,600, engaged as they are in litigation running well into the millions, there is little or no incentive, outside of the realization of a public duty well done, for any assistant, however qualified, to remain with the department, and the state is also continually in danger of losing competent men thus qualified by experience. This argument also applies where new appointments are to be considered. It would seem, therefore, that the recommendation should meet with the approval of all persons who are interested in

the real rights of the state; for it is dictated by the first principles of wise business policy, and is in accordance with the most common mandates of justice.

CONCLUSION.

I venture to make the foregoing suggestions, not in a spirit of criticism, but in the hope that growing out of the same any discussion which may arise therefrom, the state may be benefited, the administration of its laws made more certain and just, and the welfare of its people more certainly preserved.

Respectfully submitted,

GEORGE T. SIMPSON,
Attorney General.

December 31, 1910.

ACTIONS AND PROCEEDINGS.

A—Civil Cases.

Except as hereinafter noted, no expense has beeen incurred in any of of the following matters except in a few instances in trifling amounts, for clerks' fees and other like charges.

No. Attorney General's Docket.	
1019-1060	State v. Shevlin-Carpenter Lumber Co. Timber. Judgment for state in supreme court of the United States. $14,569.19.
1041-1275	State v. Le Sueur Lumber Co. Timber. Pending in United State supreme court. $8,265.02.
1043	State v. H. C. Clarke. Timber. Judgment for defendant. $6,692.61.
1044	State v. H. C. Akeley Lumber Co. Timber. Judgment for state. $6,147.15.
1063-1074	State v. Western Union Telegraph Co. Taxes. Pending in supreme court of the United States. $40.564.07; $26,190.00. *Incurred prior to Jan. 4, 1909, C. W. Somerby, $1,000.00; Royal A. Stone, $1,500.00.
1064	State v. Red River Lumber Co. Timber. Judgment for defendant in state supreme court. $15,642.00.
1068-1274	State v. Rat Portage Lumber Co. Timber. Pending in supreme court United States. $6,833.74.
1070	State v. Bonness & Howe. Timber. Judgment for state in district court of Cass county. Unsatisfied. $3,035.83.
1071	State v. Bonness & Howe. Timber. Judgment for state in district court of Cass county. Unsatisfied. $4,755.67.
1072	State v. Bonness & Howe. Timber. Judgment for state in district court of Cass county. Unsatisfied. $17,979.67.
1078	State v. H. C. Akeley Lumber Co. Timber. Judgment for state. $14,592.24.
1085	*State v. Great Northern Railway Co. Taxes. Judgment for state in supreme court of United States. Royal A. Stone, $2,500. $129,890.37.
1086	*State v. Chicago Great Western Railway Co. Taxes. Judgment for state in supreme court of United States. Royal A. Stone, $1,000. $27,306.67.
1103	State v. Holgate, treasurer. Taxes. Judgment for state. Unsatisfied. $17,157.74.
1104-1364	State v. Nicols-Chisholm Lumber Co. Timber. Judgment for defendant. $8,500.
1121	McConaughy v. Secretary of State. Constitutional amendment. Tax. Sustained.
1250	Watkins v. Secretary of State. Constitutioanl amendment. Good roads. Sustained.
1153	Cooke v. Elliott. Timber. Judgment for state. $1,294.30.
1162	State v. Northwestern Telephone Exchange Co. Taxes. Judgment for state. $1,891.85.
1163	State v. Minnesota & International Railway Co. Taxes. Judgment for state. $3,055.25.
1168	*Railroad rate cases: Tried on the facts and submitted to the master. Findings against the contention of the state. Submitted to United States circuit court. Pending. Expenses incurred to December 31, 1910: F. H. Peterson, $500. Paid E. T. Young, $8,000. Edmund S. Durment, $9.061.00. Thos. D. O'Brien, $5,500. Printing, $582. by special appropriation of the legislature of 1909.
1197	Axelrod v. Williams, as commissioner of labor. Application to annul order of commissioner. Judgment for commissioner.
1198	Franke & Hagenmuller v. Williams, as commissioner of labor. Application to annul order of commissioner. Judgment for commissioner.
1199	Gordon v. Williams, as commissioner of labor. Application to annul order of commissioner. Judgment for commissioner.
1215	State v. Standard Oil Company. Constitutionality of chapter 267, Laws of 1907. Affirmed in state supreme court. Pending on merits in district court of Ramsey county.
1220	State v. Mason City & Fort Dodge Railway Co. Penalty for non-payment of taxes. $139.85.
1221	State v. Mason City & Fort Dodge Railway Co. Penalty for non-payment of taxes. $229.13.

No. Attorney General's Docket.	
1223	State v. Wisconsin, Minnesota & Pacific Railway Co. Penalty for non-payment of taxes. $944.23.
1224	State v. Wisconsin, Minnesota & Pacific Railway Co. Penalty for non-payment of taxes. $1,257.71.
1227	State v. Chicago Great Western Railway Co. Penalty for non-payment of taxes. $1,331.15
1229	State v. Minnesota & North Wisconsin Railway Co. Penalty for non-payment of taxes. $177.89.
1238	State v. Chicago Great Western Railway Co. Penalty for non-payment of taxes. $2,707.88. Incurred prior to January 4, 1909, and paid by special appropriation of the legislature of 1909.
1240	State v. Fenton G. Warner and National Surety Co. Action on bond for $7,891.85. Paid by surety company, $5,242.46. Subsequently recovered on judgment against Warner, $379.80. Balance pending.
1241	State v. H. C. Akeley Lumber Co. Timber. Judgment for state. $20,837.25.
1245	State v. Cudahy Packing Co. Taxes. Writ of error. Supreme court of United States. Dismissed.
1252	State ex rel v. Village of Gilbert. Quo warranto. Judgment for state.
1259	State v. Crookston Lumber Co. Timber. Judgment for state. $225.27.
1260	State v. Crookston Lumber Co. Timber. Judgment for state. $1,525.40.
1261	State v. Crookston Lumber Co. Timber. Judgment for state. $747.72.
1262	State v. Crookston Lumber Co. Timber. Judgment for state. $632.62.
1263	State v. Crookston Lumber Co. Timber. Judgment for state. $921.74.
1264	State v. Crookston Lumber Co. Timber. Judgment for state. $1,889.95.
1265	State v. Crookston Lumber Co. Timber. Judgment for state. $344.66.
1266	State v. C. A. Smith Lumber Co. Timber. Judgment for state. $567.48.
1267	State v. Geo. W. Martin, et al. Timber. Judgment for state. $1,484.14.
1268	State v. James Ingram. Timber. Judgment for state. $538.93.
1269	State v. Wilcox Lumber Co. Timber. Judgment for state. $486.54.
1270	State v. Farmers Mutual Hail Insurance Co. Taxes. Pending. $433.65.
1272-1086	In the matter of the receivership of the Cricago Great Western Railway Company. Omitted earnings. Judgment for state. $7,936.28. Pending, $5,693.81.
1276	State v. Chicago Great Western Railway Co. Taxes. Judgment for state in supreme court of United States. $32,695.32.
1277	State v. Chicago Great Western Railway Co. Taxes. Judgment for state in supreme court of United States. $29,605.02.
1280	State v. Great Northern Railway Co. Taxes. Judgment for state in supreme court of United States. $141,102.05.
1281	State v. Great Northern Railway Co. Taxes. Judgment for state in supreme court of United States. $147,702.12.
1282	State v. Mason City & Fort Dodge Railway Co. Taxes and penalty. $5,132.42.
1283	State v. Wisconsin, Minnesota & Pacific Railway Co. Taxes and penalty. $25,590.67.
1284	Estate Colin Buchanan. Inheritance tax. Judgment for state. $500.00.
1285	State v. Great Northern Railway Co. Omitted earnings. Judgment for state. Paid. $1,148.48.
1286	State v. Great Northern Railway Co. Omitted earnings. Pending. $10,682.39.
1287	In the matter of the application of the Duluth & Northern Minnesota Railway Co. to condemn certain lands.
1288	State ex rel v. Village of Arbo. Quo warranto. Pending.
1289	Robinson v. Randall. Habeas corpus. Prisoner discharged.
1290	State ex rel v. McIntosh. Quo warranto. Judgment for relator.
1291	State v. Minneapolis & St. Louis Railway Co. Quo warranto. Pending.
1292	State v. Wisconsin Central Railway Co. Quo warranto. Pending.
1293	State v. Minnesota & North Wisconsin Railway Co. Penalty for non-payment of taxes. Judgment for state. $137.56.
1294	In the matter of the estate of Reuben S. Goodfellow. Inheritance tax. Pending. Increase. $7,700.00.
1295	Minnesota Milk Shippers' Association v. Chicago Great Western Railway Co. Freight rates. Pending.

No. Attorney General's Docket.	
1296	State ex rel v. Haas. Quo warranto. Writ quashed.
1297	In the matter of Archie Ryberg. Habeas corpus. Writ quashed.
1300	Henry Wolfer v. Claus Melheim. Action on twine note. Judgment for state. $257.50.
1301	Henry Wolfer v. Patrick Bresnahan. Action on twine note. Judgment for state. $140.00.
1302	Henry Wolfer v. J. P. Lommen Co. Action on twine note. Judgment for state. $191.49.
1303	State v. Great Northern Railway Co. Taxes. Judgment for state in supreme court of United States. $138,507.97.
1304	State v. Chicago Great Western Railway Co. and Receivers. Taxes. Judgment for state. $27,565.02.
1305	State v. Powers-Simpson-Griffin. Timber. Judgment for state. $319.30.
1306	State v. Powers-Simpson-Griffin. Timber. Judgment for state. $960.54.
1307	State v. Powers-Simpson-Griffin. Timber. Judgment for state. $109.15.
1308	State v. Powers-Simpson-Griffin. Timber. Judgment for state. $154.67.
1309	State v. Western Union Telegraph Co. Taxes. Pending. $30,292.12.
1310	In the matter of the estate of Daniel R. Noyes. Inheritance tax. $30,052.69.
1311	Adelaide E. Harding v. Minnesota State Agricultural Society. Action for damages caused by death. Judgment for society.
1310(a)	Board of Control v. County of Waseca. Taxes, inebriate. Judgment for board. $20.00.
1311(a)	Board of Control v. Village of Mora. Taxes, inebriate. Judgment for board. $20.00.
1312	Board of Control v. Village of Avoca. Taxes, inebriate. Judgment for board. $40.00.
1313	Board of Control v. City of St. Paul. Taxes, inebriate. Judgment for board. $4,420.00.
1314	State ex rel v. Spang. Constitutionality "Alderman Act." Sustained.
1315	W. E. Foster v. State of Minnesota et al. Action to quit title. Dismissed.
1316	Pearl A. M. Stahl v. Gamble. Action to quiet title. Dismissed.
1318	Wilson C. Brown v. Board of Control. Validity of bonds for new state prison. Sustained.
1319	State v. Chicago, Burlington & Quincy Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1320	State v. Chicago, St. Paul, Minneapolis & Omaha Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1321	State v. Chicago, Milwaukee & St. Paul Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1322	State v. Chicago, Rock Island & Pacific Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1323	State v. Northern Pacific Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1324	State v. Great Northern Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1325	State v. Minneapolis & St. Louis Railway Co. To prevent railroads from doing warehouse business. Pending in supreme court.
1326	Bankruptcy of Western Implement Co. Claim for twine, preferred. Judgment for state in United States district court. affirmed in United States circuit court of appeals. $7,053.97.
1327	State ex rel v. Nolan. Habeas corpus. Relator discharged.
1328	State v. Namikin Lumber Co. Timber. Judgment for state. $6,883.08.
1329	State ex rel v. City of East Grand Forks. Nuisance. Pending.
1330	State ex rel v. S. G. Iverson, as state auditor. Taxes. Judgement for relator.
1331	McMillan v. State Board of Health. Injunction. Judgment for board.
1332	Estate Giles Gilbert.
1333	Wilhelm Schmidt v. State of Minnesota. To establish lost certificates. Judgment for state.
1334	L. O. Cooke v. S. G. Iverson, as state auditor. Injunction. Judgment for plaintiff.
1335	State ex rel v. Whittier. Habeas corpus. Writ quashed.

No. Attorney General's Docket.	
1336	Marcel Gilbert v. State of Minnesota. Action to quiet title. Dismissed.
1337	State ex rel v. Parr. Habeas corpus. Judgment for relator.
1338	State v. Chicago Great Western Railway Co. To enforce order railroad and warehouse commission. Pending.
1339	In the matter of Beltrami county. Proceeding to remove A. W. Daneher, Wess Wright, F. O. Sibley,, county commissioners, and John Wilman, county auditor. Removed.
1340	State v. Namikin Lumber Co. Timber. Judgment for state. $3,539.70.
1341	Henry Wolfer v. E. J. Dooner, et al. Twine note. $878.38.
1343, 1391	State v. Great Northern Railway Co. To enforce order of railroad and warehouse commission. Order inforced.
1344	Bartles Oil Company v. Lynch, as oil inspector. Injunction. Judgment for plaintiff.
1345	Application of George Myllenbeck.
1346	In matter condemnation proceedings by United States of America. Virginia.
1347	Martin Schroeder v. S. G. Iverson, as state auditor. To compel issuance of land contract. Action dismissed.
1348	Alice M. Getchell v. S. G. Iverson, as state auditor. To compel issuance of land contract. Action dismissed.
1349	State ex rel Attorney General v. Chicago, Milwaukee & St. Paul Railway Co. Mandamus. Judgment for relator.
1350	State v. Mutual Benefit Life Insurance Co. Taxes. $5,619.60. Judgment for defendant.
1351	State ex rel Attorney General v. Sperry-Hutchinson Co. Quo warranto. Judgment for defendant.
1352	State ex rel Attorney General v. National Securities Co. Insolvency of corporation. Receivers appointed.
1353	State Agricultural Society v. Saunders. Conversion. Dismissed.
1354	State v. Korrer, et al. Ownership of ore under meandered lakes. Injunction. Accounting. Pending.
1355	State v. Great Northern Railway Co. To enforce order of railroad and warehouse commission. Pending.
1356	State v. Chicago, Milwaukee & St. Paul Railway Co. Enforce order of railroad and warehouse commission. Judgement for state.
1357	State v. Chicago, Milwaukee & St. Paul Railway Co. To enforce order of railroad and warehouse commission. Pending.
1359	In the matter of the estate of F. L. Wilkins. Twine note. Pending. $282.41.
1360	State v. City of St. Paul. Services of public examiner. Judgment for state. $600.00.
1361-1372	In the matter of Itasca county. M. F. Kane, assistant public examiner, to be appointed receiver. Treasurer removed.
1363	State ex rell Thos. T. Riley, as sheriff. Habeas corpus. Writ issued.
1365	State ex rel v. Village of Deerwood. Quo warranto. Dismissed.
1366	Application of Minneapolis, St. Paul, Sault Ste. Marie Railway Co. to condemn lands in Beltrami county. Pending.
1367	R. E. Cobb v. Andrew R. French, as dairy and food commissioner. Injunction. Judgment for commissioner.
1368	Nels Rasmussen et al. v. Carlos Avery, as executive agent. Fisheries in Lake Pepin. Injunction. Dismissed.
1369	State v. Namikin Lumber Co. Timber. Judgment for state. $8,943.96.
1371	State v. Red River Lumber Co. et al. Accounting. Pending. $5,214.00.
1373	State ex rel v. John A. Hartigan, as insurance commissioner. Mandamus. Judgment for commissioner.
1374	State ex rel v .Great Northern Railway Co. Injunction, transfer Kennedy stock. Dismissed.
1375	State v. Wells-Fargo Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.
1376	State v. Great Northern Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.
1377	State v. American Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.
1378	State v. Western Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.
1379	State v. United States Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.

Attorney General's Docket No.	
1380	State v. Adams Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.
1381	State v. Northern Express Co. Proceedings before railroad and warehouse commission to determine express rates. Pending.
1382	State v. Western Union Telegraph Co. Taxes. Pending $2,600.00.
1385	State v. Faribault et al. To quiet title. Pending.
1386	State v. Duluth Telephone Co. Taxes. Pending.
1387	State v. Brooks-Scanlon Lumber Co. et al. Timber. Pending. $20,612.19.
1388	American Linseed Oil Co. v. Andrew R. French, as dairy and food commissioner. Injunction. Pending.
1389	State v. United States Express Co. Taxes. Pending. $9,719.66.
1390	State ex rel v. Julius A. Schmahl, secretary of state. Mandamus. Judgment for executor.
1392	Application of Chicago, Milwaukee & St. Paul Railway Co. to condemn land in Chippewa county. Pending.
1393	State ex rel Holdridge v. Probate Court of Hennepin County. Inheritance tax. Order reversed.
1394	State ex rel Gage v. Probate Court of Hennepin County. Inheritance tax. Judgment modified.
1395	Matter of John S. Kennedy. Inheritance tax. $345,325.25.
1396	Henry Wolfer v. A. J. Higdem. Twine note. Judgment for plaintiff. $747.50.
1397	State ex rel v. Village of Alice. Quo warranto. Demurrer overruled.
1398	Condemnation of land in Minneopa Park. Dismissed.
1399	McMillan v. State of Minnesota. To quiet title. Dismissed.
1400	State ex rel v. Julius A. Schmahl, as secretary of state. Mandamus. Pending.
1401	State ex rel v. Minneapolis Car Co. Quo warranto. Dismissed.
1402	Henry Wolfer v. J. P. Gustafson. Twin note. Judgment for plaintiff. $130.82.
1403	State ex rel v. Village of Osakis. Mandamus. Judgment for state.
1404	State ex rel v. J. H. Fleming. Quo warranto. Judgment for defendant.
1405	State ex rel v. Village of Dover. Quo warranto. Pending.
1406	Minnesota Canal & Power Co. v. Fall Lake Boom Co. et al. Condemnation. Pending.
1407	State v. Creamery Package Co. Ouster. Pending.
1408	A. B. Irons v. School District. Injunction. Judgment for defendant.
1409	In the matter of Crow Wing county. Taxes. Pending.
1410	In the matter of the estate of Chas. G. Church. Application to deduct property in California denied. Inheritance tax. Judgment for state.
1411	State ex rel v. Andrew W. Wasgatt. Quo warranto. Pending.
1412	State v. Minnesota Farmers Mutual Insurance Co. Taxes. Pending. $332.48.
1413	State v. Farmers Mutual Hail Insurance Co. Taxes. Pending. $313.23.
1414	State v. Queen City Fire Insurance Co. Taxes. Pending. $554.88.
1415	State v. State Farmers Mutual Hail Insurance Co. Taxes. Pending. $875.49.
1416	In the matter of Gustave Pfeffer, deceased. Petition for allowance of will. Denied.
1417	In the matter of the estate of Chas. T. Miller. Inheritance tax. Judgment for state. Increase, $2,500.00.
1418	State ex rel v. American Telephone & Telegraph Co. et al. Quo warranto. Pending.
1419	Adelaide E. Harding, as administratrix v. Minnesota State Agricultural Society. Damages caused by death. Pending.
1420	Wm. T. James v. State of Minnesota et al. Register title. Pending.
1421	In re Amherst H. Wilder Charity, a corporation et al v. George T. Simpson, as attorney general. Consolidation of corporations. Judgment for plaintiff.
1422	James S. O'Donnell v. John A. Hartigan, as insurance commissioner. Injunction. Pending.
1424	State of Minnesota v. State of Wisconsin. Boundary line. Supreme court of the United States. Pending.

1425 State of Minnesota v. Union Tank Line Co. Taxes and penalty. Pending. $2,614.60.

1426 State ex rel Attorney General George T. Simpson v. Wisconsin Central Railway Co. and Soo Railway Co. Mandamus. Pending.

1427 Sterling v. State Board of Health. Nuisance. Verdict for board. Pending.

1428 State ex rel v. Heberle-Francis Co. Quo warranto. Pending.

1429 In the matter of the estate of John E. Nicholls, deceased. Inheritance tax. Pending.

1430 Corina L. Hobart v. S. W. Hall et al. Ejectment. Pending.

1431 State ex rel v. Swan Storm. Quo warranto. Pending.

*Incurred prior to Jan. 4, 1909.

COLLECTIONS.

By law, when money is due the State of Minnesota, the State Auditor makes his draft for the amount involved, upon the State Treasurer and places it in the hands of the Treasurer for collection. The Treasurer notifies the person interested, and if the same is not paid within thirty days, such draft is then transmitted to the Attorney General for collection. Collection is made by the Attorney General by negotiation, or in his discretion, by suit, where the latter is necessary. The following statement shows the collections that have been made by the Attorneys General from January 4, 1909, to December, 1910, inclusive. For convenience they are divided into "Timber," "Taxes," and "Miscelleneous." The items marked "Timber" include those which arose by reason of the action of the public examiner herein otherwise mentioned, the current timber trespass and sale; the items marked "Taxes" include railway, telephone, telegraph, inheritance, inebriate, freight and express; and the items marked "Miscellaneous," all others.

MONEYS COLLECTED FROM JANUARY, 1909, TO DECEMBER, 1910.

Taxes	$1,388,560.20
Timber	237,195.04
Miscellaneous	20,533.65
Total	$1,646,288.89

B—Criminal Cases.

No. Attorney General's Docket.	
663	*State v. Wah-We-Yea-Cumig. Murder. Acquitted in district court of Mahnomen county.
664	*State v. F. A. Mayo. Murder. Beltrami county. Pending.
666	State v. John M. Day. Perjury. Pipestone county. Affirmed.
667	State v. Patrick Doyle. Non-support. Hennepin county. Affirmed.
668	State v. Kalman Light. Arson. St. Louis county. Convicted.
669	State v. Arthur Z. Drew. Embezzlement. Ramsey county. Reversed and new trial granted.
670	State v. Theo. Hjerpe. Rape. Nicollet county. Convicted.
672	*State v. S. J. Shinn. Larceny. Beltrami county. Disagreed.
671	State v. Morris Brooks et al. Permitting minor in dancing hall. Hennepin county. Convicted.
673	*State v. O. Reskovich, John Corescovic, Pete Kasmovicz. Murder in second degree. Carver county. Convicted.
675	*State v. Krahmer. Larceny. Itasca county. Convicted.
676	*State v. Ketman. Murder. Clay county. Convicted.
677	*State v. Ledbeter—Smith. Murder. Blue Earth county. Smith convicted. Ledbeter acquitted.
678	*State v. Fournier. Murder. Crow Wing county. Acquitted.
679	*State v. Oren. Arson. Faribault county. Convicted.
680	State v. Fleetwood. Larceny. Freeborn county. Convicted.
679a	*State v. Ruth. Murder. Yellow Medicine county. Convicted.
681	State v. Schreiber. Murder. St. Louis county. Convicted.
683	State v. Preus. Seduction under promise of marriage. Le Sueur county. New trial granted by supreme court.
684	State v. Bierbauer. Forgery. Blue Earth county. Convicted.
685	State v. Slocum. Larceny. Beltrami county.
686	*State v. Mossberg. Violation of liquor laws. Kandiyohi county. Convicted.
687	State v. Chamberlain. Sabbath breaking. Blue Earth county. Convicted.
688	State v. Schmidt. Violation of liquor laws. Carver county. Convicted.
689	State v. Hoist. Murder. Hennepin county. Reversed.
690	State ex rel v. Wm. Gerber. Habeas corpus. Ramsey county. Writ quashed.
691	State v. Hans Hanson. Violation of liquor laws. Clearwater county. Pending.
692	State v. Timothy Murphy. Larceny. Ramsey county. Pending.
693	State v. Carrie A. Foster McCoy. Assault. Wright county. Pending.
694	State v. Almond B. Clarke. Carnal knowledge. Martin county. Pending.
695	State v. Wagner et al. White slave traffic. Ramsey county. Pending.
696	State v. C. W. Young et al. Contempt of court. Ramsey county. Pending.
697	State v. Waterman. Auto speeding. Ramsey county. Convicted.
698	State v. Snyder. Larceny. Cottonwood county. Pending.
699	State v. McPherson. Violation of game laws. St. Louis county. Pending.
700	State v. William Gorman. Assault in first degree. Hennepin county. Pending.
702	State v. Claude Yoder. Bigamy. Becker county. Pending.
703	*State v. E. S. Lucia. Murder, first degree. Cass county. Acquitted.
706	*State v. Patrick J. Gibbons. Murder, first degree. Dakota county. Pending.
707	*State v. Horace A. Anderson. Rape. Washington county. Pending.
708	*State v. Butterfield et al. Malfeasance in office. Crow Wing county. Pending.
709	State v. Frank Wondra. Mayhem. Le Sueur county. Pending.

*Tried by attorney general or his assistants in the district court.

EXTRADITION RULES.

The following rules adopted by the Interstate Extradition Conference, held at the City of New York, are submitted for the guidance of County Attorneys in making applications for requisitions—

The application and other papers in connection therewith must be made by the County Attorney for the county in which the offense was committed, and must be in triplicate. The following must appear by the certificate of the county attorney:

A. The full name of the person for whom extradition is asked, to be properly spelled in Roman capital letters, for example: JOHN DOE, and the name of the agent proposed.

B. That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

C. That he believes he has sufficient evidence to secure the conviction of the fugitive.

D. That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

E. If there has been any former application for requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reason for the second requisition, together with the date of such application, as near as may be.

F. If the fugitive is known to be under either civil or criminal arrest in the state or territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

G. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

H. The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

I. If the offense charged is not of recent occurrence a satisfactory reason must be given for the delay in making the application.

(1) In all cases of fraud, false pretenses, embezzlement or forgery, when made a crime by the common law, or any penal code or statute, an affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason must be given for the absence of such affidavit.

(2) Proof by affidavit of facts and circumstances, satisfying the executive that the alleged criminal has fled from justice of the state, and is in the state on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the state at the time of the commission of the offense, and is now in the state upon which the requisition is made, is sufficient evidence, in the absence of the other proof, that he is a fugitive from justice. To meet the requirements of some states that have not adopted these rules, these facts should appear by

affidavit, and the facts upon which the affidavit is based, that the fugitive is now in such state, must be given in such affidavit, as that affiant has received letters from parties advising him of that fact, or has conversed with parties who have seen the fugitive in such state.

(3) If an indictment has been found, certified copies in triplicate must accompany the application.

(4) If an indictment has not been found by the grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate **(a notary public is not a magistrate within the meaning of this rule)**, and that a warrant has been issued, and triplicate certified copies of the same, together with the returns thereon, if any, must be furnished.

(5) The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrants, must be certified as required by United State Statute.

(6) No requisition will be made for the extradition of any fugitive except in compliance with these rules.

In addition to the foregoing rules, the following suggestions should be observed:

In suggesting a person as Agent the name of the Sheriff or Deputy Sheriff should be given, such being the law of this State.

There should be a formal application addressed to the Executive of this state by the County Attorney, which may embrace the certificate first mentioned in the foregoing rules, including the paragraphs "A" to "H" inclusive.

The affidavit required in subdivision (1) of paragraph "I" must be made by the principal complaining witness. The affidavit required in subdivision (2) of paragraph "1" may be made by any person having knowledge of the facts therein referred to.

The affidavit required by subdivision (4) should be made by the complaining witness, and it is meant that the facts and circumstances shall be set forth with more particularity than in the complaint sworn to before the magistrate, it being assumed that, in the absence of the formal act of the grand jury, there should be some evidence upon which to base a supposition that the party charged with the offense is guilty.

Great care should be taken that all papers are properly certified to, and accompanying the papers should be a certificate of the magistrate before whom the proceedings are pending, that in his opion all parties having made affidavits, which are sent with the proceedings, are to be believed, and that the facts therein stated present a proper case for a requisition. The official character of the magistrates before whom affidavits are taken must be certified to by the Clerk of the District Court where such magistrate is not judge of the court of record.

Extradition will not be granted for petty offenses.

In all cases, the greatest care will be exercised, to ascertain, beyond a doubt, that the object in seeking the requisition is not to collect a debt,

or to afford some person an opportunity to travel at the public expense, or to answer some other private end, and if a requisition shall have been improperly or unadvisably granted there will be no hesitation in promptly revoking it.

In all cases of extradition where the fugitive is beyond the jurisdiction of the United States, it would be better to confer at once with the Attorney General.

Note: This office has prepared a full set of blanks, with detailed instructions, covering applications for requisitions. The Governor will be glad to furnish a set of blanks to any county attorney of this state on request.

REQUISITIONS APPROVED.

Requisitions from governors of other states upon the governor of Minnesota for the arrest and surrender of alleged fugitives from justice, examined at the request of the governor.

State.	Name of Fugitive.	Date of Approval.
Iowa	C. C. Smith	*Jan. 26, 1909.
Colorado	Sherman W. Morris	Feb. 13, 1909.
Iowa	Archie Ryberg	Feb. 10, 1909.
Nebraska	George Williams	Feb. 20, 1909.
Illinois	Albert J. Chartier	Mar. 1, 1909.
North Dakota	Isem Bacon	Mar. 3, 1909.
Kansas	Oliver Pickett	Mar. 9, 1909.
Missouri	Mitchell A. W. McDonald	Mar. 13, 1909.
Michigan	Louis Severance	April 22, 1909.
Washington	Albin Johnson	April 23, 1909.
Illinois	Charles T. Cunningham	May 10, 1909.
Michigan	Stanislaus Simon	May 26, 1909.
Illinois	Nathan Gross	June 3, 1909.
Iowa	C. C. Smith	June 7, 1909.
Wisconsin	D. L. Greley	Sept. 4, 1909.
Iowa	William Plummer	Sept. 14, 1909.
Wisconsin	Walter Whitehead	Sept. 24, 1909.
Wisconsin	George Gunther	Sept. 24, 1909.
Washington	Thomas W. Sprague	Oct. 12, 1909.
Wisconsin	George Hensel	Oct. 14, 1909.
Wisconsin	Harry Fisk	Oct. 23, 1909.
Pennsylvania	William J. Robinson	Nov. 8, 1909.
North Dakota	T. B. Posey	Nov. 17, 1909.
Illinois	M. M. Terry	Nov. 29, 1909.
Illinois	Felix Younghart	Dec. 6, 1909.
Illinois	Mathew Luther	Dec. 31, 1909.
Illinois	Paul C. McDonald	Jan. 31, 1910.
Illinois	Mollie Boeker	Feb. 4, 1910.
Illinois	Mack Honchins	Feb. 11, 1910.
Illinois	John E. Byers	Mar. 10, 1910.
Iowa	August Rinne	Mar. 16, 1910.
North Dakota	H. A. Lueck	April 5, 1910.
Idaho	Alexander Windquist	April 12, 1910.
Wisconsin	William A. Doran	April 14, 1910.
Wisconsin	Anton Blogik	April 14, 1910.
South Dakota	Charles Denton	April 29, 1910.
Nebraska	Joseph Vondra, Emil Mertz, Thomas Cally, William Sedlaeck, Stanley (first name not known)	May 11, 1910.
North Dakota	Mason W. Stevens	May 27, 1910.
Illinois	Roger DeCoverly	May 27, 1910.
Michigan	Edward Rappleya, Jr.	June 2, 1910.
Illinois	John P. Bartos	June 6, 1910.
Iowa	Roy Speckeen	June 14, 1910.
Wisconsin	Steward Galleffe and E. V. Bloom.	June 16, 1910.
Iowa	Harry Bowman	June 20, 1910.
California	A. H. Burns	June 27, 1910.
New York	Samuel Scherer	July 11, 1910.
Iowa	E. E. Erickson	Aug. 10, 1910.
Illinois	George Wylie	Aug. 10, 1910.

State.	Name of Fugitive.	Date of Approval.
Iowa	Elza Dimmitt	Aug. 23, 1910.
Iowa	Hiram Dillingham	Sept. 2, 1910.
Nebraska	Benjamin R. Pierce	Sept. 20, 1910.
Iowa	Charles A. Gates	Sept. 20, 1910.
Illinois	R. E. Roselle	Sept. 26, 1910.
Illinois	Heri Barbichon	Oct. 6, 1910.
Kentucky	James Johnson, alias Toronto Jimmy	Nov. 12, 1910.
Ohio	Paul Jones	Nov. 14, 1910.
Ohio	Albert Beckwith	Nov. 14, 1910.
Illinois	George B. Roberts	Nov. 21, 1910.
Illinois	Edward H. Johnson	Nov. 28, 1910.
Iowa	Robert E. Williams	Nov. 29, 1910.
Iowa	Bud E. Chase	Dec. 12, 1910.

Application to the Governor of Minnesota for requisitions upon the governors of other states for the arrest and surrender of alleged fugitives from justice, examined at the request of the governor.

State.	Name of Fugitive.	Date of Approval.
Iowa	Henry Magee	Jan. 7, 1909.
Dominion of Canada	Claud McCready	Jan. 16, 1909.
Oregon	W. E. Babcock	Jan. 22, 1909.
Oregon	Howard H. Mutch	Jan. 20, 1909.
Oregon	Linfred Isackson	Feb. 13, 1909.
Washington	T. J. Flaherty	Mar. 4, 1909.
South Dakota	John Palmer	June 3, 1909.
New York	R. W. Dever	Mar. 19, 1909.
Pennsylvania	Harry McLean	Mar. 19, 1909.
Ohio	Edward J. McCue and Maud McCue	April 2, 1909.
Oregon	Oliver J. Shinn	April 10, 1909.
Wisconsin	E. H. Hill	April 3, 1909.
North Dakota	Ernst Miller	May 8, 1909.
Wisconsin	Redeal E. Engbretson and Agnes Anderson	May 10, 1909.
Montana	Louis Ludke	June 25, 1909.
North Dakota	E. Emody	July 6, 1909.
North Dakota	Sydney Dierberger	July 28, 1909.
North Dakota	Edward O'Regan	Aug. 6, 1909.
Wisconsin	Chas. L. Beckman	Aug. 17, 1909.
South Dakota	E. E. Perry	Sept. 4, 1909.
Kansas	Ephriam Cutter	Sept. 4, 1909.
Washington	John F. Diethorne	Sept. 10, 1909.
South Dakota	Dad Williams and Joe Barus	Sept. 14, 1909.
Utah	Natale Purene	Sept. 14, 1909.
Montana	Chas. G. Lind	Sept. 17, 1909.
Montana	Linsey Garlock	Sept. 21, 1909.
North Dakota	David E. Robbins	Sept. 25, 1909.

State.	Name of Fugitive.	Date of Approval.
Iowa	Edward Halvorson	Nov. 4, 1909.
Iowa	Andrew Kjomme	Nov. 4, 1909.
Oregon	Dan Regan	Nov. 8, 1909.
Wisconsin	Matt Millbach	Nov. 9, 1909.
Montana	Jerry L. Wilson	Nov. 10, 1909.
Illinois	Patrick Shaw	Nov. 12, 1909.
Washington	Angus McAuley	Jan. 24, 1910.
New York	George Betts, alias W. H. Stevenson	Feb. 7, 1910.
Illinois	Lorenz Hansen	Feb. 21, 1910.
California	Ralph W. Howe	Mar. 26, 1910.
Illinois	Louis W. Stabbien	June 4, 1910.
Washington	John Clark	June 13, 1910.
Ohio	E. Glen Wilson	June 13, 1910.
North Dakota	Fred Herringer	June 20, 1910.
Oregon	Harley Tackels	June 22, 1910.
Washington	C. E. McMaster	June 24, 1910.
Oregon	G. T. Compton	June 24, 1910.
Rhode Island	Margaret J. Wilson	June 30, 1910.
Iowa	J. M. Harris	Sept. 2, 1910.
Iowa	William King	Sept. 9, 1910.
Wisconsin	Chas. Adams	Sept. 4, 1910.
Illinois	Ray Lynow	Oct. 11, 1910.
Illinois	Fred Becker, Bud Chesman and George Lavette	Oct. 12, 1910.
Ohio	M. Gottschalk	Oct. 15, 1910.
Ohio	John Louis Weaver	Nov. 28, 1910.
Iowa	G. Lane	Dec. 8, 1910.
Iowa	Christ Hanlon	Dec. 8, 1910.

REGISTRATION OF TITLE.

Attorney General's Docket No.	
1	Willis J. Holmes and Shagawa Iron Company, applicant v. State of Minnesota et al., defendants.
2	Patrick Ryan, applicant v. State of Minnesota et al., defendant.
3	Albert S. Elford, applicant v. State of Minnesota et al., defendants.
4	Harry Rickett, applicant v. State of Minnesota et al., defendants.
5	K. Cleophas, applicant v. State of Minnesota et al., defendants.
6	Minnesota Debenture Company, applicant v. State of Minnesota et al., defendants.
7	United States Savings & Loan Co., applicant v. State of Minnesota et al., defendants.
8	Frank A. Huber v. State of Minnesota et al.
9	Robert R. Dunn v. State of Minnesota et al.
10	Michael P. Ryan v. State of Minnesota et al., defendants.
11	Bridget A. Simpson v. State of Minnesota et al.
12	Charles B. Bolander v. State of Minnesota et al.
13	Willis J. Holmes and Shagawa Iron Co., applicants v. State of Minnesota et al., defendants.
14	Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
15	Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
20	Harry E. Pence, applicant v. State of Minnesota et al., defendants.
21	William O. Denegre, applicant v. State of Minnesota et al., defendants.
22	Norman McDonald, applicant v. State of Minnesota et al., defendants.
23	Frances E. Nash, applicant v. State of Minnesota et al., defendants.
24	United States Savings & Loan Co., applicant v. State of Minnesota et al., defendants.
25	Midway Realty Co., applicant v. State of Minnesota et al., defendants.
26	Anna A. Lindstrom, applicant v. State of Minnesota et al., defendants.
27	George W. Horton, applicant v. State of Minnesota et al., defendants.
28	Rosa J. Gribble, applicant v. State of Minnesota et al., defendants.
29	Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
30	Nora Elizabeth K. Rieger, applicant v. State of Minnesota et al., defendants.
31	Silas King, applicant v. State of Minnesota et al., defendants.
32	Charles W. Boyer, applicant v. State of Minnesota et al., defendants.
33	Ware-Hospes Co., a corporation, applicant v. State of Minnesota et al, defendants.
34	Carolyn E. White, applicant v. State of Minnesota et al., defendants.
35	Annie C. Barnard, applicant v. State of Minnesota et al., defendants.
36	County of St. Louis, applicant v. State of Minnesota et al., defendants.
37	Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
38	Carolyn E. White, applicant v. State of Minnesota et al., defendants.
39	James Tracy, applicant v. State of Minnesota et al., defendants.
40	Wm. C. Foster, applicant v. State of Minnesota et al., defendants.
41	Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
42	Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
43	Thomas Gould, applicant v. State of Minnesota et al., defendants.
44	Carolyn E. White, applicant v. State of Minnesota et al., defendants.
45	Agnes F. Kingman, applicant v. State of Minnesota et al., defendants.
46	William Hendricks, applicant v. State of Minnesota et al., defendants.
47	Frank J. Huber, applicant v. State of Minnesota et al., defendants.
48	Nels O. Hage, applicant v. State of Minnesota et al., defendants.
49	Gust A. Rydberg, applicant v. State of Minnesota et al., defendants.
50	William A. Foster, applicant v. State of Minnesota et al., defendants.
51	The Rector, Church Wardens and Vestrymen and St. Mark's Church, applicant v. State of Minnesota et al. ,defendants.
52	Richard E. Roberts, applicant v. State of Minnesota et al., defendants.
53	Carolyn E. White, applicant v. State of Minnesota et al., defendants.
54	Margaret M. Moriarty, applicant v. State of Minnesota et al., defendants.
55	Herbert Warren, applicant v. State of Minnesota et al., defendants.
56	Capitol City Realty Co., applicant v. State of Minnesota et al., defendants.
57	Willis J. Holmes, applicant v. State of Minnesota et al., defendants.

58 William Hendricks, applicant v. State of Minnesota et al., defendants.
59 William Hendricks, applicant v. State of Minnesota et al., defendants.
60 William Hendricks, applicant v. State of Minnesota et al., defendants.
61 William Hendricks, applicant v. State of Minnesota et al., defendants.
62 Julius H. Barnes, applicant v. State of Minnesota et al., defendants.
63 Edward Everett Smith et al., applicants v. State of Minnesota et al., defendants.
64 Ida M. Lind, applicant v. State of Minnesota et al., defendants.
65 Wm. C. Foster, applicant v. State of Minnesota et al., defendants.
66 Elmer O. Grimsrud, applicant v. State of Minnesota et al., defendants.
67 Midway Realty Co., applicant v. State of Minnesota et al., defendants.
68 Conrad P. Kuckler, applicant v. State of Minnesota et al., defendants.
69 Conrad P. Kuckler, applicant v. State of Minnesota et al., defendants.
70 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
71 Fred B. Krafft, applicant v. State of Minnesota et al., defendants.
72 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
73 Midway Realty Co., applicant v. State of Minnesota et al., defendants.
74 Willis J. Holes, applicant v. State of Minnesota et al., defendants.
75 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
76 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
77 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
78 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
79 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
80 Hicks & Co., applicant v. State of Minnesota et al., defendants.
81 Hicks & Co., applicants v. State of Minnesota et al., defendants.
82 Northwestern Improvement Co., applicant v. State of Minnesota et al., defendants.
83 Jasper Realty Co., applicant v. State of Minnesota et al., defendants.
84 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
85 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
86 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
87 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
88 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
89 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
90 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
91 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
92 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
93 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
94 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
95 Mette L. Arnold, applicant v. State of Minnesota et al., defendants.
96 Julius H Burns, applicant v. State of Minnesota et al., defendants.
97 Julius H. Burns, applicant v. State of Minnesota et al., defendants.
98 John H. Bingham, applicant v. State of Minnesota et al., defendants.
99 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
100 John U. Farwell et al., applicant v. State of Minnesota et al., defendants.
101 Anna A. Lindstrom, applicant v. State of Minnesota et al., defendants.
102 George P. Tweed et al., applicant v. State of Minnesota et al., defendants.
103 The Arcade Investment Co., applicant v. State of Minnesota et al., defendants.
104 Carolyn E. White, applicant v. State of Minnesota et al., defendants.
105 Minnesota Debenture Co., applicant v. State of Minnesota et al., defendants.
106 George W. Holland, applicant v. State of Minnesota etc al., defendants.
107 Mette L. Arnold et al., applicant v. State of Minnesota et al., defendants.
108 Robert A. Jones, applicant v. State of Minnesota et al., defendants.
109 Margaret Young, applicant v. State of Minnesota et al., defendants.
110 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
111 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
112 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
113 William A. Foster, applicant v. State of Minnesota et al., defendants.
114 Julius H. Barnes, applicant v. State of Minnesota et al., defendants.
115 Herman W. Philips, applicant v. State of Minnesota et al., defendants.
116 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
117 Willis J Holmes, applicant v. State of Minnesota et al., defendants.
118 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.

119 William G. White, applicant v. State of Minnesota et al., defendants.
120 Charles P. Frank ,applicant v. State of Minnesota et al., defendants.
121 Atlas Land Co., applicant v. State of Minnesota et al., defendants.
122 Poplar Land Co., applicant v. State of Minnesota et al., defendants.
123 Pulpwood Log Co., applicant v. State of Minnesota et al., defendants.
124 Cedar Supply Co., applicant v. State of Minnesota et al., defendants.
125 Pulpwood Log Co., applicant v. State of Minnesota et al., defendants.
126 Pulpwood Log Co., applicant v. State of Minnesota et al., defendants.
127 Cedar Supply Co., applicant v. State of Minnesota et al., defendants.
128 The St. Paul Hebrew Institute, applicant v. State of Minnesota et al., defendants.
129 Margaret Young, applicant v. State of Minnesota et al., defendants.
130 Mette L. Arnold, applicant v. State of Minnesota et al., defendants.
131 Henry Gamble, applicant v. State of Minnesota et al., defendants.
132 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
133 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
134 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
135 George W. Holland, applicant v. State of Minnesota et al., defendants.
136 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
137 Fred B. Rosson, applicant v. State of Minnesota et al., defendants.
138 Stanley A. Cassidy, applicent v. State of Minnesota et al., defendants.
139 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
140 Joseph Toudel et al., applicant v. State of Minnesota et al., defendants.
141 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
142 Jasper Realty Co., applicant v. State of Minnesota et al., defendants.
143 Albert H. Vedder, applicant v. State of Minnesota et al., defendants.
144 James True Finson, applicant v. State of Minnesota et al., defendants.
145 John Kurovsky, applicant v. State of Minnesota et al., defendants.
146 John Baumann, applicant v. State of Minnesota et al., defendants.
147 Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
148 Winnifred Tracy, applicant v. State of Minnesota et al., defendants.
149 Henry Hug, applicants v. State of Minnesota et al., defendants.
150 Fidelity Realty Co., applicants v. State of Minnesota et al., defendants.
151 William W. Cutler and wife, applicants v. State of Minnesota et al., defendants.
152 Daniel W. Doty, applicant v. State of Minnesota et al., defendants.
153 Bernhard C. Bottelson et al., applicant v. State of Minnesota et al., defendants.
154 Luella Hill, applicant v. State of Minnesota et al., defendants.
155 Pulpwood Log Co. et al., applicant v. State of Minnesota et al., defendants.
156 James Powers, applicant v. State of Minnesota et al., defendants.
157 Ware-Hospes Co., applicants v. State of Minnesota et al., defendants.
158 Jasper Realty Co., applicant v. State of Minnesota et al., defendants.
159 James Powers, applicant v. State of Minnesota et al., defendants.
160 Edward Halverson, applicant v. State of Minnesota et al., defendants.
161 William C. Foster, applicant v. State of Minnesota et al., defendants.
162 William C. Foster, applicant v. State of Minnesota et al., defendants.
163 William C. Foster, applicant v. State of Minnesota et al., defendants.
164 William C. Foster, applicant v. State of Minnesota et al., defendants.
165 William C. Foster, applicant v. State of Minnesota et al., defendants.
166 William C. Foster, applicant v. State of Minnesota et al., defendants.
167 William C. Foster, applicant v. State of Minnesota et al., defendants.
168 William C. Foster, applicant v. State of Minnesota et al., defendants.
169 William C. Foster, applicant v. State of Minnesota et al., defendants.
170 Frank A. Eckman, applicant v. State of Minnesota et al., defendants.
171 Frederick L. Bayard, applicant v. State of Minnesota et al., defendants.
172 Harry P. Millette, applicant v. State of Minnesota et al., defendants.
173 William Graham, applicant v. State of Minnesota et al., defendants.
174 Carolyn E. White, applicant v. State of Minnesota et al., defendants.
175 Margaret McMahon, applicant v. State of Minnesota et al., defendants.
176 Charles Fabbrini, applicant v. State of Minnesota et al., defendants.
177 Willis J. Holmes, applicant v. State of Minnesota e tal., defendants.
178 Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
179 Willis J Holmes, applicant v. State of Minnesota et al., defendants.
180 Charles W. Emmert, applicant v. State of Minnesota et al., defendants.

Attorney General's Docket No.	
181	Annetia Campbell, applicant v. State of Minnesota et al., defendants.
182	Thomas J. Hogan, applicant v. State of Minnesota et al., defendants.
183	Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
184	Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
185	John A. Dahl et al., applicant v. State of Minnesota et al., defendants.
186	Mary Alice Putman, applicant v. State of Minnesota et al., defendants.
187	Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
188	Duluth-Superior Dredging Co., applicant v. State of Minnesota et al., defendants.
189	Ware-Hospes Co., applicants v. State of Minnesota et al., defendants.
190	Willis J. Holmes, applicant v. State of Minnesota et al., defendants.
191	Capital City Realty Co., applicants v. State of Minnesota et al., defendants.
192	Capital City Realty Co., applicant v. State of Minnesota et al., defendants.
193	Duluth, Winnipeg & Pacific Railway Co., applicant v. State of Minnesota et al., defendants.
194	Duluth, Winnipeg & Pacific Railway Co., applicant v. State of Minnesota et al., defendants.
195	Francis C. Peabody, applicant v. State of Minnesota et al., defendants.
196	Thomas Keating, applicant v. State of Minnesota et al., defendants.
197	Margaret Keating, applicant v. State of Minnesota et al., defendants.
198	Christopher A. Chenery and Wm. E. McCullough, applicants v. State of Minnesota et al., defendants.
199	Charles Glifford, applicant v. State of Minnesota et al., defendants.
200	Northern Mortgage & Investment Co., applicant v. State of Minnesota et al., defendants.
201	Duluth-Superior Dredging Co., applicant v. State of Minnesota et al., defendants.
202	Margaret Young, applicant v. State of Minnesota et al., defendants.
203	Alexander A. McKenzie, applicant v. State of Minnesota et al., defendants.
204	Olive Irene Bliss, applicant v. State of Minnesota et al., defendants.
205	Philip J. Reilly, applicant v. State of Minnesota et al., defendants.
206	Lizzie Wood, applicant v. State of Minnesota et al., defendants.
207	Fred Hanson, applicant v. State of Minnesota et al., defendants.

STATE LOANS.

Under the law of this State the permanent school, permanent university, state institutions and swamp land funds may be loaned to any county, city, village, town or school district in this state. The applications for such loans upon being filed in the office of the State Auditor, who is ex-officio the clerk of the State Board of Investment, are transmitted to the Attorney General, by whom the legality of the application and of the proposed bond issue are determined, and if approved so endorsed.

From July 31st, 1908, the date of the last report of this office, to July 31st, 1910, applications for such loans, in sums ranging from $200 to $100,000, the great majority of them being for small amounts, aggragating a total of $3,489,997.43, have been so approved, on which the State, through its Board of Investment, has loaned the sum of $2,983,009.00 Also, since July 31st, 1910, there has also been so approved applications for loans amounting to $1,014,768.00, on which the State, through its Board of Investment, has loaned the sum of $524,896.00.

REPORTS OF
COUNTY ATTORNEYS
1909-1910

AITKIN COUNTY.

E. H. KRELWITZ, 1908, AND LOUIS HALLUM, 1909, COUNTY ATTORNEYS

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	5	2	.....	.....	2	1	.....
Assault in third degree	1	1	.....	.....	.....	.....	5
Grand larceny in second degree	5	2	.....	1	.....	2	3
Petit larceny	1	1	.....	.....	.....	.....	1
Bastardy	1	.....	.....	.....	1	.....	.....
Obscene literature	2	1	.....	.....	1	.....	.....
Indecent assult	1	.....	.....	1	.....	.....	.....
Adultery	2	.....	.....	.....	.....	2	.....
Keeping house of ill fame	2	1	.....	.....	1	.....	.....
Violation of liquor laws	2	1	.....	.....	1	.....	.....
Setting fires, Chapter 182, Laws 1909	1	.....	.....	.....	1	.....	.....
Totals	23	9	.....	2	7	5	9
In Justice and Municipal Courts—							
Assault in third degree	12	10	.....	1	1	.....	.....
Burglary in third degree	1	.....	.....	.....	1	.....	.....
Petit larceny	8	7	.....	.....	1	.....	.....
Keeping house of ill fame	1	.....	.....	.....	1	.....	.....
Violation of game and fish laws	3	.....	.....	2	.....	1	.....
Violation of pure food laws	3	3	.....	.....	.....	.....	.....
Violation of liquor laws	6	6	.....	.....	.....	.....	6
Language tending to provoke a breach of peace	3	3	.....	.....	.....	.....	3
Malicious mischief	1	1	.....	.....	.....	.....	.....
Cruelty to animals	1	1	.....	.....	.....	.....	.....
Gambling	7	7	.....	.....	.....	.....	5
Setting forest fires	5	5	.....	.....	.....	.....	.....
Drunkenness	3	3	.....	.....	.....	.....	3
Vagrancy	10	10	.....	.....	.....	.....	10
Threatening bodily harm	1	1	.....	.....	.....	.....	.....
False pretences	1	1	.....	.....	.....	.....	1
Totals	66	58	.....	3	4	1	28

Costs taxes, $556.30; Fines assessed, $1,219.05; Total collections, $1,585.50.

ANOKA COUNTY.

ALBERT F. PRATT, 1908–1909, COUNTY ATTORNEY

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Arson in second degree	1	.....	.....	1	.....	.....	.....
Assault in third degree	1	.....	.....	1	.....	.....	4
Grand larceny in second degree	2	2	.....	.....	.....	.....	.....
Petit larceny	3	2	.....	1	.....	.....	4
Carnal knowledge of female child	2	2	.....	.....	.....	.....	1
Bastardy	3	2	.....	.....	1	.....	3
Illegal voting	2	2	.....	.....	.....	.....	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Totals	15	11	.....	3	1	.....	12
In Justice and Municipal Courts—							
Assault in third degree	11	6	.....	3	2	.....	.....
Petit larceny	13	9	.....	1	3	.....	.....
Indecent assault	1	.....	.....	.....	1	.....	.....
Bastardy	1	.....	.....	.....	1	.....	.....
Violation of game and fish laws	21	13	.....	6	2	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	2
Language tending to provoke a breach of peace	5	4	.....	1	.....	.....	3
Non-support	3	3	.....	.....	.....	.....	.....
Malicious mischief	4	3	.....	1	.....	.....	3
Incorrigibility	1	1	.....	.....	.....	.....	.....
Threats	1	1	.....	.....	.....	.....	1
Disposing of mortgaged property	1	.....	.....	.....	1	.....	.....
Violation of pharmacy law	1	.....	.....	1	.....	.....	.....
Totals	64	41	.....	13	10	....	9

taxes, $322.60; Fines assessed, $1,321.75; Total collections, $946.71.

BECKER COUNTY.

PETER F. SCHROEDER, 1908–1909, COUNTY ATTORNEY

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	*Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	3	2				1	
Assault in second degree	6	2			2	2	
Robbery in second degree	1					1	
Robbery in third degree	1			1			
Burglary in third degree	4	1			3		
Grand larceny in first degree	3	3					
Grand larceny in second degree	12	7			2	3	
Forgery in third degree	1				1		
Abduction	2					2	
Bigamy	2	2					
Incest	3	1			1	1	
Bastardy	4	2			1	1	
Keeping house of ill fame	1	1					
Violation of liquor laws	5				2	3	
Non-support	1					1	
Gambling	5	1				4	
Carnal knowledge	1			1			
Abduction	2				2		
Practicing medicine without a license	1			1			
Totals	58	22		3	14	19	
In Justice and Municipal Courts—							
Assault in third degree	49	28		8	11	2	
Petit larceny	30	21		3	3	1	
Rape, attempt	1				1		
Bastardy	1	1					
Violation of game and fish laws	15	12		3			
Violation of pure food laws	4	4					
Violation of liquor laws	10	4		3	3		
Drunkenness	26	24			2		
Defrauding hotel keeper	2	1		1			
Language tending to provoke breach of peace	13	11		2			
Non-support	2	2					
Malicious mischief	4	3			1		
Cruelty to animals	3	3					
Incorrigibility	1			1			
Security to keep peace	4	2			2		
Selling tobaccos to minors	4	3			1		
Violation of health laws, Section 5,008	1	1					
Vagrancy	1	1					
Practicing medicine without license	1				1		
Totals	172	121		21	25	3	

Costs taxes, $4,208.02; Fines assessed, $2,324.00; Total collections, $1,458.92.

BELTRAMI COUNTY.

HENRY FUNKLEY, 1908, AND CHESTER McKUSICK, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor	No Bill Found
In District Court—								
Murder in first degree	3			2		1	1	
Assault in first degree	9	6				1		2
Assault in second degree	4	4					1	
Assault in third degree	6	5		1			1	
Maiming	1			1				
Robbery in first degree	2	1				1		
Robbery in third degree	1	1						
Burglaryin third degree	3	1			2		1	
Grand larceny in first degree	6	2		1	1	1		1
Grand larceny in second degree	20	6		5	1	7	2	1
Petit larceny	9	7		1		1	1	
Indecent assault	1	1						
Defrauding hotel keeper	4	4					1	
Defrauding livery stable keeper	2	2						
Incorrigibility	4	4						
Adultry	1				1			
Forgery in second degree	3	2					2	1
Keeping house of ill fame	2							2
Non-support	1				1			
Prosecutions of public officials, misconduct	16				3	13		
Violation of liquor laws	9			1	2	3		3
Totals	107	46		12	11	28	10	10
In Justice and Municipal Courts—								
Assault in third degree	9	8		1				
Grand larceny in second degree	10	8		1	1			
Defrauding hotel keeper	6	4		2				
Violation of game and fish laws	4	3		1				
Language tending to provoke a breach of peace	1	1						
Discharging firearms in public place	1	1						
Totals	31	25		5	1			

Costs Taxes, $192.35; Fines assessed, $277.60; Total collection, $333.30.

BENTON COUNTY.

JOHN C. LARSON, 1908, AND J. A. SENN, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2	1	.....	1	.....	.....	1
Robbery in first degree	2	.....	2	.....	.....	.....	.....
Forgery in second degree	2	2	.....	.....	.....	.....	.....
Violation of liquor laws	2	1	.....	.....	.....	1	.....
Totals	8	4	2	1	.....	1	1
In Justice and Municipal Courts—							
Assault in third degree	38	29	.....	2	4	2	19
Petit larceny	13	11	.....	1	1	.....	4
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of game laws	3	1	.....	2	.....	.....	.....
Violation of liquor laws	6	3	.....	.....	1	2	1
Language tending to provoke a breach of peace	9	9	.....	.....	.....	.....	6
Defrauding hotel keeper	1	1	.....	.....	.....	.....	.....
Obstructing highway	2	2	.....	.....	.....	.....	.....
Disorderly conduct	9	9	.....	.....	.....	.....	7
Drunkenness	22	22	.....	.....	.....	.....	22
Slander	1	1	.....	.....	.....	.....	1
Fornication	1	1	.....	.....	.....	.....	.....
Resisting officer	1	1	.....	.....	.....	.....	1
Fast driving on bridge	3	2	1	.....	.....	.....	1
Malicious destruction of property	1	1	.....	.....	.....	.....	.....
Aiding and abbetting in assault	1	1	.....	.....	.....	.....	1
Totals	112	95	1	5	6	4	63

Costs taxes, $876.15; Fines assessed, $686.80; Total collection, $1,203.76.

BIG STONE COUNTY.

J. J. PURCELL, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	1	.....	.....	.....	.....	1	.....
Murder in third degree	1	1	.....	.....	.....	.....	.....
Manslaughter in second degree	1	1	.....	.....	.....	.....	.....
Robbery in first degree	2	.....	.....	.....	2	.....	.....
Grand larceny in first degree	1	.....	.....	.....	1	.....	.....
Grand larceny in second degree	1	.....	.....	.....	1	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	.....
Totals	8	3	.....	.....	4	1	.....
In Justice and Municipal Courts—							
Assault in third degree	15	9	.....	.....	6	.....	.....
Burglary in third degree	6	4	.....	.....	2	.....	.....
Grand larceny in second degree	2	1	.....	.....	1	.....	.....
Petit larceny	15	13	.....	1	1	.....	.....
Forgery in third degree	1	1	.....	.....	.....	.....	.....
Violation of game and fish laws	1	1	.....	.....	.....	.....	.....
Defrauding hotel keeper	1	.....	.....	.....	1	.....	.....
Language tending to provoke a breach of peace	2	.....	.....	1	1	.....	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Cruelty to animals	3	2	.....	.....	1	.....	.....
Drunk and disorderly	11	9	.....	.....	2	.....	11
Carrying concealed weapons	1	1	.....	.....	.....	.....	.....
Totals	59	42	.....	2	15	.....	11

Costs taxes, $286.77; Fines assessed, $645.50; Total collection, $798.58.

BLUE EARTH COUNTY.

WALTER A. PLYMAT, 1908–1909, COUNTY ATTORNEY

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	7	1	.....	1	3	2	.....
Assault in second degree	3	.....	.....	1	2	.....	.....
Assault in third degree	3	2	.....	1	.....	.....	.....
Grand larceny in first degree	2	.....	.....	.....	2	.....	.....
Grand larceny in second degree	22	11	.....	1	9	1	.....
Forgery in second degree	6	3	.....	1	.....	2	.....
Forgery in third degree	1	1	.....	.....	.....	.....	.....
Adultery	1	.....	.....	.....	.....	1	.....
Incest	4	1	.....	.....	2	1	.....
Bastardy	1	.....	.....	.....	.....	1	.....
Resisting officer	1	.....	.....	1	.....	.....	.....
Totals	51	19	.....	6	18	8	.....
In Justice and Municipal Courts—							
Assault in third degree	33	24	.....	5	4	.....	.....
Petit larceny	15	11	.....	2	2	.....	.....
Violation of game laws	5	5	.....	.....	.....	.....	.....
Violation of pure food laws	9	9	.....	.....	.....	.....	.....
Violation of liquor laws	3	3	.....	.....	.....	.....	.....
Defrauding hotel keeper	2	2	.....	.....	.....	.....	.....
Language tending to provoke a breach of the peace	21	7	.....	.....	11	2	1
Non-support	8	6	.....	.....	1	1	.....
Malicious mischief	3	.....	.....	.....	3	.....	.....
Incorrigibility	1	1	.....	.....	.....	.....	.....
Drunkenness	117	113	.....	.....	3	1	117
Cruelty to animals	1	.....	.....	1	.....	.....	.....
Destroying personal property of another	1	1	.....	.....	.....	.....	.....
Violation of state barber laws	1	1	.....	.....	.....	.....	.....
Violation of school laws	2	1	.....	1	.....	.....	.....
Fornication	1	1	.....	.....	.....	.....	.....
Sabbath breaking	2	1	.....	.....	1	.....	.....
Totals	225	186	.....	9	25	4	118

Costs taxes, $1,569.10; Fines assessed, $1,516.00; Total collection, $2,048.51.

BROWN COUNTY.

AUG. G. ERICKSON, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	.....	1	.....	.....	.....	.....
Robbery in first degree	1	.....	1	.....	.....	.....	.....
Grand larceny in second degree	13	1	7	3	2	.....	.....
Bastardy	2	1	.....	.....	1	.....	.....
Violation of game and fish laws	2	.....	.....	.....	.....	2	.....
Selling undrawn turkey	1	.....	.....	1	.....	.....	.....
Violation of liquor laws	5	5	.....	.....	.....	.....	1
Totals	25	7	9	4	3	2	1
In Justice and Municipal Courts—							
Assault in third degree	18	18	.....	.....	.....	.....	5
Violation of pure food laws	5	5	.....	.....	.....	.....	.....
Violation of game and fish laws	4	1	.....	1	2	.....	.....
Petit larceny	5	5	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	21	17	.....	3	1	.....	4
Non-support	1	1	.....	.....	.....	.....	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Discharging fire arms	2	2	2	.....	.....	.....	.....
Drunkenness	23	23	.....	.....	.....	.....	23
Minor smoking in public place	1	.....	1	.....	.....	.....	.....
Vagrancy	1	.....	1	.....	.....	.....	.....
Threatening bodily harm	2	.....	1	1	.....	.....	.....
Totals	84	73	5	5	3	.....	43

Costs taxes, $1,608.01; Fines assessed, $1,138.00; Total collection, $1,107.49.

CARLTON COUNTY.

CLAYTON J. DODGE, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	1	.....	.....	1	.....	.....	.....
Assault in second degree	1	.....	.....	.....	1	.....	2
Assault in third degree	1	1	.....	.....	.....	.....	14
Grand larceny in second degree	10	6	.....	1	3	.....	6
Petit larceny	1	1	.....	.....	.....	.....	4
Forgery in second degree	1	.....	.....	.....	.....	1	1
Keeping house of ill fame	1	1	.....	.....	.....	.....	.....
Gambling	14	14	.....	.....	.....	.....	.....
Setting forest fires	2	.....	.....	2	.....	.....	.....
Bastardy	1	.....	.....	.....	.....	1	.....
Totals	33	23	.....	4	4	2	27
In Justice and Municipal Courts—							
Assault in second degree	3	2	.....	.....	1	.....	.....
Assault in third degree	44	36	.....	.....	8	.....	.....
Robbery in second degree	1	.....	.....	.....	1	.....	.....
Grand larceny in second degree	18	10	.....	.....	8	.....	.....
Petit larceny	22	14	.....	.....	8	.....	.....
Forgery in second degree	2	.....	.....	.....	2	.....	.....
Adultery	2	.....	.....	.....	2	.....	.....
Bastardy	9	.....	.....	.....	.....	.....	.....
Violation of pure food laws	2	2	.....	.....	.....	.....	.....
Violation of liquor laws	7	7	.....	.....	.....	.....	.....
Defrauding livery stable keeper	5	4	.....	.....	1	.....	1
Defrauding hotel keeper	1	1	.....	.....	.....	.....	.....
Non-support	4	3	.....	1	.....	.....	2
Malicious mischief	5	3	.....	.....	2	.....	.....
Setting forest fires	5	4	.....	.....	1	.....	.....
Drunkness	8	8	.....	.....	.....	.....	8
Lascivious conduct	1	1	.....	.....	.....	.....	.....
Refusing to work poll tax	1	1	.....	.....	.....	.....	.....
Under bonds to keep peace	2	.....	.....	.....	.....	.....	.....
Totals	142	96	.....	1	34	.....	11

Costs taxes, $1,261.74; Fines assessed, $2,149.50; Total collection, $1,552.85.

CARVER COUNTY.

THOS. F. CRAVEN, 1908, JOHN J. FAHEY, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Manslaughter in first degree	3	3	.....	.....	.....	.....	.....
Grand larceny in first degree	1	.....	.....	.....	.....	1	.....
Grand larceny in second degree	1	1	.....	.....	.....	.....	.....
Petit larceny	3	.....	.....	.....	.....	3	.....
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	1	.....	.....	.....	.....	1	.....
Concealing stolen property	2	1	.....	.....	1	.....	1
Totals	12	6	.....	.....	1	5	1
In Justice and Municipal Courts—							
Assault in third degree	8	.....	.....	.....	.....	.....	1
Petit larceny	2	2	.....	.....	.....	.....	2
Violation of game and fish laws	11	11	.....	.....	.....	.....	.....
Impersonating an officer	3	3	.....	.....	.....	.....	.....
Totals	24	24	.....	.....	.....	.....	3

Costs taxes, $47.61; Fines assessed, $343.50; Total collection, $391.11.

CASS COUNTY.

J. S. SCRIBNER, 1908, RICHARD M. FUNK, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court —							
Assault in first degree	2	.....	.....	.....	.....	2	.....
Assault in second degree	1	1	.....	.....	.....	.....	.....
Assault in third degree	9	1	.....	.....	.....	.....	.....
Robbery in first degree	1	.....	.....	.....	.....	1	1
Robbery in second degree	1	1	.....	.....	.....	.....	.....
Grand larceny in first degree	4	.....	.....	1	2	1	.....
Grand larceny in second degree	9	5	.....	1	3	.....	.....
Forgery in first degree	1	1	.....	.....	.....	.....	.....
Forgery in second degree	1	.....	.....	.....	1	.....	.....
Rape	2	2	.....	.....	.....	.....	.....
Indecent assult	2	1	.....	.....	.....	1	.....
Adultery	3	.....	.....	1	1	1	.....
Seduction	1	.....	.....	1	.....	.....	.....
Violation of liquor laws	10	.....	.....	.....	.....	.....	.....
Receiving money from prostitute	1	.....	.....	1	.....	.....	.....
Totals	48	12	.....	5	7	6	1
In Justice and Municipal Courts—							
Assault in third degree	15	15	.....	.....	.....	.....	3
Petit larceny	16	15	.....	1	.....	.....	4
Violation of game and fish laws	5	5	.....	.....	.....	.....	.....
Violation of liquor laws	2	.....	.....	2	.....	.....	.....
Cutting timber on state lands	1	.....	.....	.....	.....	1	.....
Defrauding livery stable keeper	1	.....	.....	.....	.....	1	.....
Obstructing public highway	2	1	.....	1	.....	.....	.....
Receiving money from prostitute	1	.....	.....	.....	1	.....	.....
Unlawfully detaining animals	1	1	.....	.....	.....	.....	.....
Drunkenness	11	11	.....	.....	.....	.....	11
Totals	55	48	.....	4	1	2	18

Costs taxes, $139.90; Fines assessed, $275.00; Total collection, $150.00.

CHIPPEWA COUNTY.

LYNDON A. SMITH, 1908, C. A. FOSNES, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1	.....	.....	.....	.....	.....
Burglary in third degree	1	.....	.....	.....	.....	1	.....
Grand larceny in second degree	3	2	.....	1	.....	.....	2
Forgery in second degree	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	7	7	.....	.....	.....	.....	.....
Gambling	2	2	.....	.....	.....	.....	.....
Totals	15	13	.....	1	.....	1	2
In Justice and Municipal Courts—							
Assault in third degree	17	17	.....	.....	.....	.....	8
Petit larceny	5	5	.....	.....	.....	.....	3
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	1
Defrauding hotel keeper	1	1	.....	.....	.....	.....	.....
Gambling	10	10	.....	.....	.....	.....	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Incorrigibility	1	1	.....	.....	.....	.....	.....
Stealing ride on railroad	4	4	.....	.....	.....	.....	.....
Breaking out of quarantine	1	1	.....	.....	.....	.....	.....
Totals	42	42	.....	.....	.....	.....	1

Costs taxes, $93.55; Fines assessed, $1,250.50; Total collection, $1,233.00.

CHISAGO COUNTY.

CHARLES ELMQUIST, 1908, ALFRED STOLBERG, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	3	2	1				
Adultery	2	2					
Violation of liquor laws	14		2			12	
Concealing birth of child	1		1				
Totals	20	4	4			12	
In Justice and Municipal Courts—							
Assault in second degree	1				1		
Assault in third degree	12	8	2	1		1	2
Petit larceny	4	3		1			
Violation of pure food laws	3	3					
Violation of liquor laws	3	1	2				
Non-support	1	1					
Dispensing drugs without license	1	1					
Discharging firearms in public place	1		1				1
Totals	26	17	5	2	1	1	3

Costs taxes, $307.19; Fines assessed, $640.00; Total collection, $743.25.

CLAY COUNTY.

C. G. DOSLAND, 1908, W. W. JOHNSON, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in second degree	1	1					
Assault in second degree	3	3					6
Burglary in third degree	2	2					
Grand larceny in first degree	4	1		3			
Grand larceny in second degree	12	11					
Indecent assault	1	1					
Perjury	1			1			
Seduction	1	1					
Violation of liquor laws	2	2					2
Gambling	1	1					
Sodomy, attempt	1				1		
Carnal knowledge of female	1			1			
Totals	30	23		5	1		8
In Justice and Municipal Courts—							
Assault in second degree	41	35		1	4	1	10
Arson in second degree	5	5					
Petit larceny	108	99			9		2
Violation of pure food laws	4	4					46
Violation of liquor laws	3	3					
Defrauding hotel keeper	1	1					
Language tending to provoke a breach of peace	6	5				1	3
Non-support	1	1					
Malicious mischief	1				1		
Cruelty to animals	1	1					1
Exceeding speed limit in automobile	1	1					
Selling tobacco to minors	1	1					
Nuisance	1	1					
Carrying concealed weapons	6	6					
Selling adulterated linseed oil	1	1					
Totals	181	164		1	14	2	

Costs taxes, $2,095.04; Fines assessed, $895.60; Total collection, $1,075.87.

CLEARWATER COUNTY.

EDWARD T. TEITSWORTH, 1908, OSCAR T. STENVICK, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Manslaughter in second degree	2	1	.....	.....	.....	1	2
Assault in second degree	4	1	.....	.....	.....	3	3
Assault in third degree	1	1	.....	.....	.....	.....	1
Grand larceny in first degree	2	.....	.....	.....	.....	2	3
Grand larceny in second degree	9	6	.....	1	.....	2	.....
Carnal knowledge	2	.....	.....	1	1	.....	.....
Incest	1	.....	.....	.....	1	.....	.....
Bastardy	2	.....	.....	.....	2	.....	.....
Violation of liquor laws	7	4	.....	.....	3	.....	.....
Illigal voting	1	.....	.....	.....	.....	1	.....
Malicious mischief	2	.....	.....	.....	.....	2	.....
Fornication	7	2	.....	.....	3	2	.....
Pointing gun at human being	1	1	.....	.....	.....	.....	1
Totals	41	16	.....	2	10	13	14
In Justice and Municipal Courts—							
Assault in third degree	6	4	.....	1	.....	1	.....
Petit larceny	2	2	.....	.....	.....	.....	.....
Violation of game and fish laws	15	10	.....	4	1	.....	1
Violation of pure food laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	6	1	.....	.....	2	3	.....
Defrauding hotel keeper	1	.....	.....	.....	1	.....	.....
Incorrigibility	1	1	.....	.....	.....	.....	.....
Slander of female	1	1	.....	.....	.....	.....	.....
Refusing to work on highway	1	1	.....	.....	.....	.....	.....
Setting fire near prairie land	1	1	.....	.....	.....	.....	.....
Drunkenness	1	1	.....	.....	.....	.....	1
Totals	36	23	.....	5	4	4	2

Costs taxes, $699.57; Fines assessed, $1,195.45; Total collection, $1,166.91.

COOK COUNTY.

D. B. McALPINE, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating liquor
In District Court—							
Grand larceny in second degree	2	2	.....	.....	.....	.....	2
Furnishing liquor to Indian	1	1	.....	.....	.....	.....	.....
Totals	3	3	.....	.....	.....	.....	2
In Justice and Municipal Courts—							
Assault in third degree	2	1	.....	1	.....	.....	.....
Violation of game and fish laws	5	5	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	1	1	.....	.....	.....	.....	.....
Incorrigibility	1	1	.....	.....	.....	.....	.....
Cruelty to animals	1	1	.....	.....	.....	.....	.....
Starting forest fires	12	5	.....	3	4	.....	.....
Refusing to obey fire warden	1	1	.....	.....	.....	.....	.....
Drunkenness	17	17	.....	.....	.....	.....	17
Furnishing liquor to Indian	2	2	.....	.....	.....	.....	2
Breaking pound	1	1	.....	.....	.....	.....	.....
Totals	43	35	.....	4	4	.....	19

Costs taxes, $417.06; Fines assessed, $448.00; Total collection, $744.53.

COTTONWOOD COUNTY.

D. A. STUART, 1908, O. J. FINSTAD, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	4	4	.....	.....	.....	.....	1
Arson in third degree	1	1	.....	.....	.....	.....	1
Grand larceny in second degree	2	2	.....	.....	.....	.....	1
Forgery in second degree	1	1	.....	.....	.....	.....	.....
Rape	1	1	.....	.....	.....	.....	.....
Perjury	1	.....	.....	1	.....	.....	.....
Seduction	1	.....	.....	.....	1	.....	.....
Abandoning minor child	1	1	.....	.....	.....	.....	.....
Totals	12	10	.....	1	1	.....	3
In Justice and Municipal Courts—							
Assault in third degree	9	7	.....	1	1	.....	4
Petit larceny	6	6	.....	.....	.....	.....	2
Violation of game and fish laws	10	10	.....	.....	.....	.....	.....
Violation of pure food laws	3	2	.....	.....	1	.....	.....
Defrauding hotel keeper	1	.....	.....	.....	1	.....	.....
Language tending to provoke a breach of peace	6	5	.....	.....	1	.....	3
Non-support	1	.....	.....	.....	1	.....	.....
Obstructing highway	1	.....	.....	.....	1	.....	.....
Violating school law	1	1	.....	.....	.....	.....	.....
Auctioneering without a license	1	1	.....	.....	.....	.....	.....
Totals	39	32	.....	1	6	.....	9

Costs, taxes, $525.98; Fines assessed, $606.29; Total collection, $733.22.

CROW WING COUNTY.

J. H. WARNER, 1908, W. A. FLEMING, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	3	2	.....	.....	.....	1	.....
Manslaughter in first degree	1	.....	.....	.....	.....	1	.....
Manslaughter in second degree	4	4	.....	.....	.....	.....	.....
Assault in first degree	1	1	.....	.....	.....	.....	.....
Assault in second degree	4	4	.....	.....	.....	.....	.....
Burglary in second degree	1	1	.....	.....	.....	.....	.....
Burglary in third degree	2	2	.....	.....	.....	.....	.....
Grand larceny in first degree	2	2	.....	.....	.....	.....	.....
Grand larceny in second degree	2	.....	.....	1	.....	1	.....
Carnal knowledge	1	.....	.....	1	.....	.....	.....
Indecent assault	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	14	2	.....	5	2	5	.....
Totals	36	19	.....	7	2	8	.....
In Justice and Municipal Courts—							
Assault in second degree	1	.....	.....	.....	1	.....	.....
Assault in third degree	21	11	.....	9	1	.....	.....
Petit larceny	17	14	.....	3	.....	.....	.....
Keeping house of ill fame	1	.....	.....	.....	1	.....	.....
Violation of game and fish laws	12	10	.....	2	.....	.....	.....
Violation of liquor laws	25	14	.....	1	6	4	.....
Defrauding hotel keeper	3	3	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	12	8	.....	2	2	.....	.....
Non-support	3	.....	.....	.....	2	1	.....
Cruelty to animals	3	.....	.....	3	.....	.....	.....
Totals	90	63	.....	20	13	5	.....

Costs taxes, $39.50; Fines assessed, $1,189.70; Total collection, $848.20.

DAKOTA COUNTY.

WILLIAM HODGSON, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1					
Assault in third degree	2	1		1			
Robbery in third degree	1	1					
Grand larceny in first degree	2	2					
Grand larceny in second degree	3	3					
Rape	1	1					
Totals	10	9		1			
In Justice and Municipal Courts—							
Intoxication	337	266			40	31	190
Assault in second degree	16	14		2			
Assault in third degree	30	12			18		6
Cruelty to animals	1				1		
Non-support	3	1		2			
Defrauding hotel keeper	2	1			1		2
Discharging firearms	1	1					
Malicious mischief	1	1					
Vagrancy	12	5			7		
Violation of game and fish laws	1				1		
Violation of pure food laws	1				1		
Violation of liquor laws	2				2		
Violation of school laws	2				2		
Totals	409	301		4	73	31	198

[1] Costs taxes, $1,299.97; Fines assessed, $1,407.85; Total collection, $751.30.

DODGE COUNTY.

J. J. McCAUGHEY, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1					1	
Grand larceny in second degree	2				2		
Forgery in second degree	1				1		
Indecent assault	1	1					
Violation of liquor laws	3	1		1	1		
Carnal knowledge of children	1	1					
Selling intoxicating liquors							
Selling intoxicating liquors without license	5	1		1		3	
Selling liquor on Sunday	2	1			1		
Totals	16	5		2	5	4	
In Justice and Municipal Courts—							
Assault in third degree	7	6			1		2
Petit larceny	6	6					4
Defrauding hotel keeper	1	1					1
Language tending to provoke a breach of peace	1	1					1
Cruelty to animals	1	1					1
Disorderly conduct	2	2					1
Violation of tobacco laws	1	1					
Carnal knowledge of children	4	4					4
Intoxication	4	4					4
Violation of auto law	2	2					
Totals	29	28			1		18

Costs taxes, $145.84; Fines assessed, $309.50; Total collection, $350.34.

DOUGLAS COUNTY.

CONSTANT LARSON, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	4	4					
Unlawful assembly	3	3					
Totals	7	7					
In Justice and Municipal Courts—							
Assault in third degree	27	27					19
Grand larceny in second degree	10	5		1	2	2	
Seduction	2					2	
Violation of game and fish laws	10	9			1		
Violation of pure food laws	2	2					
Violation of liquor laws	26	25			1		19
Language tending to provoke a breach of peace	6	5		1			6
Non-support	1	1					
Malicious mischief	1			1			
Incorrigibility	2	2					
Unlawful discharge of firearms	2	2			1		
Unlawful assembly	3	3					3
Exceeding speed limit	1	1					
Totals	93	82		3	5	4	

Costs taxes, $839.43; Fines assessed, $893.00; Total collection, $1,152.85.

FARIBAULT COUNTY.

H. L. BULLIS, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2	2					
Assault in third degree	1	1					
Robbery in third degree	1	1					
Arson in first degree	1	1					
Grand larceny in second degree	5	5					
Forgery in second degree	1	1					
Indecent assault	1	1					
Bigamy	1	1					
Violation of liquor laws	4	4					
Miscellaneous	2	2					
Totals	19	19					
In Justice and Municipal Courts—							
Assault in second degree	1	1		1			
Assault in third degree	5	4		1			
Grand larceny in second degree	5	5					
Petit larceny	2	2			1	1	
Violation of pure food laws	2			1	1		
Language tending to provoke a breach of peace	3	3					
Drunkenness	14	14					14
Miscellaneous	1	1					
Totals	33	30		3	2	1	14

Costs taxes, $549.31; Fines assessed, $640.00; Total collection, $895.74.

FILLMORE COUNTY.

R. J. PARKER, 1908, JOHN W. HOPP, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1					1
Arson in second degree	1	1					
Arson in third degree	1	1					
Grand larceny in second degree	6	4			1	1	
Forgery in second degree	1	1					
Rape	2				1	1	
Seduction	1				1		
Bastardy	4	1			1	2	
Violation of liquor laws	6	6					
Incorrigibility	1	1					
Embezzlement of public money	1	1					
Abduction	1				1		
Totals	26	17			5	4	1
In Justice and Municipal Courts—							
Assault in third degree	15	15					2
Petit larceny	1	1					1
Bastardy	3	3					
Violation of game and fish laws	4	1			3		
Violation of pure food laws	1	1					
Defrauding hotel keeper	1	1					
Language tending to provoke a breach of peace	1	1					
Non-support	1	1					1
Keeping unlicensed liquor place	1	1					
Disturbing religious meeting	11	11					
Using obscene language	1	1					
Voluntary intoxication	14	14					14
Totals	54	51			3		18

Costs taxes, $804.69; Fines assessed, $713.00; Total collection, $1,109.51.

FREEBORN COUNTY.

NORMAN E. PETERSON, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	3	1		1		1	2
Assault in third degree	1			1			
Burglary in third degree	3	2		1			1
Grand larceny in first degree	7	1		2	2	2	
Grand larceny in second degree	4	4					2
Forgery in third degree	1	1					1
Keeping house of ill fame	1					1	
Keeping disorderly house	1					1	
Violation of liquor laws	2	2					
Receiving stolen property	1				1		
Totals	24	11		5	3	5	6
In Justice and Municipal Courts—							
Assault in second degree	2				2		
Assault in third degree	21	16		5			7
Grand larceny in first degree	1	1					
Grand larceny in second degree	3	3					
Petit larceny	18	15		3			
Seduction	1			1			
Violation of game and fish laws	3	3					
Violation of pure food laws	10	10					
Defrauding hotel keeper	1				1		
Defrauding livery stable keeper	5	1		3	1		
Language tending to provoke a breach of peace	4	4					
Malicious mischief	1			1			
Incorrigibility	1	1					
Cruelty to animals	1	1					
Gambling	1	1					
Drunkenness	1	1				1	1
Indecent exposure	1	1					
Violating tobacco laws	2	2					
Purchasing stolen property from minor	2	1		1			
Criminal slander	1			1			
Disorderly conduct				1			1
Keeping dirty creamery		1					
Conspiracy				1			
Totals	80	62		17	4	1	9

Costs taxes, $1,241.53; Fines assessed, $921.90; Total collection, $897.96.

GOODHUE COUNTY.

Wm. M. ERICSON, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Manslaughter in first degree	2				1	1	2
Assault in second degree	3	2				1	3
Assault in third degree	1					1	1
Arson in first degree	1	1					
Grand larceny in first degree	1	1					
Grand larceny in second degree	11	7			2	2	8
Indecent assault	3	2				1	
Adultery	1				1		
Bastardy	5	3			1	1	
Violation of liquor laws	3			3			
Language tending to provoke a breach of peace	1					1	
Breach of peace	4				1	3	
Carnal knowledge of child	2			1	1		
Totals	38	16		4	7	11	14
In Justice and Municipal Courts—							
Manslaughter in first degree	1	1					1
Assault in second degree	2	2					
Assault in third degree	35	27		2	6		9
Arson in first degree	1	1					
Grand larceny in second degree	12	10			2		
Petit larceny	10	9		1			6
Indecent assault	2	2					
Adultery	1	1					
Seduction	1				1		
Bastardy	7	4		2	1		
Violation of game and fish laws	5	2			3		
Violation of pure food laws	3	3					
Defrauding hotel keeper	3	3					
Language tending to provoke a breach of peace	16	13		3			7
Non-support	9	9					1
Malicious mischief	3	2			1		
Incorrigibility	1				1		
Drunkenness	20	20					20
Breach of peace	3	3					
Fornication	2	2					
Carnal knowledge of child	2	2					
Violation of school laws	2	2					
Breach of peace bond	6	6					
Indecent language	3	3					2
Voluntary drinking	16	16					16
Public nuisance	1	1					
Totals	167	144		8	15		62

Costs taxes, $1,616.89; Fines assessed, $1,198.85; Total collection, $1,234.60.

GRANT COUNTY.

E. J. SCOFIELD, 1908, N. J. BOTHNE, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nole Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	5		1		3	1	1
Perjury	2					2	
Violation of liquor laws	1			1			
Carnal knowledge of female child under sixteen years of age	3			1		2	
Totals	11		1	2	3	5	
In Justice and Municipal Courts—							
Assault in third degree	3	3					
Violation of game and fish laws	9	3	6				
Violation of pure food laws	1			1			
Violation of liquor laws	1		1				1
Malicious mischief	1	1					
Totals	15	7	7	1			2

Costs taxes, $66.65; Fines assessed, $171.00; Total collection, $174.45.

HENNEPIN COUNTY.

AL. J. SMITH, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	7	3	1			3	
Murder in second degree	1	1					
Manslaughter in first degree	2		1			1	
Assault in first degree	11	7		2	1	1	
Assault in second degree	15	3	5	4	3		
Receiving stolen property	15	8	2		5		
Robbery in first degree	30	12	8	1	1	8	
Robbery in second degree	6	2	1	1		2	
Burglary in third degree	73	28	24	3	7	11	
Grand larceny in first degree	22	12	4	1	4	1	
Grand larceny in second degree	220	78	84	13	25	20	
Forgery in second degree	67	28	17	5	3	14	
Rape	6			2	4		
Indecent assault	9	1			4	4	
Swindling	4	4					
Carnal knowledge of children	16	5	5	1	2	3	
Extortion	5			1	4		
Bribery	2			2			
Abortion	4	1		1		2	
Bigamy	4		3		1		
Adultery	3	2			1		
Incest	2	1			1		
Seduction	2	1	1				
Bastardy	18	2			7	9	
Keeping house of ill fame	6			1	5		
Violation of game and fish laws	3	3					
Violation of liquor laws	24	4	5	1	8	6	
Injuring property	1	1					
Compounding a crime	1				1		
Non-support	7	1	1	1	2	2	
Malicious mischief	1			1			
Impersonating an officer	1				1		
Resisting an officer	3		2		1		
Desertion	2				1	1	
Selling railway tickets	2				2		
Carrying concealed weapons	3	1			1	1	
Crime against nature	1	1					
Giving obscene literature	5		2	1	1	1	
Discharging firearms	2		2				
Abandonment	1			1			
Smoking opium	3			1	2		
Practicing medicine without license							
Using false weights	4				3	1	
Receiving reward for appointment to public office	2				2		
Totals	616	210	168	44	103	91	
In Justice and Municipal Courts—							
Assault in third degree	4	3			1		
Petit larceny	6	5		1			
Violation of game and fish laws	9	9					
Violation of pure food laws	1					1	
Violation of speed limit	8	6		2			
Violation of liquor laws	21	18		3			
Prize fighting	3	3					
Discharging firearms	1	1					
Practicing medicine without license	1	1					
Cruelty to animals	2	2					
Violation of pharmacy laws	1	1					
Assault and battery	6	6					
Interfering with natural water course	1	1					
Slander	4	4					
Totals	68	60		6	1	1	

HOUSTON COUNTY.

O. K. DAHLE, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	1					1	
Burglary in second degree	1	1					
Grand larceny in first degree	2	2					1
Indecent assault	1	1					
Violation of liquor laws	9	9					
Totals	14	13				1	1
In Justice and Municipal Courts—							5
Assault in third degree	10	10					
Petit larceny	4	4					1
Violation of game and fish laws	2	2					
Violation of liquor laws	5	5					3
Language tending to provoke a breach of peace	6	6					3
Non-support	1	1					2
Malicious mischief	3	2			1		
Peace proceeding	3	2			1		3
Totals	34	32			2		17

Costs taxes, $462.10; Fines assessed, $619.00; Total collection, $854.87.

HUBBARD COUNTY.

E. R. DAMPIER, 1908, W. W. WOOLLEY, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in first degree	4	4					
Arson in first degree	1	1					
Arson in third degree	2	2					
Rape	1	1					
Bastardy	1	1					
Keeping house of ill fame	3	3					
Non-support	1	1					
Drunkenness	6	6					6
Refusing to pay poll tax	1	1					
Selling mortgaged property without consent	1	1					
Selling liquor without license	1	1					
Keeping unlicensed drinking place	2	2					
Transient business	1	1					
Totals	25	25					6
In Justice and Municipal Courts—							
Assault in first degree	3	3					1
Assault in third degree	1	1					
Arson in third degree	1	1					
Petit larceny	1			1			
Keeping house of ill fame	3	3					3
Violation of liquor laws	2					2	
Gambling	1	1					
Drunkenness	1	1					1
Refusing to pay poll tax	1	1					
Selling mortgaged property	1	1					
Selling liquor without license	1	1					1
Keeping unlicensed liquor place	2	2					
Totals	18	15		1		2	6

Costs taxes, $310.73; Fines assessed, $717.00; Total collection, $922.53.

ISANTI COUNTY.

HENRY F. BARKER, 1908, JOHN W. CLOVER, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Manslaughter in first degree	1	1					
Assault in second degree	2	2					2
Assault in third degree	3	2		1			
Grand larceny in first degree	1	1					
Grand larceny in second degree	2	2					
Indecent assault	1			1			
Perjury	1				1		
Bastardy	1	1					
Violation of liquor laws	13	6		6		1	2
Illegal voting	3	1		1	1		
Incorrigibility	1	1					
Carnal knowledge of a child under 16 years	1	1					
Attempt suicide	1	1					
Totals	31	19		9	2	1	4
In Justice and Municipal Courts—							
Assault in third degree	13	12		1			5
Petit larceny	4	4					
Bastardy	1					1	
Violation of pure food laws	1	1					
Violation of liquor laws	1	1					1
Language tending to provoke a breach of peace	1	1					
Malicious mischief	1	1					
Drunkenness	5	5					5
Discharging firearms	1	1					1
Refusing to work poll tax	1	1					1
Threatening to kill wife	1	1					1
Resisting an officer	2	2					2
Fornication	2	2					2
Totals	34	32		1		1	18

Costs taxes, $946.11; Fines assessed, $1,160.06; Total collection, $1,163.39.

ITASCA COUNTY.

ALFRED L. THWING, 1908, FRANK F. PRICE, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	2			1		1	
Murder in third degree	3					3	
Assault in first degree	21	9		4	2	6	
Assault in second degree	11	6		2	3		
Assault in third degree	3	1				2	
Arson in first degree	1	1					
Burglary in third degree	4	3		1			
Grand larceny in first degree	14	3		2	6	3	
Grand larceny in second degree	44	28		2	2	12	
Forgery in first degree	1			1			
Misappropriation of public moneys	10	1		2		7	
Forgery in second degree	2			1		1	
Forgery in third degree	1			1			
Indecent assault	1					1	
Perjury	1			1			
Bribery	3					3	
Extortion	3	2				1	
Adultery	3				2	1	
Bastardy	2					2	
Keeping house of ill fame	1				1		
Violation of liquor laws	25	3				22	
Malicious mischief	2					2	
Malfeasance in office	3					3	
Setting forest fires and failure to maintain patrol	4				1	3	
Totals	165	57		18	17	73	
In Justice and Municipal Courts—							
Assault in third degree	28	25		2	1		
Robbery in second degree	2				2		
Arson in first degree	3				3		
Grand larceny in first degree	2	1		1			
Grand larceny in second degree	5				5		
Petit larceny	27	22		5			
Perjury	4					4	
Bastardy	1					1	
Violation of game and fish laws	41	33		5	3		
Violation of liquor laws	49	48			1		
Illegal voting	1					1	
Defrauding hotel keeper	8	6		1	1		
Defrauding livery stable keeper	3	3					
Language tending to provoke a breach of peace	2	1			1		
Non-support	1	1					
Malicious mischief	12	9		3			
Cruelty to animals	1	1					
Peddling without license	1	1					
Miscellaneous misdemeanors	12	9		3			
Setting forest fires and failure to maintain patrol	1	1			2		
Totals	204	161		20	19	6	

Costs taxes, $1,898.65; Fines assessed, $2,454.15; Total collection, $2,397.60.

JACKSON COUNTY.

L. F. LAMMERS, 1908, J. A. MANSFIELD, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	6	2	.....	1	.....	3	2
Grand larceny in second degree	13	7	.....	.....	6	.....	3
Forgery in second degree	3	1	.....	.....	2	.....	1
Rape	2	1	.....	.....	1	.....	.....
Adultery	6	.....	.....	.....	4	2	.....
Incest	1	1	.....	.....	.....	.....	.....
Bastardy	3	.....	.....	.....	1	2	.....
Violation of game and fish laws	5	.....	.....	.....	1	4	.....
Carrying burglar's tools	2	2	.....	.....	.....	.....	.....
Totals	41	14	.....	1	15	11	6
In Justice and Municipal Courts—							
Assault in third degree	16	15	.....	.....	1	.....	12
Grand larceny in second degree	2	2	.....	.....	.....	.....	.....
Petit larceny	11	9	.....	1	1	.....	1
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of game and fish laws	14	13	.....	.....	.....	1	.....
Violation of liquor laws	2	2	.....	.....	.....	.....	2
Language tending to provoke a breach of peace	5	5	.....	.....	.....	.....	4
Drunkenness	9	8	.....	.....	1	.....	9
Aiming firearm at human being	1	1	.....	.....	.....	.....	.....
Totals	61	56	.....	1	3	1	28

Costs taxes, $497.09; Fines assessed, $915.42; Total collection, $861.91.

KANABEC COUNTY.

W. A. HOWARD, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Bastardy	3	3	.....	.....	.....	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	.....
Totals	4	4	.....	.....	.....	.....	.....
In Justice and Municipal Courts—							
Assault in third degree	5	4	.....	.....	1	.....	.....
Petit larceny	2	2	.....	.....	.....	.....	.....
Violation of game and fish laws	4	3	.....	1	.....	.....	.....
Violation of liquor laws	3	2	.....	.....	1	.....	.....
Language tending to provoke a breach of peace	1	1	.....	.....	.....	.....	.....
Drunkenness	14	14	.....	.....	.....	.....	14
Violation of Sunday laws	1	1	.....	.....	.....	.....	.....
Totals	30	27	.....	1	2	.....	14

Costs taxes, $99.61; Fines assessed, $273.00; Total collection, $307.08.

KANDIYOHI COUNTY.

GEORGE H. OTTERNESS, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	3	3	.....	.....	.....	.....	.....
Forgery in second degree	1	1	.....	.....	.....	.....	.....
Bastardy	1	.....	.....	.....	.....	1	.....
Violation of liquor laws	7	1	.....	3	2	1	.....
Selling tobacco to minor	1	1	.....	.....	.....	.....	.....
Selling obscene pictures	1	1	.....	.....	.....	.....	.....
Totals	14	7	.....	3	2	2	.....
In Justice and Municipal Courts—							
Assault in third degree	15	11	.....	3	1	.....	.....
Petit larceny	13	12	.....	.....	1	.....	.....
Forgery in second degree	1	1	.....	.....	.....	.....	.....
Bastardy	1	.....	.....	.....	1	.....	.....
Violation of game and fish laws	23	20	.....	1	2	.....	.....
Violation of liquor laws	3	3	.....	.....	.....	.....	.....
Non-support	2	.....	.....	.....	2	.....	.....
Cruelty to animals	1	1	.....	.....	.....	.....	.....
Obstructing public street	1	1	.....	.....	.....	.....	.....
Drunkenness	5	5	.....	.....	.....	.....	5
Selling obscene pictures	4	4	.....	.....	.....	.....	.....
Unlawful exposure of person	1	1	.....	.....	.....	.....	.....
Totals	70	59	.....	4	7	.....	5

Costs taxes, $696.04; Fines assessed, $916.00; Total collection, $1,003.31.

KITTSON COUNTY.

R. R. HEDENBERG, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Uuder Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2	.....	.....	1	.....	1	.....
Assault in third degree	1	.....	.....	.....	1	.....	1
Burglary in second degree	3	.....	.....	.....	.....	3	.....
Burglary in third degree	2	1	.....	.....	1	.....	2
Grand larceny in first degree	2	.....	.....	.....	.....	2	.....
Indecent assault	1	1	.....	.....	.....	.....	1
Seduction	1	.....	.....	.....	.....	1	.....
Bastardy	2	1	.....	.....	1	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	1
Assault with intent to commit murder in first degree	1	.....	.....	.....	.....	1	.....
Totals	16	4	.....	1	3	8	5
In Justice and Municipal Courts—							
Assault in third degree	10	10	.....	.....	.....	.....	2
Petit larceny	3	2	.....	.....	1	.....	1
Bastardy	2	1	.....	.....	.....	1	.....
Violation of game and fish laws	3	3	.....	.....	.....	.....	.....
Violation of pure food laws	2	2	.....	.....	.....	.....	.....
Incorrigibility	1	.....	.....	.....	1	.....	.....
Assault with intent to commit murder in first degree	2	1	.....	.....	.....	1	.....
Threatening to do bodily harm	2	2	.....	.....	.....	.....	1
Use of abusive language	3	2	.....	1	.....	.....	1
False pretenses	2	.....	.....	.....	2	.....	.....
Drunkenness	1	1	.....	.....	.....	.....	1
Auctioneering without license	3	2	.....	1	.....	.....	.....
Search warrant	1	.....	.....	.....	1	.....	.....
Totals	35	26	.....	2	5	2	6

Costs taxes, $783.22; Fines assessed, $382.00; Total collection, $604.20.

KOOCHICHING COUNTY.

W. V. KANE, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Plead ed Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	1	1	.....	.....	.....	.....	.....
Assault in second degree	3	1	.....	.....	1	1	3
Assault in third degree	4	3	.....	.....	.....	1	.....
Arson in first degree	2	.....	.....	.....	1	1	2
Arson in third degree	2	1	.....	1	.....	.....	.....
Grand larceny in second degree	5	4	.....	.....	1	.....	.....
Violation of liquor laws	2	2	.....	.....	.....	.....	.....
Non-support	1	1	.....	.....	.....	.....	.....
Leasing property for house of ill fame	1	.....	.....	.....	1	.....	.....
Totals	21	13	.....	1	4	3	5
In Justice and Municipal Courts—							
Assault in third degree	13	9	.....	3	1	.....	5
Petit larceny	16	12	.....	2	2	.....	5
Bastardy	1	.....	.....	.....	1	.....	.....
Violation of game and fish laws	8	8	.....	.....	.....	.....	.....
Defrauding hotel-keeper	1	1	.....	.....	.....	.....	.....
Malicious mischief	1	.....	.....	1	.....	.....	.....
Cruelty to animals	2	1	.....	1	.....	.....	.....
Gambling	5	.....	.....	.....	5	.....	.....
Totals	47	31	.....	7	9	.....	10

Costs taxes, $2,814.08; Fines assessed, $669.30; Total collection, $574.74.

LAC QUI PARLE COUNTY.

W. F. SODERBERG, 1908, H. L. BORGENDALE, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2	2					
Burglary in third degree	3	3					3
Grand larceny in second degree	2	1			1		
Petit larceny	1					1	
Forgery in first degree	1					1	
Violation of liquor laws	8	8					
Malicious mischief	1			1			
Totals	18	14		1	1	2	3
In Justice and Municipal Courts—							
Assault in third degree	6	6					1
Bastardy	1	1					
Violation of game and fish laws	2	2					
Non-support	1					1	1
Violation of barber laws	1	1					
Drunkenness	3	3					3
Totals	14	13				1	5

Costs taxes, $19.50; Fines assessed, $909.00; Total collection, $715.00.

LAKE COUNTY.

B. F. FOWLER, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicatinge Liquor
In District Court—							
Grand larceny in first degree	1	1					1
Grand larceny in second degree	4	4					
Forgery in third degree	2	2					
Keeping house of ill fame	2	2					
Violation of liquor laws	1	1					
Attempt to carnally know and abuse female child under ten years old	1	1					
Totals	11	11					1
In Justice and Municipal Courts—							
Assault in third degree	11	9		1	1		5
Petit larceny	4	4					1
Violation of game and fish laws	12	12					
Violation of pure food laws	1	1					
Violation of liquor laws	3	3					
Defrauding hotel keeper	2	2					1
Language tending to provoke a breach of peace	2	2					2
Malicious mischief	1	1					
Totals	36	34		1	1		9

Costs taxes, $128.90; Fines assessed, $2,010.00; Total collection, $1,896.79.

LE SUEUR COUNTY.

A. J. EDGERTON, 1908, FRANCIS J. HAUZEL, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Courts—							
Assault in firrt degree	1	1					
Assault in second degree	2	2					1
Assault in third degree	1	1					1
Arson in first degree	1			1			
Burglary in third degree	1	1					
Forgery in second degree	1	1					
Rape	1	1					
Indecent assault	1				1		
Seduction	1	1					
Violation of liquor laws	1				1		
Drunkenness	1	1					1
Totals	12	9		1	2		3
In Justice and Municipal Courts—							
Assault in first degree	1	1					
Assault in third degree	11	7		2	2		1
Grand larceny in first degree	1	1					
Petit larceny	2	2					1
Rape	2	2					
Bastardy	1				1		
Violation of game and fish laws	4	4					
Violation of pure food laws	1	1					
Violation of liquor laws	6	3			3		1
Defrauding hotel keeper	1	1					
Language tending to provoke a breach of peace	6	5		1			
Non-support	2	2				1	
Indecent exposure	1	1					
Drunkenness	11	11					11
Peddling without license	1	1					
Totals	51	42		3	6	1	14

Costs taxes, $1,754.84; Fines assessed, $355.00; Total collection, $567.40.

LINCOLN COUNTY.

WARREN MILLER, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Uuder Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	1	1					
Grand larceny in second degree	2	2					
Bastardy	1	1					
Totals	4	4					
In Justice and Municipal Courts—							
Assault in third degree	2			1	1		
Petit larceny	1	1					1
Violation of pure food laws	1	1					
Violation of liquor laws	1	1					1
Selling property at auction without a license as an auctioneer	1	1					
Totals	6	4		1	1		2

Costs taxes, $85.00; Fines assessed, $15.18; Total collection, $77.53.

LYON COUNTY.

W. J. ROBINSON, 1908, 1910 COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in first degree	2	.....	1	1	.....	.....	.....
Assault in second degree	1	1	.....	.....	.....	.....	1
Grand larceny in second degree	1	.....	1	.....	.....	.....	.....
Petit larceny	1	1	.....	.....	.....	.....	.....
Rape	1	.....	.....	1	.....	.....	.....
Adultery	1	.....	.....	.....	1	.....	.....
Bastardy	1	.....	.....	.....	.....	1	.....
Violation of pure food laws	1	.....	1	.....	.....	.....	.....
Gambling	1	.....	1	.....	.....	.....	.....
Totals	10	2	4	2	1	1	.....
In Justice and Municipal Courts—							
Maiming	4	3	.....	.....	.....	1	.....
Petit larceny	5	1	.....	.....	2	2	.....
Forgery in first degree	2	2	.....	.....	.....	.....	.....
Bastardy	1	.....	.....	1	.....	.....	.....
Violation of liquor laws	3	3	.....	.....	.....	.....	.....
Selling mortgaged property	1	1	.....	.....	.....	.....	.....
Totals	16	10	.....	1	2	3	1

Costs taxes, $173.36; Fines assessed, $393.00; Total collection, $386.30.

McLEOD COUNTY.

C. G. ODQUIST, 1908, SAM G. ANDERSON, JR., 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Petit larceny	2	.....	.....	1	.....	1	.....
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	.....
Malicious mischief	1	.....	.....	.....	.....	1	.....
Carnal knowledge of child	2	.....	.....	.....	1	1	.....
Severing property from freehold	2	.....	.....	.....	2	.....	.....
Totals	9	2	.....	1	3	3	.....
In Justice and Municipal Courts—							
Assault in third degree	22	21	.....	.....	1	.....	3
Burglary in third degree	1	.....	.....	.....	1	.....	.....
Petit larceny	5	4	.....	.....	1	.....	1
Bastardy	2	1	.....	.....	1	.....	.....
Violation of game and fish laws	5	3	.....	.....	2	.....	.....
Violation of liquor laws	2	2	.....	.....	.....	.....	1
Language tending to provoke a breach of peace	3	2	.....	.....	1	.....	.....
Non-support	1	1	.....	.....	.....	.....	.....
Malicious mischief	2	2	.....	.....	.....	.....	2
Violation of pharmacy laws	1	1	.....	.....	.....	.....	.....
Failure to work poll tax	1	1	.....	.....	.....	.....	.....
Totals	45	38	.....	.....	7	.....	7

Costs taxes, $366.56; Fines assessed, $360.25; Total collection, $591.31.

MAHNOMEN COUNTY.

C. C. COOPER, 1908, J. T. VAN NUTER, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	2	.....	.....	1	.....	1	.....
Assault in second degree	1	.....	.....	.....	.....	1	.....
Burglary in third degree	1	1	.....	.....	.....	.....	.....
Totals	4	1	.....	1	.....	2	.....
In Justice and Municipal Courts—							
Assault in third degree	11	6	.....	2	3	.....	.....
Petit larceny	2	.....	.....	2	.....	.....	.....
Adultery	1	.....	.....	.....	1	.....	.....
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of game and fish laws	11	11	.....	.....	.....	.....	.....
Violation of pure food laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	2	.....	.....	.....	2	.....	.....
Non-support	1	1	.....	.....	.....	.....	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Destroying property	1	1	.....	.....	.....	.....	.....
Contempt of court	2	2	.....	.....	.....	.....	.....
Totals	34	24	.....	4	6	.....	.....

Costs taxes, $938.04; Fines assessed, $385.00; Total collection, $627.99.

MARSHALL COUNTY.

WM. J. BROWN, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in third degree	1	1	.....	.....	.....	.....	1
Burglary in second degree	1	1	.....	.....	.....	.....	.....
Grand larceny in first degree	3	.....	.....	.....	3	.....	.....
Forgery in second degree	1	1	.....	.....	.....	.....	.....
Indecent assault	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	10	7	.....	.....	3	.....	.....
Aiming firearm at human being	1	1	.....	.....	.....	.....	1
Totals	18	12	.....	.....	6	.....	2
In Justice and Municipal Courts—							
Assault in third degree	3	.....	.....	.....	3	.....	.....
Petit larceny	1	1	.....	.....	.....	.....	.....
Violation of game and fish laws	5	5	.....	.....	.....	.....	.....
Violation of liquor laws	3	3	.....	.....	.....	.....	.....
Resisting an officer	1	1	.....	.....	.....	.....	1
Totals	13	10	.....	.....	3	.....	1

Costs taxes, $273.58; Fines assessed, $970.00; Total collection, $1,130.28.

MARTIN COUNTY.

J. E. PALMER, 1908, F. G. SASSE, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Violation of liquor laws	2	2					
Carnal knowledge of child	2	2					
Totals	4	4					
In Justice and Municipal Courts—							
Assault in second degree	12	10		1	1		1
Petit larceny	11	8		1	2		
Rape	1				1		1
Bastardy	2	2					
Violation of game and fish laws	6	6					
Violation of liquor laws	8	7			1		5
Defrauding hotel keeper	1	1					1
Non-support	4				4		1
Malicious mischief	1	1					
Gambling	1	1					
Carnal knowledge	1				1		
Totals	48	36		2	10		9

Costs taxes, $273.64; Fines assessed, $575.00; Total collection, $368.83.

MEEKER COUNTY.

LUKE K. SEXTON, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2			2			
Assault in third degree	1			1			
Grand larceny in second degree	2	2					
Petit larceny	1	1					
Rape	1	1					
Language tending to provoke a breach of peace	3			3			
Omitting to perform official duty	1			1			
Totals	11	4		7			
In Justice and Municipal Courts—							
Assault in third degree	20	20					
Petit larceny	4	4					
Violation of game and fish laws	18	18					
Violation of pure food laws	2	2					
Malicious mischief	4	4					
Incorrigibility	8	8					
Totals	56	56					

Costs taxes, $605.53; Fines assessed, $765.00; Total collection, $808.14.

MILLE LACS COUNTY.

JOSEPH A. ROSS, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1					
Grand larceny in second degree	2	2					
Petit larceny	2	1			1		
Forgery in second degree	2				2		
Violation of liquor laws	2	1			1		
Criminal libel	1			1			
Totals	10	5		1	4		
In Justice and Municipal Courts—							
Assault in third degree	3	3					3
Violation of liquor laws	1	1					
Malicious mischief	2	2					
Drunkenness	2	2					2
Totals	8	8					5

Costs taxes, $47.51; Fines assessed, $65.65; Total collection, $105.51.

MORRISON COUNTY.

DON M. CAMERON, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in second degree	1	1					
Assault in third degree	2	2					
Arson in first degree	2	1		1			1
Burglary in third degree	2	1			1		1
Grand larceny in first degree	1					1	
Grand larceny in second degree	3	1				2	
Petit larceny	4	1		1		2	
Perjury	1	1					
Bastardy	2	2					
Violation of game and fish laws	1	1					
Violation of liquor laws	2	2					
Malicious mischief	1	1					1
Violation of health laws	1	1					
Violation of Sec. 4866, R. L. 1905	6	2		1		3	
Violation of Sec. 4865, R. L. 1909	5					5	
Totals	34	17		3	1	13	3
In Justice and Municipal Courts—							
Murder in first degree	1				1		
Assault in second degree	2				2		2
Assault in third degree	37	33		2	2		9
Arson in third degree	1				1		
Petit larceny	15	12		1	2		
Bastardy	3				3		
Keeping house of ill fame	3			1	2		
Violation of game and fish laws	1			1			
Violation of pure food laws	10	10					
Violation of liquor laws	5	5					
Defrauding hotel keeper	1	1					
Defrauding livery stable keeper	1	1					
Language tending to provoke a breach of peace	17	15		1	1		3
Incorrigibility	6	6					
Threatening bodily harm	4	2			2		3
Trespassing on railroad property	3	3					
Violation of Sec. 4865, R. L. 1905	2	1			1		1
Violation of Sec. 4866, R. L. 1905	3	2		1			
Totals	115	91		7	17		18

Costs taxes, $4,433.47; Fines assessed, $883.64; Total collection, $1,725.39.

MOWER COUNTY.

ARTHUR W. WRIGHT, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Burglary in third degree	2	2					
Grand larceny in second degree	6	6					
Violation of liquor laws	5	5					
Totals	13	13					
In Justice and Municipal Courts—							
Assault in third degree	11	10		1			4
Petit larceny	14	13			1		2
Bastardy	2	1			1		
Violation of pure food laws	2	2					
Violation of liquor laws	17	16		1			10
Defrauding hotel keeper	2	1				1	
Defrauding livery stable keeper	1	1					
Language tending to provoke a breach of peace	1	1					1
Non-support	7	7					
Malicious mischief	2	2					1
Incorrigibility	3	3					
Disorderly conduct	3	3					
Violation of drug laws	2	2					
Under bond to keep peace	1	1					
Carrying concealed weapons	3	3					1
Dangerous use of firearms	1	1					1
Sale of tobacco to minors	1					1	
Totals	73	67		2	2	2	27

Costs taxes, $991.67; Fines assessed, $2,515.00; Total collection, $1,729.42.

MURRAY COUNTY.

L. S. NELSON, 1908, ROBERT W. TERRY, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Drunkenness	1	1					1
Totals	1	1					1
In Justice and Municipal Courts—							
Assault in third degree	12	11			1		2
Bastardy	1					1	
Petit larceny	2	2					
Violation of game and fish laws	1			1			
Violation of liquor laws	2	2					
Language tending to provoke a breach of peace	1			1			
Drunkenness	1	1					1
Disturbing the peace	2	1		1			
Injury to personal property	5	5					
Totals	27	22		3	1	1	3

Costs taxes, $219.14; Fines assessed, $228.00; Total collection, $386.79.

NICOLLET COUNTY.

GEORGE T. OLSEN, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	2	2					
Rape	1	1					
Totals	3	3					
In Justice and Municipal Courts—							
Assault in third degree	5	5					2
Arson in third degree	1	1					
Grand larceny in second degree	1	1					
Petit larceny	4	3			1		1
Bastardy	1	1					
Violation of game and fish laws	7	7					
Violation of liquor laws	3	3					3
Defrauding hotel keeper	1	1					
Violation of pharmacy laws	5	5					
Proceeding to prevent breach of peace	3	3					
Discharging firearm	1	1					3
Drunkeness	3	3					9
Totals	35	34			1		

Costs taxes, $555.08; Fines assessed, $380.25; Total collection, $454.93.

NOBLES COUNTY.

E. J. JONES, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2	2					
Assault in third degree	2	1		1			2
Grand larceny in second degree	17	15				2	1
Forgery in second degree	2	2					
Violation of liquor laws	1				1		
Totals	24	20		1	1	2	3
In Justice and Municipal Courts—							
Assault in third degree	13	12			1		1
Petit larceny	14	14					
Forgery in second degree	2				2		
Violation of game and fish laws	14	13		1			
Violation of liquor laws	23	22			1		22
Defrauding hotel keeper	1			1			
Language tending to provoke a breach of peace	1	1					
Malicious mischief	3	3					
Violation of health laws	1	1					
Hawking and peddling	1				1		
Illegal sale of poison	1	1					
Selling at auction without license	1	1					
Violation of school laws	1	1					
Obstruction of public highways	1			1			
Totals	77	69		3	5		22

Costs taxes, $615.92; Fines assessed, $828.00; Total collection, $904.15.

NORMAN COUNTY.

M. A. BRATTLAND, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Burglary in second degree	1			1			
Grand larceny in second degree	1			1			
Bigamy	1	1					
Bastardy	2	2					
Violation of liquor laws	4	4					
Malicious mischief	1					1	
Setting prairie fire	1	1					
Totals	11	8		2		1	
In Justice and Municipal Courts—							
Assault in third degree	6	4			2		1
Petit larceny	6	4			1	1	1
Bastardy	7	4			2	1	
Violation of pure food laws	1	1					
Violation of liquor laws	2	2					
Incorrigibility	2	2					
Refusing to aid officer	2	2					
Drunkenness	5	5					5
Proceeding to require bond to keep the peace	1	1					
Totals	32	25			5	2	7

Costs taxes, $435.82; Fines assessed, $1,616.25; Total collection, $1,817.66.

OLMSTEAD COUNTY.

J. H. RICHARDSON, 1908, GEO. H. ALLEN, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in second degree	1	1					
Assault in second degree	3	2			1		3
Grand larceny in second degree	27	8		2	14	3	18
Petit larceny	3	3					3
Forgery in second degree	2	1			1		2
Indecent assault	1	1					1
Incest	1				1		
Violation of liquor laws	11	4			7		11
Unlawful discharge of firearms	1	1					1
Carnal knowledge	1	1					
Totals	51	22		2	24	3	39
In Justice and Municipal Courts—							
Assault in second degree	1				1		1
Assault in third degree	14	11		2	1		2
Grand larceny in second degree	5			1	4		
Petit larceny	16	11		1	4		6
Violation of liquor laws	9	6		1	2		
Defrauding hotel keeper	2	2					
Defrauding livery stable keeper	1	1					1
Language tending to provoke a breach of peace	4	1			3		1
Non-support	1				1		
Malicious mischief	5	1			4		
Cruelty to animals	2	1			1		
Voluntary intoxication	11	10			1		11
Proceeding to prevent crime	6			1	5		2
Assault and battery	6	3			3		2
Fighting	7	4			3		7
Stealing ride on cars	4	4					4
Permitting noxious weeds to go to seed	3	1			2		
Cruelty to child	1	1					
Violating auto speed limit	1	1					
Fugitive from justice	1	1					
Truancy	1				1		
Slander of female	1	1					1
Totals	102	60		6	36		38

Costs taxes, $781.86; Fines assessed, $1,988.89; Total collection, $2,199.80.

OTTER TAIL COUNTY.

C. L. HILTON, 1908, ANTON THOMPSON, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	6	.....	2	.....	.....	4	.....
Assault in third degree	5	4	1	.....	.....	.....	1
Robbery in first degree	1	1	.....	.....	.....	.....	.....
Burglary in third degree	5	.....	5	.....	.....	.....	.....
Grand larceny in first degree	1	.....	.....	.....	.....	1	.....
Grand larceny in second degree	8	2	5	1	.....	.....	.....
Petit larceny	1	.....	.....	.....	.....	1	.....
Forgery in second degree	2	.....	.....	.....	.....	2	.....
Indecent assault	2	1	.....	.....	.....	1	.....
Incest	1	.....	.....	.....	.....	1	.....
Bastardy	5	4	.....	.....	1	.....	.....
Keeping house of ill fame	1	.....	.....	.....	.....	1	.....
Violation of game and fish laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	4	4	.....	.....	.....	.....	.....
Setting fire	1	.....	.....	.....	.....	1	.....
Carnal knowledge of child	1	.....	.....	.....	.....	1	.....
Attempt to commit murder	1	.....	1	.....	.....	.....	.....
Carrying concealed weapons	1	1	.....	.....	.....	.....	.....
Injuring of property	1	....	1	.....	.....	.....	.....
Attempt to commit rape	1	.....	.....	.....	.....	1	.....
Totals	49	18	15	1	1	14	1
In Justice and Municipal Courts—							
Assault in third degree	19	4	13	1	1	.....	.....
Arson in third degree	1	.....	.....	.....	1	.....	.....
Burglary in third degree	3	.....	.....	.....	3	.....	.....
Grand larceny in second degree	1	.....	.....	.....	1	.....	1
Petit larceny	32	3	24	.....	5	.....	.....
Violation of game and fish laws	37	20	14	2	1	.....	.....
Violation of pure food laws	9	3	1	.....	5	1	.....
Violation of liquor laws	5	3	1	.....	.....	.....	1
Language tending to provoke a breach of peace	6	4	2	.....	.....	.....	.....
Incorrigibility	3	3	.....	.....	.....	.....	.....
Resisting an officer	1	.....	1	.....	.....	.....	.....
Drunkenness	20	4	14	1	1	.....	20
Setting fire	1	.....	.....	1	.....	.....	.....
Bond to keep the peace	2	2	.....	.....	.....	.....	.....
Obstructing highway	1	.....	1	.....	.....	.....	.....
Carnal knowledge of child	2	.....	.....	.....	.....	2	.....
Carrying concealed weapons	1	.....	.....	.....	.....	1	.....
Injuring property	1	.....	.....	.....	.....	1	.....
Totals	145	46	71	5	18	5	21

Costs taxes, $242.98; Fines assessed, $672.34; Total collection, $1,457.34.

PINE COUNTY.

S. C. SCOTT, 1908, C. H. McKUSICK, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in first degree	4				1	3	
Assault in second degree	1	1					
Assault in third degree	8	4		3	1		
Grand larceny in first degree	4	1		2	1		
Grand larceny in second degree	3	2		1			
Petit larceny	2	2					1
Indecent assault, carnal knowledge	2					2	
Adultery	5	3		2			
Violation of game and fish laws	5	5					
Violation of liquor laws	19	13		2	3	1	
Defrauding hotel keeper	1				1		
Language tending to provoke a breach of peace	9	3		2	4		
Malicious mischief	1			1			
Incorrigibility	2	2					
Cruelty to animals	1			1			
Gambling	3	3					
Resisting an officer	2				1	1	2
Interfering with an officer	2	2					1
Setting a trap or spring gun	1					1	
Swindling with cards	2			1	1		
Stealing logs	1				1		
Attempt to assault	1				1		
Slandering female	3	1		1		1	
Threats to break the peace	3	2		1			
Setting forest fires	3	2			1		
Drunkenness	2	2					2
Obtaining credit under false pretenses							
Disturbing public meeting	1			1			
Totals	91	48		18	16	9	6
In Justice and Municipal Courts—							
Assault in second degree	1	1					
Assault in third degree	7	4		1	2		3
Petit larceny	9	6		3			
Bastardy	1					1	
Keeping house of ill fame	1				1		
Violation of game and fish laws	4			1	3		
Violation of liquor laws	5	1			4		
Incorrigibility	1			1			
Drunk and disorderly	2	2					2
Totals	31	14		6	10	1	5

Costs taxes, $1,134.79; Fines assessed, $511.00; Total collection, $974.77.

PIPESTONE COUNTY.

P. P. CODY, 1908, A. L. JANES, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Manslaughter in second degree	2	.....	.....	1	.....	1	.....
Assault in second degree	2	.....	.....	.....	1	1	.....
Violation of liquor laws	4	2	.....	1	1	.....	.....
Grand larceny in second degree	7	7	.....	.....	.....	.....	.....
Perjury	1	1	.....	.....	.....	.....	.....
Selling mortgaged property	1	1	.....	.....	.....	.....	.....
Totals	17	11	.....	2	2	2	.....
In Justice and Municipal Courts—							
Assault in third degree	11	9	.....	.....	2	.....	3
Petit larceny	15	9	.....	.....	5	1	6
Violation of game and fish laws	2	2	.....	.....	.....	.....	.....
Violation of pure food laws	3	2	.....	.....	.....	1	.....
Violation of liquor laws	2	1	.....	.....	1	.....	.....
Language tending to provoke a breach of peace	4	3	.....	1	.....	.....	.....
Malicious mischief	2	2	.....	.....	.....	.....	1
Incorrigibility	1	.....	.....	.....	1	.....	.....
Non-support	1	.....	.....	.....	.....	1	.....
Cruelty to animals	1	1	.....	.....	.....	.....	.....
Totals	42	29	.....	1	9	3	10

Costs taxes, $385.13; Fines assessed, $772.24; Total collection, $918.80.

POLK COUNTY.

JAMES H. MAYBURY, 1908, ERIC O. HAGEN, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittas	Nolle Prosequ	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	1					1	
Murder in second degree	1					1	
Assault in second degree	7	3		1	3		4
Grand larceny in first degree	1					1	
Grand larceny in second degree	44	32		2	3	7	26
Petit larceny	1	1					1
Forgery in second degree	1	1					
Forgery in third degree	1	1					
Indecent assault	2	1				1	
Bastardy	1					1	
Keeping house of ill fame	3	3					
Violation of liquor laws	7	7					
Language tending to provoke a breach of peace	1	1					
Malicious mischief	2				1	1	
Carrying concealed weapons	1	1					
Gambling	6	2			1	3	
Buying stolen property	1			1			
Kidnapping	1				1		
Fornication	1				1		
Totals	83	53		4	10	16	31
In Justice and Municipal Courts—							
Assault in second degree	3				3		
Assault in third degree	51	38		1	12		27
Maiming	1				1		
Burglary in second degree	1					1	
Grand larceny in first degree	1				1		
Grand larceny in second degree	30				30		
Petit larceny	57	44			13		22
Indecent assault	1				1		
Adultery	2				2		
Bastardy	2				2		
Keeping house of ill fame	1				1		
Violation of game and fish laws	10	7		1	2		
Violation of pure food laws	16	16					
Violation of liquor laws	54	54					52
Illegal voting	5	5					5
Cutting timber on state land	1				1		
Defrauding hotel keeper	5	4				1	
Language tending to provoke a breach of peace	16	9		2		5	6
Non-support	3	1			1	1	
Malicious mischief	7	3		1		3	1
Incorrigibility	11	10			1		
Cruelty to animals	2	2					3
Gambling	3	1			2		1
Miscellaneous	14	12			2		1
Obtaining money under false pretense	4	4					
Carrying concealed weapons	4	4					1
Speeding auto	2	2					
Indecent exposure	4	4					4
Practicing veterinary	1	1					
Setting prairie fires	1	1					
Selling tobacco to minors	3	3					
Obstructing highway	1	1					
Fornication	2	2					2
Resisting officer	1	1					1
Attempted subordination of perjury	1				1		
Drunkenness	97	96			1		
Totals	418	325		5	77	11	126

Costs taxes, $6,997.51; Fines assessed, $3,281.66; Total collection, $3,318.98.

POPE COUNTY.

JULIUS O. GROVE, 1908–1909, COUNTY ATTORNEY

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in first degree	1	1	.....	.....	.....	.....	.....
Burglary in third degree	1	.....	.....	.....	.....	1	.....
Grand larceny in second degree	2	.....	.....	.....	.....	2	2
Forgery in second degree	1	.....	.....	.....	.....	1	.....
Violation of liquor law	7	4	.....	.....	.....	3	.....
Malicious mischief, destruction of property	1	1	.....	.....	.....	.....	.....
Totals	13	6	.....	.....	.....	7	2
In Justice and Municipal Courts—							
Assault in third degree	11	11	.....	.....	.....	.....	5
Petit larceny	3	3	.....	.....	.....	.....	1
Bastardy	3	3	.....	.....	.....	.....	.....
Violation of pure food laws	7	7	.....	.....	.....	.....	.....
Violation of liquor laws	5	5	.....	.....	.....	.....	.....
Defrauding hotel keeper	2	2	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	1	1	.....	.....	.....	.....	.....
Malicious mischief	2	2	.....	.....	.....	.....	1
Incorrigibility	1	1	.....	.....	.....	.....	.....
Totals	35	35	.....	.....	.....	.....	7

Costs taxes, $168.32; Fines assessed, $869.60; Total collection, $987.92.

RAMSEY COUNTY.

RICHARD D. O'BRIEN, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
District Court—							
Murder in first degree	5	1	.....	3	1	.....	.....
Manslaughter in first degree	3	2	.....	.....	.....	1	.....
Assault in first degree	3	1	.....	2	.....	.....	.....
Assault in second degree	14	5	.....	4	3	2	.....
Arson in first degree	1	.....	.....	1	.....	.....	.....
Arson in third degree	1	.....	.....	1	.....	.....	.....
Burglary in first degree	1	.....	.....	1	.....	.....	.....
Burglary in second degree	4	2	.....	.....	2	.....	.....
Burglary in third degree	19	15	.....	1	3	.....	.....
Grand larceny in first degree	20	10	.....	3	6	1	.....
Grand larceny in second degree	89	66	.....	18	4	1	.....
Petit larceny	7	7	.....	.....	.....	.....	.....
Forgery in second degree	23	13	.....	.....	4	6	.....
Forgery in third degree	3	1	.....	.....	.....	2	.....
Rape	3	2	.....	1	.....	.....	.....
Indecent assault	4	3	.....	1	.....	.....	.....
Bribery	2	2	.....	.....	.....	.....	.....
Abortion	1	.....	.....	1	.....	.....	.....
Bigamy	1	1	.....	.....	.....	.....	.....
Bastardy	3	1	.....	.....	2	.....	.....
Violation of liquor laws	38	5	.....	5	17	11	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Gambling	4	1	.....	.....	3	.....	.....
Publishing details of execution of convict	3	3	.....	.....	.....	.....	.....
Extortion	1	.....	.....	1	.....	.....	.....
Receiving stolen property	9	1	.....	3	4	1	.....
Receiving deposits in defunct bank	4	.....	.....	.....	.....	4	.....
Abduction	1	1	.....	.....	.....	.....	.....
Unlawfully entering building	1	1	.....	.....	.....	.....	.....
Receiving deposit by insolvent bank	4	1	.....	.....	.....	3	.....
Practicing medicine without license	2	1	.....	.....	.....	1	.....
Swindling	3	.....	.....	.....	.....	3	.....
Attempt to swindle	4	4	.....	.....	.....	.....	.....
Attempt arson	1	.....	.....	.....	.....	1	.....
Crime against nature	2	2	.....	.....	.....	.....	.....
Totals	285	153	.....	46	49	37	.....
In Justice and Municipal Courts—							
Manslaughter in first degree	1	.....	.....	.....	.....	1	.....
Assault in second degree	2	.....	.....	.....	.....	2	.....
Assault in third degree	6	5	.....	1	.....	.....	.....
Maiming	10	10	.....	.....	.....	.....	.....
Burglary in first degree	1	1	.....	.....	.....	.....	.....
Grand larceny in second degree	10	.....	.....	.....	6	4	.....
Petit larceny	104	99	.....	3	2	.....	.....
Forgery in first degree	4	4	.....	.....	.....	.....	.....
Forgery in third degree	1	.....	.....	.....	.....	1	.....
Perjury	1	.....	.....	.....	.....	1	.....
Bribery	1	.....	.....	.....	.....	1	.....
Abortion	1	.....	.....	.....	.....	1	.....
Bigamy	1	1	.....	.....	.....	.....	.....
Incest	1	1	.....	.....	.....	.....	.....
Seduction	1	1	.....	.....	.....	.....	.....
Bastardy	8	.....	.....	.....	6	2	.....
Keeping house of ill fame	1	.....	.....	.....	.....	1	.....
Violation of game and fish laws	5	4	.....	.....	1	.....	.....
Violation of pure food laws	11	5	.....	1	5	.....	.....
Violation of liquor laws	11	5	.....	6	.....	.....	.....
Illegal voting	1	.....	.....	.....	1	.....	.....
Cutting timber on state lands	2	2	.....	.....	.....	.....	.....
Defrauding hotel keeper	7	7	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	1	.....	.....	1	.....	.....	.....
Non-support	61	46	.....	2	8	5	.....
Fornication	2	2	.....	.....	.....	.....	.....
Malicious destruction of property	2	2	.....	.....	.....	.....	.....
Cruelty to animals	2	2	.....	.....	.....	.....	.....
Practicing medicine without license	1	.....	.....	1	.....	.....	.....
Attempt arson	1	.....	.....	.....	.....	1	.....
Crime against nature	1	1	.....	.....	.....	.....	.....
Employment of child under 16 years	1	1	.....	.....	.....	.....	.....
Totals	263	199	.....	15	29	20	.....

Costs taxes, $35.60; Fines assessed, $1,353.90; Total collection, $803.90.

RED LAKE COUNTY.

THOMAS GERMO, 1908, WILHELM MICHELET, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1			1			1
Burglary in third degree	1		1				
Grand larceny in second degree	3	1				2	
Petit larceny	1		1				
Abortion	2				1	1	1
Keeping house of ill fame	2	1		1			
Totals	10	2	2	2	1	3	2
In Justice and Municipal Courts—							
Assault in second degree	1			1			1
Assault in third degree	13	8			5		
Grand larceny in second degree	7				7		2
Petit larceny	7	4			3		
Indecent assault	1				1		
Adultery	1				1		
Violation of game and fish laws	14	13			1		
Violation of pure food laws	13	13					
Violation of liquor laws	4	4					
Defrauding hotel keeper	6	2			4		1
Language tending to provoke a breach of peace	1	1					1
Malicious mischief	1	1					1
Incorrigibility	3	2			1		
Gambling	1				1		
Drunkenness	12	12					12
Vagrancy	1	1					
Violation of compulsory education law	9	2			7		
Breach of peace	1	1					
Totals	96	64		1	31		18

Costs taxes, $462.22; Fines assessed, $831.00; Total collection, $900.58.

REDWOOD COUNTY.

WM. G. OWENS, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	3	3					1
Burglary in third degree	2				2		
Grand larceny in first degree	1	1					
Grand larceny in second degree	9	5		4			
Petit larceny	13	13					
Forgery in third degree	1	1					
Indecent assault	2	1		1			
Perjury	1					1	
Bastardy	1	1					
Violation of game and fish laws	2	2					
Violation of liquor laws	11	4			1	6	
Illegal voting	2				1	1	
Language tending to provoke a breach of peace	1	1					
Gambling	5			5			
Selling mortgaged property	1	1					
Totals	55	33		10	4	8	1
In Justice and Municipal Courts—							
Assault in third degree	16	16					9
Petit larceny	3	3					
Adultery	2				1	1	
Bastardy	3	1				2	
Violation of game and fish laws	4	4					
Violation of pure food laws	1	1					
Violation of liquor laws	25	22			1	2	8
Defrauding hotel keeper	1	1					
Language tending to provoke a breach of peace	15	12		2	1		7
Malicious mischief	8	8					
Cruelty to animals	1	1					
Resisting a police officer	1	1					
Obstructing public highway	2	1			1		
Malicious trespass	1	1					
Disturbing religious meeting	1	1					1
Kidnapping	1	1					
Injuring and destroying public property	4	4					
Breaking quarantine	1	1					
Totals	90	79		2	4	5	25

Costs taxes, $740.21; Fines assessed, $547.49; Total collection, $2,005.20.

RENVILLE COUNTY.

FRANK MURRAY, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in first degree	1	1					
Grand larceny in second degree	4	4					2
Forgery in second degree	1	1					1
Violation of liquor laws	2	2					
Totals	8	8					3
In Justice and Municipal Courts—							
Assault in third degree	7	7					
Petit larceny	3	3					
Violation of liquor laws	2	2					
Language tending to provoke a breach of peace	1	1					
Non-support	1	1					
Drunkenness	1	1					1
Disturbing the peace	1	1					
Destroying property	1	1					
Indecent exposure	1	1					
Charged with being intoxicated	2	2					2
Disorderly conduct	2	2					2
Keeping an unlicensed saloon	2	2					1
Illegal voting	2	2					2
Totals	26	26					8

Costs taxes, $102.67; Fines assessed, $513.25; Total collection, $562.37.

RICE COUNTY.

A. B. CHILDRESS, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	2					2	
Manslaughter in second degree	1			1			
Assault in first degree	4	2			2		
Assault in third degree	1	1					
Arson in third degree	1			1			
Grand larceny in first degree	5	4				1	
Grand larceny in second degree	19	5	9		3	2	
Petit larceny	2				1	1	
Forgery in second degree	1	1					
Forgery in third degree	1	1					
Indecent assault	1				1		
Perjury	2				2		
Receiving deposits in insolvent bank	5		1		4		
Receiving stolen property	1					1	
Incest	3	1				2	
Seduction	2					2	
Bastardy	3	2				1	
Keeping house of ill fame	2			2			
Violation of liquor laws	4			1	3		
Illegal selling of tobacco	1		1				
Non-support	1				1		
Malicious mischief	2	2					
Extortion	1	1					
Selling mortgaged property	1				1		
Criminal libel	1				1		
Insolvent bank	1	1					
Totals	68	21	11	5	19	12	
In Justice and Municipal Courts—							
Manslaughter in second degree	1					1	
Assault in first degree	2					2	1
Assault in second degree	1			1			
Assault in third degree	66	46		9	11		13
Maiming	2	2					
Grand larceny in first degree	4					4	
Grand larceny in second degree	10			1	8	1	
Petit larceny	22	13		2	4	3	
Forgery in second degree	2					2	
Indecent assault	1					1	
Abortion	5	3			2		
Bigamy	2	2					
Incest	5	1		1	1	2	
Bastardy	1	1					
Keeping house of ill fame	2					2	
Violation of game and fish laws	10	10					
Violation of pure food laws	8	8					
Violation of liquor laws	6	1	2		3		
Illegal voting	1	1					
Defrauding hotel keeper	1					1	
Defrauding livery stable keeper	1					1	
Language tending to provoke a breach of peace	11	8		3			
Non-support	5	4				1	
Malicious mischief	2	1		1			
Incorrigibility	2	2					
Extortion	1	1					
Drunkenness	177	177			3		177
Contempt of Court	2					2	
Speed laws	1	1					
Totals	354	282	2	18	32	23	191

Costs taxes, $2,423.59; Fines assessed $3,215.20; Total collection, $2,611.06.

ROCK COUNTY.

C. H. CHRISTOPHERSON, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in third degree	1	1					
Burglary in third degree	1	1					1
Grand larceny in second degree	4	2			1	1	1
Adultery	1	1					
Violation of liquor laws	21	18		1	2		
Carnal knowledge of child	2			1	1		
Totals	30	23		2	4	1	2
In Justice and Municipal Courts—							
Assault in third degree	19	16		3			10
Petit larceny	4	3			1		
Violation of game and fish laws	1			1			
Violation of liquor laws	36	36					34
Defrauding hotel keeper	1	1					
Language tending to provoke a breach of peace	2	1			1		1
Malicious mischief	2	2					1
Public indecency	4	4					
Peace proceedings	2	1		1			
Maintaining public nuisance							
Abuseve language	3	3					3
Totals	71	64		5	2		49

Costs taxes, $427.50; Fines assessed, $1,708.00; Total collection, $2,074.10.

ROSEAU COUNTY.

G. M. STEBBINS, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	1	1					
Forgery in second degree	1	1					
Rape	2				2		
Indecent assault	1				1		
Bastardy	2	1				1	
Violation of liquor laws	2	2					
Cutting timber on state lands	1	1					
Injury to property	1					1	
Totals	11	6			3	2	
In Justice and Municipal Courts—							
Assault in third degree	5	5					
Petit larceny	2	2					
Violation of pure food laws	5	5					
Violation of game and fish laws	4	4					
Violation of liquor laws	5	5					
Incorrigibility	1	1					
Violation of fire laws	1	1					
Totals	23	23					

Costs taxes, $855.72; Fines assessed, $747.00; Total collection, $1,342.10.

SCOTT COUNTY.

J. F. LEONARD, 1908, W. H. SOUTHWORTH, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in second degree	1	.....	1	.....	.....	.....	.....
Assault in second degree	2	.....	1	1	.....	.....	1
Grand larceny in second degree	5	4	.....	.....	.....	1	1
Rape	1	.....	.....	1	.....	.....	.....
Malicious mischief	1	.....	.....	.....	.....	1	.....
Cruelty to animals	1	.....	.....	.....	.....	1	.....
Selling mortgaged property	1	.....	.....	.....	.....	1	.....
Carrying concealed weapons	1	.....	.....	.....	.....	1	.....
Totals	13	4	2	2	.....	5	2
In Justice and Municipal Courts—							
Obstructing railroad tracks	3	3	.....	.....	.....	.....	1
Assault in third degree	8	.....	8	.....	.....	.....	4
Petit larceny	1	.....	.....	1	.....	.....	.....
Violation of pure food laws	1	.....	1	.....	.....	.....	.....
Violation of liquor laws	17	17	.....	.....	.....	.....	17
Defrauding hotel keeper	1	.....	.....	.....	1	.....	.....
Language tending to provoke a breach of peace	2	2	.....	.....	.....	.....	1
Non-support	1	.....	.....	.....	1	.....	.....
Malicious mischief	1	.....	.....	.....	1	.....	.....
Breach of the peace	3	.....	3	.....	.....	.....	.....
Acting as a pharmacist without license	1	1	.....	.....	.....	.....	.....
Practicing optometry without a license	1	.....	1	.....	.....	.....	.....
Totals	40	23	13	1	3	.....	23

Costs taxes, $247.49; Fines assessed, $660.00; Total collection, $684.57.

SHERBURNE COUNTY.

CHARLES S. WHEATON, 1908, GEO. H. TAYLOR, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in first degree	1	1	.....	.....	.....	.....	.....
Assault in second degree	2	2	.....	.....	.....	.....	.....
Assault in third degree	.....	.....	.....	.....	.....	.....	.....
Rape	2	2	.....	.....	.....	.....	.....
Totals	5	5	.....	.....	.....	.....	.....
In Justice and Municipal Courts—							
Assault in third degree	3	3	.....	.....	.....	.....	.....
Petit larceny	4	4	.....	.....	.....	.....	.....
Violation of pure food laws	4	4	.....	.....	.....	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	1
Malicious mischief	1	1	.....	.....	.....	.....	1
Gambling	1	1	.....	.....	.....	.....	.....
Disturbing religious meeting	1	1	.....	.....	.....	.....	.....
Incorrigibility	2	2	.....	.....	.....	.....	.....
Totals	17	17	.....	.....	.....	.....	2

Costs taxes, $43.27; Fines assessed, $130.00; Total collection, $155.65.

SIBLEY COUNTY.

CHAS. W. QUANDT, 1908, W. F. ODELL, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1	.....	.....	.....	.....	1
Grand larceny in second degree	2	1	.....	.....	1	.....	.....
Bastardy	1	.....	.....	.....	1	.....	.....
Cruelty to animals	2	.....	.....	.....	.....	2	.....
Totals	6	2	.....	.....	2	2	1
In Justice and Municipal Courts—							
Assault in third degree	7	6	.....	1	.....	.....	5
Violation of pure food laws	1	1	.....	.....	.....	.....	.....
Operating steam engine without a license	1	1	.....	.....	.....	.....	.....
Totals	9	8	.....	1	.....	.....	5

Costs taxes, $302.93; Fines assessed, $162.55; Total collection, $299.83.

STEARNS COUNTY.

JOSEPH B. HIMSL, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in second degree	2	.....	.....	1	.....	1	.....
Assault in first degree	2	2	.....	.....	.....	.....	.....
Assault in second degree	6	2	.....	.....	1	3	.....
Burglary in third degree	4	2	.....	.....	2	.....	4
Grand larceny in second degree	6	5	.....	.....	.....	1	.....
Forgery in second degree	6	3	2	.....	1	.....	.....
Rape	1	.....	.....	.....	1	.....	.....
Indecent assault	1	.....	1	.....	.....	.....	.....
Adultery	1	.....	.....	.....	1	.....	.....
Bastardy	2	.....	.....	1	1	.....	.....
Violation of liquor laws	2	2	.....	.....	.....	.....	.....
Totals	33	16	3	2	7	5	4
In Justice and Municipal Courts—							
Assault in third degree	52	47	.....	3	2	.....	19
Petit larceny	28	23	.....	.....	5	.....	1
Violation of game and fish laws	9	7	.....	.....	2	.....	.....
Violation of pure food laws	11	10	.....	1	.....	.....	.....
Violation of liquor laws	16	15	.....	1	.....	.....	.....
Defrauding hotel keeper	4	4	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	19	16	.....	2	.....	1	7
Malicious mischief	4	4	.....	.....	.....	.....	1
Incorrigibility	1	1	.....	.....	.....	.....	.....
Cruelty to animals	3	1	.....	2	.....	.....	.....
Unlawful dental practice	4	4	.....	.....	.....	.....	.....
Taking restrained cattle	2	2	.....	.....	.....	.....	.....
Disturbing religious meeting	1	.....	.....	.....	1	.....	.....
Obstructing street crossings	1	1	.....	.....	.....	.....	.....
Receiving stolen property	2	2	.....	.....	.....	.....	.....
Threatening to kill	1	1	.....	.....	.....	.....	.....
Destroying quarantine cards	1	1	.....	.....	.....	.....	.....
Resisting arrest	1	1	.....	.....	.....	.....	.....
Neglect to report vital statistics	1	1	.....	.....	.....	.....	.....
Indecent exposure	2	.....	.....	1	1	.....	.....
Selling Liquor to drunks	3	1	.....	.....	.....	.....	3
Lascirious behavior	3	1	.....	.....	.....	.....	1
Totals	167	145	.....	10	11	1	32

Costs taxes, $4,589.81; Fines assessed, $1,232.00 Total collection, $2,211.14.

ST. LOUIS COUNTY.

JOHN H. NORTON, 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	10	6	.....	2	.....	2	.....
Murder in second degree	2	.....	.....	1	.....	1	.....
Manslaughter in first degree	5	3	.....	1	1	.....	.....
Assault in first degree	7	4	.....	1	1	1	.....
Assault in second degree	21	17	.....	4	.....	.....	.....
Assault in third degree	2	2	.....	.....	.....	.....	.....
Robbery in first degree	4	2	.....	1	1	.....	.....
Robbery in second degree	3	2	.....	.....	1	.....	.....
Robbery in third degree	1	1	.....	.....	.....	.....	.....
Arson in first degree	1	.....	.....	.....	1	.....	.....
Arson in second degree	2	2	.....	.....	.....	.....	.....
Burglary in second degree	1	.....	.....	1	.....	.....	.....
Burglary in third degree	25	17	.....	3	5	.....	.....
Grand larceny in first degree	2	.....	.....	1	1	.....	.....
Grand larceny in second degree	99	74	.....	14	8	3	.....
Petit larceny	6	6	.....	.....	.....	.....	.....
Forgery in second degree	27	19	.....	2	4	2	.....
Rape	2	1	.....	.....	1	.....	.....
Indecent assault	12	5	.....	2	5	.....	.....
Perjury	1	1	.....	.....	.....	.....	.....
Abortion	1	.....	.....	.....	1	.....	.....
Adultery	2	1	.....	.....	1	.....	.....
Bastardy	9	9	.....	.....	.....	.....	.....
Keeping house of ill fame	7	7	.....	.....	.....	.....	.....
Violation of game and fish laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	58	43	.....	5	10	.....	.....
Illegal voting	3	.....	.....	1	2	.....	.....
Gambling	20	20	.....	.....	.....	.....	.....
Removing mortgaged property	1	1	.....	.....	.....	.....	.....
Obscene pictures	4	4	.....	.....	.....	.....	.....
Swindling	3	2	.....	1	.....	.....	.....
Sodomy	1	1	.....	.....	.....	.....	.....
Kidnapping	1	1	.....	.....	.....	.....	.....
Unlawfully entering building	2	2	.....	.....	.....	.....	.....
Attempting suicide	1	1	.....	.....	.....	.....	.....
Injuring personal property	1	1	.....	.....	.....	.....	.....
Removing a horse without authority	4	4	.....	.....	.....	.....	.....
Carrying concealed weapons	1	1	.....	.....	.....	.....	.....
Abusing female child	1	1	.....	.....	.....	.....	.....
Totals	354	262	.....	40	43	9	.....
In Justice and Municipal Courts—							
Assault in third degree	54	53	.....	1	.....	.....	.....
Grand larceny in second degree	27	24	.....	.....	3	.....	.....
Petit larceny	1	1	.....	.....	.....	.....	.....
Indecent assault	1	1	.....	.....	.....	.....	.....
Bastardy	2	.....	.....	1	.....	1	.....
Violation of game and fish laws	5	5	.....	.....	.....	.....	.....
Violation of pure food laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	43	43	.....	.....	.....	.....	.....
Illegal voting	1	1	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	3	3	.....	.....	.....	.....	.....
Non-support	2	1	.....	.....	.....	1	.....
Incorrigibility	1	1	.....	.....	.....	.....	.....
Cruelty to animals	3	3	.....	.....	.....	.....	.....
Carrying concealed weapons	1	1	.....	.....	.....	.....	.....
Disorderly conduct	2	2	.....	.....	.....	.....	.....
Indecent exposure	1	1	.....	.....	.....	.....	.....
Resisting an officer	3	3	.....	.....	.....	.....	.....
Slander	1	.....	1	.....	.....	.....	.....
Totals	152	144	1	2	3	2	.....

Costs taxes, $10,511.00; Fines assessed, $16,975.00; Total collection, $17,265.00.

STEELE COUNTY.

W. F. SAWYER, 1908, F. A. ALEXANDER, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Burglary in third degree	2	.....	.....	.....	.....	2	.....
Grand larceny in first degree	1	.....	.....	.....	.....	1	.....
Grand larceny in second degree	5	2	.....	.....	1	2	.....
Forgery in second degree	6	3	.....	.....	2	1	.....
Bastardy	1	1	.....	.....	.....	.....	.....
Disposing of mortgaged property	1	.....	.....	.....	.....	1	.....
Totals	16	6	.....	.....	3	7	.....
In Justice and Municipal Courts—							
Assault in third degree	22	18	.....	2	.....	2	3
Grand larceny in second degree	1	.....	.....	1	.....	.....	.....
Petit larceny	9	9	.....	.....	.....	.....	5
Bastardy	3	3	.....	.....	.....	.....	.....
Violation of pure food laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	.....
Defrauding hotel keeper	3	2	.....	.....	.....	1	.....
Language tending to provoke a breach of peace	8	7	.....	1	.....	.....	1
Incorrigibility	1	.....	.....	1	.....	.....	.....
Cruelty to animals	3	3	.....	.....	.....	.....	1
Unlawful co-habitation	4	4	.....	.....	.....	.....	.....
Peace bond proceedings	6	6	.....	.....	.....	.....	.....
Indecent exposure	2	2	.....	.....	.....	.....	.....
Carrying concealed weapons	3	3	.....	.....	.....	.....	.....
Selling at auction without license	1	1	.....	.....	.....	.....	.....
Interfering with officer	2	2	.....	.....	.....	.....	.....
Totals	70	62	.....	5	.....	3	9

Costs taxes, $433.05; Fines assessed, $376.00; Total collection, $713.98.

STEVENS COUNTY.

GEORGE W. BEISE, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicat ng Liquor
In District Court—							
Grand larceny in second degree	3	3	.....	.....	.....	.....	.....
Forgery in second degree	1	.....	.....	.....	.....	1	.....
Bigamy	1	.....	.....	.....	.....	1	.....
Totals	5	3	.....	.....	.....	2	.....
In Justice and Municipal Courts—							
Assault in third degree	9	7	.....	.....	1	1	6
Petit larceny	6	2	.....	.....	.....	4	.....
Bastardy	1	.....	.....	.....	1	.....	.....
Violation of game and fish laws	2	2	.....	.....	.....	.....	.....
Defrauding hotel keeper	4	1	.....	.....	2	1	.....
Language tending to provoke a breach of peace	2	1	.....	.....	1	.....	.....
Non-support	1	.....	.....	.....	.....	1	.....
Malicious mischief	1	.....	.....	.....	1	.....	1
Cruelty to animals	1	1	.....	.....	.....	.....	.....
Totals	27	14	.....	.....	6	7	7

Costs taxes, $242.04; Fines assessed, $78.50; Total collection, $116.24.

SWIFT COUNTY.

JOHN I. DAVIS, 1908, E. L. THORNTON, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Grand larceny in second degree	1	1					
Violation of liquor laws	1	1					
Injurying public highway	1	1					
Totals	3	3					
In Justice and Municipal Courts—							
Assault in third degree	7	5			2		1
Grand larceny in second degree	1			1			1
Petit larceny	1	1					1
Violation of pure food laws	1	1					
Violation of liquor laws	2	1			1		
Incorrigibility	1	1					
Injuring public highway	6	6					
Fast driving	1	1					1
Operating steam boiler without a license	1	1					
Drunkness	6	6					6
Totals	27	23		1	3		10

Costs taxes, $454.62; Fines assessed, $109.00; Total collection, $319.71.

TODD COUNTY.

L. M. DAVIS, 1908, ARTHUR B. CHURCH, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	7	3	2			2	1
Assault in third degree	2		2				1
Burglary in third degree	2		2				
Grand larceny in first degree	3	1			2		
Grand larceny in second degree	7	2	3		1	1	
Forgery in second degree	1				1		
Attempt at rape	1	1					
Indecent assault	2	2					
Carnal knowledge of child	3	1		1	1		
Attempt to influence in election	1					1	
Totals	29	10	9	1	5	4	2
In Justice and Municipal Courts—							
Assault in third degree	29	22	7				
Grand larceny in second degree	1				1		
Petit larceny	8	6	2				
Violation of game and fish laws	3	3					
Violation of pure food laws	5	5					
Violation of liquor laws	5	2	3				
Language tending to provoke a breach of peace	6	6					
Malicious mischief	3	3					1
Cruelty to animals	2	2					
Slander of female	2	1		1			
Intoxication	6	5		1			6
Vagrancy	1	1					
Removing boundary corners	1	1					
Obstruction of public highways	1	1					
Disturbing religious meeting	1	1					
Totals	74	59	12	2	1		7

Costs taxes, $909.87; Fines assessed, $831.85; Total collection, $1,098.62.

TRAVERSE COUNTY.

EDWARD RUSTAD 1908-1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1					
Grand larceny in first degree	4			1	3		1
Grand larceny in second degree	2	1			1		
Incest	1			1			
Totals	8	2		2	4		1
In Justice and Municipal Courts—							
Assault in second degree	1				1		1
Assault in third degree	9	7			2		6
Burglary in first degree	1	1					
Burglary in third degree	1				1		
Petit larceny	5	2		2	1		2
Violation of game and fish laws	1	1					
Violation of pure food laws	1	1					
Violation of liquor laws	14	7		2	5		4
Aiding prisoners to escape	33	32			1		2
Sabbath breaking	9				9		
Miscellaneous	11	10			1		
Drunkeness	30	30					30
Totals	116	91		4	21		45

Costs taxes, $1,264.40; Fines assessed, $598.95; Total collection, $606.63.

WABASHA COUNTY.

JAMES A. CARLEY, 1908, JAMES E. PHILLIPS, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	5			1	1	3	8
Burglary in second degree	1				1		
Grand larceny in second degree	6	5			1		1
Petit larceny	1	1					
Rape	1			1			
Violation of liquor laws	3					3	
Totals	17	6		2	3	6	9
In Justice and Municipal Courts—							
Murder in first degree	1				1		
Assault in third degree	18	16		1		1	1
Petit larceny	8	7			1		5
Forgery in second degree	1				1		
Bastardy	3				3		
Violation of game and fish laws	6	6					
Violation of pure food laws	2	2					
Violation of liquor laws	10	8		1	1		10
Defrauding hotel keeper	4	3		1			
Language tending to provoke a breach of peace	5	4		1			3
Non-support	1				1		
Malicious mischief	2	2					1
Incorrigibility	3	2			1		
Intoxication	3	3					3
Totals	67	53		4	9	1	22

Costs taxes, $325.81; Fines assessed, $351.50; Total collection, $385.96.

WADENA COUNTY.

A. B. HUGHES, 1908, H. J. MAXFIELD, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Arson in third degree	1	.....	.....	.....	1	.....	.....
Burglary in third degree	1	1	.....	.....	.....	.....	.....
Grand larceny in second degree	1	1	.....	.....	.....	.....	.....
Forgery in second degree	13	1	.....	.....	.....	12	.....
Rape	3	1	.....	.....	.....	2	.....
Carnal knowledge	2	1	.....	.....	1	.....	.....
Bastardy	1	.....	.....	.....	.....	1	.....
Totals	22	5	.....	.....	2	15	.....
In Justice and Municipal Courts—							
Assault in third degree	12	12	.....	.....	.....	.....	4
Petit larceny	6	6	.....	.....	.....	.....	1
Indecent assault	1	.....	.....	1	.....	.....	.....
Bastardy	1	1	.....	.....	.....	.....	.....
Violation of game and fish laws	1	1	.....	.....	.....	.....	.....
Violation of liquor laws	3	3	.....	.....	.....	.....	.....
Non-support	1	1	.....	.....	.....	.....	.....
Malicious mischief	1	1	.....	.....	.....	.....	.....
Violation of pharmacy laws	1	1	.....	.....	.....	.....	.....
Totals	27	26	.....	1	.....	.....	5

Costs taxes, $202.40; Fines assessed, $288.01; Total collection, $408.14.

WASECA COUNTY.

A. S. MALONEY, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	3	.....	.....	1	.....	2	.....
Burglary in third degree	2	2	.....	.....	.....	.....	.....
Grand larceny in second degree	3	2	.....	1	.....	.....	.....
Forgery in second degree	2	1	.....	.....	.....	1	.....
Indecent assault	2	.....	.....	.....	.....	2	.....
Bribery	2	.....	.....	.....	.....	2	.....
Bastardy	1	1	.....	.....	.....	.....	.....
Totals	15	6	.....	2	.....	7	.....
In Justice and Municipal Courts—							
Assault in second degree	2	2	.....	.....	.....	.....	.....
Assault in third degree	2	2	.....	.....	.....	.....	2
Burglary in third degree	2	2	.....	.....	.....	.....	1
Bastardy	1	1	.....	.....	.....	.....	.....
Non-support	1	.....	.....	.....	1	.....	1
Abusive language	2	1	.....	1	.....	.....	.....
Totals	10	8	.....	1	1	.....	4

Costs taxes, $8.00; Fines assessed, $68.00; Total collection, $426.00.

WASHINGTON COUNTY.

JOHN C. NETHAWAY, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	2	2					
Assault in first degree	2					2	
Assault in second degree	1				1		1
Grand larceny in first degree	6	3		1	2		
Grand larceny in second degree	1	1					
Petit larceny	1	1					
Forgery in second degree	1				1		
Attempt at forgery in second degree	1	1					
Rape	1					1	
Bastardy	1	1					
Violation of liquor laws	3	1				2	
Totals	20	10		1	4	5	1
In Justice and Municipal Courts—							
Assault in third degree	17	9		3	3	2	3
Grand larceny in second degree	2					2	1
Petit larceny	18	14		3		1	
Indecent assault	1				1		1
Seduction	1				1		1
Bastardy	7	3			4		
Violation of game and fish laws	11	9		2			
Violation of pure food laws	5	5					
Violation of liquor laws	4	1			3		2
Defrauding hotel keeper	4	3				1	
Non-support	10	6				4	3
Malicious mischief	4				4		
Violation of labor law	3	2		1			
Violation of school laws	2	1				1	
Totals	89	53		9	16	11	11

Costs taxes, $610.57; Fines assessed, $630.00; Total collection, $647.98.

WATONWAN COUNTY.

F. F. ELLSWORTH, 1908, EDWARD C. FARMER, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	1	1					
Burglary in second degree	1				1		
Burglary in third degree	1	1					
Grand larceny in second degree	1	1					
Petit larceny	4	4					
Forgery in second degree	5	4				1	
Resisting an officer	1			1			
Carnal knowledge of a child	1					1	
Violation of pure food laws	1	1					
Violation of liquor laws	1	1					
Totals	17	13		1	1	2	
In Justice and Municipal Courts—							
Assault in third degree	19	16			3		4
Petit larceny	8	8					
Violation of game and fish laws	1	1					
Violation of pure food laws	2	2					
Violation of liquor laws	1	1					
Language tending to provoke a breach of peace	1	1					
Non-support	1			1			
Incorrigibility	1	1					
Gambling	4	4					
Resisting an officer	2	1			1		
Carnal knowledge of a child	2				2		
Drunkenness	3	3					3
Totals	45	38		1	6		7

Costs taxes, $320.45; Fines assessed, $688.87; Total collection, $696.70.

WILKIN COUNTY.

EDWARD BALENTINE, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in first degree	1			1			
Robbery in second degree	1					1	1
Robbery in third degree	2				2		
Arson in third degree	1					1	
Burglary in third degree	2				2		3
Grand larceny in first degree	2	2					5
Grand larceny in second degree	12	5			4	3	3
Rape	1	1					
Indecent assault	1	1					
Violation of liquor laws	12	2			10		
Malicious mischief	1				1		
Railway track	1				1		
Totals	37	11		1	20	5	11
In Justice and Municipal Courts—							
Assault in second degree	3	3					
Assault in third degree	2	2					1
Petit larceny	8	6			2		
Totals	13	11			2		1

Costs taxes, $184·60; Fines assessed, $476.00; Total collection, $499.95.

WINONA COUNTY.

EARL SIMPSON, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in second degree	2	2					1
Assault in third degree	1	1					
Robbery in first degree	1	1					
Burglary in third degree	3	3					
Grand larceny in first degree	4	3		1			
Grand larceny in second degree	20	18		1	1		13
Forgery in second degree	2	2					
Bastardy	1	1					
Violation of pure food laws	1	1					
Violation of liquor laws	8	7		1			
Malicious mischief	2	2					
Interference with officers	1					1	
Carnal abuse	1			1			
Obtaining signature to deed under false pretense	1			1			
Aiding persons to escape	1			1			
Exceeding speed limit, auto	1	1					
Totals	50	42		6	1	1	14
In Justice and Municipal Courts—							
Assault in third degree	43	36		7			15
Petit larceny	25	24		1			2
Violation of game and fish laws	11	11					
Violation of pure food laws	1	1					
Defrauding hotel keeper	1	1					
Language tending to provoke a breach of peace	12	10		2			
Non-support	4			1		3	
Malicious mischief	26	26					2
Incorrigibility	10	8		2			
Cruelty to animals	4	4					
Gambling	1	1					
Carnal abuse	2	1		1			
Obtaining signature to deed under false pretense	13	13					
Exceeding speed limit	7	4		3			
Interfering with officer	1	1					
Violating city ordinance	9	9					4
Destroying personal property	13	13					
Totals	183	163		17		3	23

Costs taxes, $1,113.54; Fines assessed, $1,089.50; Total collection, $1,317.12.

WRIGHT COUNTY.

J. J. WOOLLEY, 1908–1909, COUNTY ATTORNEY.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Murder in first degree	2	1	.....	1	.....	.....	.....
Assault in second degree	1	.....	.....	1	.....	.....	.....
Arson in third degree	1	1	.....	.....	.....	.....	.....
Burglary in third degree	1	1	.....	.....	.....	.....	.....
Forgery in third degree	1	1	.....	.....	.....	.....	.....
Rape	1	.....	.....	.....	.....	1	.....
Violation of liquor laws	1	1	.....	.....	.....	.....	.....
Totals	8	5	.....	2	.....	1	.....
In Justice and Municipal Courts—							
Assault in second degree	1	.....	.....	.....	1	.....	.....
Assault in third degree	45	42	.....	.....	3	.....	13
Petit larceny	17	16	.....	1	.....	.....	1
Adultery	1	1	.....	.....	.....	.....	.....
Incest	1	1	.....	.....	.....	.....	.....
Violation of game and fish laws	18	18	.....	.....	.....	.....	.....
Language tending to provoke a breach of peace	17	14	.....	3	.....	.....	3
Incorrigibility	1	1	.....	.....	.....	.....	.....
Cruelty to animals	3	3	.....	.....	.....	.....	3
Drunkenness	14	14	.....	.....	.....	.....	14
Disturbing an assembly	1	1	.....	.....	.....	.....	.....
Influencing juror	2	.....	.....	.....	2	.....	.....
Trespass	1	.....	.....	.....	1	.....	.....
Totals	122	111	.....	4	7	.....	35

Costs taxes, $1,096.01; Fines assessed, $1,382.00; Total collection, $1,549.25.

YELLOW MEDICINE COUNTY.

OLE HARTWICK, 1908, H. P. BENGSTON, 1909, COUNTY ATTORNEYS.

Charged With	Prosecutions	Convictions	Pleaded Guilty	Acquittals	Nolle Prosequi	Pending	Under Influence of Intoxicating Liquor
In District Court—							
Assault in third degree	1	1	.....	.....	.....	.....	.....
Grand larceny in first degree	1	1	.....	.....	.....	.....	.....
Totals	2	2	.....	.....	.....	.....	.....
In Justice and Municipal Courts—							
Murder in first degree	1	.....	.....	.....	.....	1	.....
Manslaughter in second degree	1	.....	.....	.....	1	.....	.....
Assault in third degree	17	16	.....	1	.....	.....	.....
Petit larceny	8	7	.....	1	.....	.....	.....
Violation of game and fish laws	6	6	.....	.....	.....	.....	.....
Violation of pure food laws	2	2	.....	.....	.....	.....	.....
Violation of liquor laws	5	4	.....	.....	.....	1	.....
Language tending to provoke a breach of peace	1	1	.....	.....	.....	.....	.....
Non-support	1	1	.....	.....	.....	.....	.....
Cruelty to animals	1	1	.....	.....	.....	.....	.....
Aiming revolver	1	1	.....	.....	.....	.....	.....
Totals	44	39	.....	2	1	2	.....

Costs taxes, $289.39; Fines assessed, $586.00; Total collection, $629.41.

OPINIONS OF ATTORNEY GENERAL

OPINIONS OF ATTORNEY GENERAL.

The following opinions constitute approximately one-fifth of those that have been rendered by the attorney general and his assistants during the years 1909 and 1910. The opinions here selected for publication are those that seemed to be of general interest and most likely to be of particular use to public officials in the discharge of their duties.

1

ANIMALS—Running at large.

Attorney General's Office.

W. D. Lord, Esq.

Dear Sir: In reply to your letter of September 28 inquiring whether townships may vote on and determine whether or not live stock shall run at large, I have to say that the present law upon that subject, so far as there is any, is found in paragraph 4, section 625, Revised Laws 1905. This reads, so far as material, as follows:

"The electors of each town have power, at their annual meeting * * * to make such lawful orders and by-laws as they deem proper for restraining horses, cattle, sheep, swine and other domestic animals from going at large on the highways."

It has been decided in this state that "the common law by which every man is bound to keep his cattle upon his own land is in force in this state except as modified by statute or pursuant to some statute."

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Sept. 29, 1909.

2

ANIMALS—Dogs may be licensed by municipalities.

Attorney General's Office.

A. D. Gray, Esq.

Dear Sir: In reply to your letter of May 17th, inquiring whether or not a village can collect license fees imposed for keeping dogs, I have to say that it is the opinion of this office that this can be done wherever the state has granted to any municipality such a power.

This office in 1893 handed down an opinion in which appears the following sentence:

"The mere fact that a dog has been declared property within the meaning of the tax laws * * * does not deprive a municipal corporation of the right

of establishing reasonable police regulations for the protection of society against that class of animals. The exaction of a dog license is merely one form of police regulation based upon the fact that dogs are frequently vicious and dangerous, and for that reason will be sustained by the courts."

Authorities bearing up on this question are found in 34 Minn. 256; 28 Cyc. 710; 67 Am. St. Rep. 298.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 24, 1910.

3

ANTI-PASS ACT—Discrimination in telephone service.

Attorney General's Office.

A. L. Leonard, Esq.

Dear Sir: In answer to your favor of recent date you are advised that in my opinion it is not lawful to grant stockholders of a telephone company a reduction in rate for telephone service as against non-stockholders for the same service. This would be in violation of chapter 449, G. L. 1907, commonly called the "Anti-Pass Act."

In the case of certain mutual telephone companies, the by-laws provide that service shall be free to the stockholders. This is in consideration of mutual ownership of the property; but where the by-laws and the articles of incorporation have no reference to the case, in my opinion a discrimination between stockholders and non-stockholders is unlawful.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 31, 1909.

4

ANTI-PASS LAW—Public telephone not in violation of.

Attorney General's Office.

Austin B. Morse, Esq.

Dear Sir: In answer to your favor of recent date you are advised that a telephone company may lawfull install a telephone in the station of a railway company for the benefit of the public. This would not be in violation of chapter 449, G. L. 1907, known as the anti-pass law.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

March 3, 1909.

5

ANTI-PASS LAW—School district may not receive free telephone service.

Attorney General's Office.

E. L. McMillan, Esq.

Dear Sir: In answer to your favor of recent date you are advised that free telephone service to school districts is a violation of chapter 449, General Laws 1907, commonly called the "Anti-Pass Law."

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 25, 1909.

ANTI-PASS LAW—Justice of peace may not receive pass.

Attorney General's Office.

John H. Norton, Esq., County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that a person working for a railroad company cannot travel on a pass and at the same time hold the office of justice of the peace. A justice of the peace is an incumbent of office under the constitution and laws of the state, and all such incumbents of office are prohibited from receiving passes except persons specifically designated in section 2 of chapter 449, G. L. 1907.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 23, 1909.

7

ANTI-PASS LAW—To what officers applicable.

Attorney General's Office.

Thomas Wilson, Esq.

Dear Sir: In answer to your oral inquiry you are advised that the phrase "incumbent of any office or position under the **constitution and laws** of this state, except as herein provided," found at the end of section 1 of chapter 449, G. L. 1907, known as the Anti-Pass Law, is to be construed the same as if it read, "incumbent of any office or position under the **constitution or laws** of this state, except as herein provided."

"The words 'and' and 'or' when used in a statute are convertible, as the sense may require. A substitution of one for the other is frequently resorted to in the interpretation of statutes, when the evident intention of the lawmaker requires it. People vs. Rice, 33 N. E. 846, 138 N. Y. 151; Eisfield vs. Kenworth, 50 Iowa, 389, 391; Collins Granite Co. vs. Devereus, 72 Me. 422, 425; Williams vs. Poor, 21 N. W. 753, 755, 65 Iowa, 410; Price vs. Forrest, 35 Atl. 1075, 1080, 54 N. J. Eq. 669.

"'And' may be read 'or' if the sense requires it. Bates' Ann. St. Ohio 1904, Secs. 6794, 23, 4947; Rev. St. (Wyo.) 1899, Sec. 2724."

Words & Phrases Judicially Defined, Vol. 1, p. 388.

This intention is made manifest also by the exceptions in section 2 of said act, wherein officers not constitutional are enumerated.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 8, 1909.

8

ANTI-PASS LAW—How construed as to railroads.

Attorney General's Office.

Thomas Wilson, Esq.

Dear Sir: In your favor of recent date involving the construction to be placed upon chapter 449 of the General Laws of 1907, you submit the following queries:

When a company has its principal office in this state or is the owner or lessee of lines in this state extending into other states, do you hold that act **forbids the giving of such transportation for use locally in those other states?"**

2. "Under like circumstances, do you hold that act **forbids the giving** of such transporation **for an interstate trip commencing in this state?"**

3. "Do you hold that a proper construction of that act would forbid the giving of a pass **for use** by any person **while engaged in the performance of some service or work for the company issuing the pass?"**

Your first query is answered in the negative. I am of the opinion that the spirit of chapter 449, supra, contemplates the issuance of passes **for travel within the state.**

Your second query is answered in the affirmative. Chapter 449, supra, is enacted under and by virtue of the police power of the state and as such, in respect to travel within the state upon an interstate trip commencing within the state, is not a burden upon interstate commerce and in conflict with the Commerce Clause of the Federal Constitution.

Your third query is answered in the negative. A pass issued for use while engaged in the performance of some service or work for the company issuing the pass is, in my opinion, issued to an employee within the purview of said act.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 18, 1909.

9

ANTI-PASS ACT—Includes officers of governor's staff.

Attorney General's Office.

Hon. John C. Hardy.

Dear Sir: In answer to your oral inquiry you are advised that staff officers of the governor, as provided by section 1047, R. L. 1905, and brigade staff officers, including major, as provided by sections 1049 and 1050 idem, are incumbents of office under the laws of this state, and such officers come within the prohibitions of chapter 449, G. L. 1907, known as the anti-pass law.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 21, 1909.

10

ANTI-PASS LAW—What constitutes discrimination.

Attorney General's Office.

B. J. Robertson, Esq.

Dear Sir: The general rule in respect to discriminations, which may be used in the interpretation of chapter 449, G. L. 1907, known as the Anti-Pass Law, is this:

"A carrier is only bound to give the same terms to all persons alike under the same conditions and circumstances and a fact which produces an inequality of circumstances justifies an inequality of charge."

Interst. Co. Commission vs. B. & O. R. Co., 145 U. S. 263; 12 Sup. Ct. R. (U. S.) 844, affg. s. c. 43 Fed. 37.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 8, 1909.

11

ANTI-PASS LAW—Telephone service at same rate for single and party line is discrimination.

Attorney General's Office.

W. F. Sawyer, Esq., City Attorney.

Dear Sir: From your oral statement it appears that a certain telephone charge is made for telephone service furnished upon a single line, and a certain

charge is made for telephone service furnished on a party line, so-called.

You inquire whether a charge made to certain individuals by a telephone company for service over a single line on the basis of the charge made for service on a party line is in violation of chapter 449, G. L. 1907, commonly called the Anti-Pass Law.

Your inquiry is answered in the affirmative. A special rate based on the party line charge granted to one who has a single line service from the telephone company is, in my opinion, the granting of a special privilege which is withheld from the users of party lines and is discriminatory and in violation of the act.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 27, 1909.

12

ANTI-PASS LAW—Discriminations in telephone service charges.

Attorney General's Office.

L. G. Sanders, Esq.

Dear Sir: In answer to your favor of recent date, you are advised that when the published telephone rates for business houses and residence are $2, and $1.50, respectively, it is not lawful to make a charge of $3 per month to parties using a telephone in both their places of business and residences. Such a rate would be a discrimination and in violation of chapter 449, G. L. 1907.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 6, 1909.

13

ANTI-PASS LAW—Discrimination in telephone charges.

Attorney General's Office.

Mr. H. E. Grutlie.

Dear Sir: In answer to your favor of recent date I have to advise you that the published rate for telephone service furnished to the public shall be the same to subscribers and non-subscribers.

A charge of fifteen cents for toll service to subscribers and twenty-five cents for the same service to non-subscribers is a discrimination, in my opinion, and in violation of chapter 449, G. L. 1907.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 4, 1909.

14

ANTI-PASS LAW—Not violated by charter provisions for free transportation.

Attorney General's Office.

C. P. Brown, Esq.

Dear Sir: This department is in receipt of your favor of August 12th, in which you inquire whether the Fargo and Moorhead Street Railway Company may lawfully carry within the city of Moorhead policemen and paid firemen, when in uniform, free of charge.

In answer I call your attention to section 6 of an ordinance granting the use of certain streets and highways in the City of Moorhead for the operation of electric street railways to the Fargo & Moorhead Street Railway Company, its successors and assigns, and fixing certain regulations upon which the same shall be done, passed October 6, 1904, which reads as follows:

"Said grantee, its successors and assigns, shall carry policemen and paid firemen when in uniform, over all parts of the line of railway free of charge."

Under and by virtue of section 6, supra, certain contractual obligations accrued in favor of the city of Moorhead, and under and by virtue thereof the railway company became obliged to carry policemen and paid firemen when in uniform, free of charge.

It accordingly follows that this is not in violation of chapter 449, G. L. 1907, commonly called the anti-pass law, and your query is answered in the affirmative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 13, 1909.

15

ANTI-PASS LAW—Notary public may not use railroad pass.

Attorney General's Office.

C. J. Laurisch, Esq.

Dear Sir: In answer to your inquiry of April 14th, you are advised that under and pursuant to the provisons of chapter 449, G. L. 1907, a notary public who is also an attorney of a railway company, may not lawfully receive free transportation.

A notary public is an officer of the state. It has been the practice in the state generally for persons in your predicament to resign as notary public.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 16, 1910.

16

ANTI-PASS LAW—Village attorney may not use railroad pass.

Attorney General's Office.

Mr. Don C. Anderson, City Attorney.

Dear Sir: I have your favor of recent date inquiring as to whether you may hold the position of village attorney and legally accept transportation from a railway company for which you have been duly appointed attorney for your locality. You state that the position of village attorney is appointive and only runs from month to month.

I am obliged to inform you that in my opinion your inquiry is to be answered in the negative. Chapter 449, G. L. 1907, among other things, provides:

"No free transportation shall be issued or given to any person when such person is a * * * candidate for or incumbent of any office or position under the constitution and laws of this state * * *."

I am of the opinion that the person holding the position of village attorney is "an incumbent of an office under the constitution and laws of the state of Minnesota." The only authority for creating the position of village attorney is by virtue of the laws of the state.

I do not wish to be considered as holding that it would not be competent for an attorney to be employed by a village for the conduct of some particular piece of litigation only and still use a pass on a railroad, but where the person in question occupies the position of village attorney with the usual duties incumbent thereon, he is within the prohibition of the statute.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1910.

17

ANTI-PASS LAW—No special telephone privileges can be granted.

Attorney General's Office.

International Stock Food Company.

Gentlemen: You state that you have been informed by the Northwestern Telephone Exchange Company that they are prohibited from selling coupons for use in the state of Minnesota, and ask when such a law went into effect.

The prohibition above referred to is held under the provisions of chapter 449, G. L. 1907, commonly known as the "Anti-pass law." This act expressly prohibits the granting of—

"Any special privilege or reduction in rate withheld from any other person * * * for the transmission of any message or communication * * *."

It was held by this office on December 1, 1908, and in a number of opinions written since then, that the granting of coupons such as are referred to in your letter was not permissible under this act.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 2, 1909.

18

ANTI-PASS LAW—School district officer cannot use railroad pass.

Attorney General's Office.

E. R. Barton, M. D.

Dear Sir: This office is in receipt of your favor of recent date, and you are advised that this department holds that an officer of a school district may not lawfully receive a railroad pass under the provisions of chapter 449, G. L. 1907, notwithstanding the fact that such officer is the surgeon of the particular railroad company.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 6, 1909.

19

ASSESSORS—Compensation of.

Attorney General's Office.

Mr. S. D. Payne.

Dear Sir: In reply to your inquiry of August 3d, I have to say that the law relating to the fees of which you inquire, is found in chapter 402, of the laws of 1907, and provides that the assessor's compensation is $2.00 for each day's services necessarily rendered.

I do not find that the assesor is entitled to any extra pay for long hours of service, nor for mileage, and therefore hold that he is not entitled to anything excepting $2.00 per day for his services necessarily rendered.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 10, 1910.

20

ASSESSORS—Bond of assessor holding over is binding on sureties, advisable however to get new bond.

Attorney General's Office.

Minnesota Tax Commission, Capitol.

Gentlemen: You call attention to chapter 316, G. L. 1909, approved April 21, 1909, which in effect extends the official term of town assessors elected at the annual meeting in March, 1909, and inquire whether the sureties upon the bond given by such assesor prior to the passage of said law would be liable for the defaults of the assessor in making his assessment for 1910 and whether such assessor should not be required to give a new bond after April 21, 1909, to cover the extended official term.

I have the honor to advise you that this department, in answer to an inquiry of similar import, stated:

"Although it is desirable that a new bond be given in the instance referred to in the question, still it will not be necessary if the old bond provided for the performance of the duties of the assesor until his successor is elected and qualified.' "

The ruling thus made is adhered to.

The decisions in this country are not uniform on the question, but the weight of authority seems to be with the above holding.

Throop on Public Officers, Sec. 213.

29 Cyc. 1457.

I would therefore suggest that a new bond be required from assessors although as a proposition of law I am inclined to the opinion that the liability of the sureties on the old bond continues.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 2, 1910.

21

Attorney General's Office.

ASSESSORS—Not to be elected in 1910.

Mr. John Barney.

Dear Sir: You state that at the last election an assessor was elected for the term of one year and that he gave bond for only one year. You inquire as to whether a new assessor should be elected at your coming town meeting. Your attention is called to the fact that the legislature of 1909 in effect extended the term of office of assessors until the 1911 town meeting.

Your inquiry is answered in the negative. If however the bond given by the assessor elected in 1909 was as you state simply for one year and does not provide that the same shall continue "until his successor is elected and qualified," then a new bond should be given. If the bond does provide as last above indicated, then it is not absolutely necessary for a new bond to be given, but such, however, would be the wiser course.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 9, 1910.

22

ASSESSOR—Attempt to elect at 1910 election is futile, old assessor holds over.

Attorney General's Office.

Mr. Arthur A. Caswell, County Auditor.

Dear Sir: You state that Columbia Heights in 1909 elected an assessor but that afterwards it was discovered that he was not a citizen and the council appointed another to fill the vacancy; that at the 1910 annual election another man was elected for the position although the man theretofore appointed was still a resident of the village and had not resigned and still claims to be the assessor of such village.

You are correct in your position that the assessor theretofore appointed holds over until the annual 1911 election. That being the case the attempted election of an assessor in 1910 was futile.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1910.

23

ASSESSORS—Legislature may extend term of office.

Attorney General's Office.

Mr. H. C. Block.

Dear Sir: You inquire as to whether or not the law known as chapter 316, G. L. 1909, in effect extending the term of office of an assessor until the March, 1911, election, is constitutional.

You are advised that its constitutionality has not been questioned. I am of the opinion, however, that it was competent for the legislature of the state to provide for the extending of the tenure of office of such assessors.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 10, 1910.

24

ASSESSOR—Must be resident of his district.

Attorney General's Office.

Mr. Charles J. Lane.

Dear Sir: You state that at the last township and village election the question of separating the village from the township was voted upon and carried, and you inquire as to your right, being a resident of the village, to be chosen and act as assessor for the township. I have to inform you that you cannot do so. In order to be qualified to act as an assessor of the township it is necessary to be a resident thereof.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 29, 1909.

25

ATTORNEY GENERAL—Not his duty to advise on other than on certain public matters.

Attorney General's Office.

Mr. R. S. Tripp.

Dear Sir: You make inquiry relative to a number of matters that this office could not with propriety answer.

Section 7 of chapter 227, G. L. 1905, provides as follows:

"The attorney general upon application shall give his opinion in writing to county, city, village or township attorneys on questions of public importance; and on application of the state superintendent of public instruction he shall give

his opinion upon any question arising under the laws relating to public schools, and on all school matters. Such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction."

It will readily appear from the foregoing that the questions that you submit do not come within the above category, and as they primarily effect a private concern it would not be fitting or proper that this office pass upon the same. You should consult some private practitioner in whom you have confidence and abide by his advice.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 29, 1909.

26

AUCTIONEER—May not appoint an assistant auctioneer.

Attorney General's Office.

Wm. H. Barnick, Esq.

Dear Sir: The law requires that an auctioneer must be licensed before he can proceed with that business. There is no provision for an assistant auctioneer, and it is not lawful, therefore, for a licensed auctioneer to have some one called an assistant auctioneer conduct auction sales for him. Of course a licensed auctioneer may have a person attend to clerical work.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 8, 1910.

27

AUTOMOBILES—Chauffeur's license not required, when.

Attorney General's Office.

Wm. J. Brown, Esq., County Attorney.

Dear Sir: You state that a real estate dealer has in his employ several men and a part of their duty is to operate motor vehicles and take prospective buyers around the country and show them lands. You inquire whether the persons thus employed will be compelled to take out chauffeurs' licenses under the provisions of chapter 259, G. L. 1909.

I am of the opinion that your inquiry is to be answered in the negative. I do not think it was the purpose of the legislature in passing the law in question to require licenses under the circumstances as outlined by you.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 22, 1910.

28

AUTOMOBILES—Running of may be regulated by municipal ordinances.

Attorney General's Office.

Hon. Reuben Warner, President Automobile Club.

Dear Sir: In your communication of recent date addressed to the attorney general you ask the following question:

"Can a city, town or village enforce any ordinance that may so specifically state local speed regulations otherwise than those defined in the automobile laws of Minnesota enacted by the last legislature?"

Replying, I have the honor to advise you that in the opinion of this department your question must be answered in the affirmative. Under the decisions in this state it would seem that such power is vested in a city or village, and in the absence of the state law making its regulations and conditions exclusive, the power of municipal regulations also exists.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 3, 1909.

29

BANKING—Investment and loan companies under supervision of superintendent of banks.

Attorney General's Office.

Hon. J. B. Galarneault, Superintendent of Banks.

Dear Sir: In reply to your letter of August 6th, which has been referred to me by the Attorney General for attention, I have to say that it is my opinion that the investment, loan and other companies enumerated in chapter 333, G. L. 1909, are placed by chapter 201 of said laws under your supervision.

My reason for this is that said chapter 333 classified the companies named therein with building and loan associations and amended chapter 58 of the Revised Laws 1905 in that respect and to that extent. From the time of the approval of chapter 333 until August 1st these companies were under the supervision of the public examiner. On August 1st chapter 201 went into effect and operated upon chapter 58 of the Revised Laws 1905 as though passed on that date. At that time "building and loan associations and other financial corporations within the state not herein specifically provided for" passed under the supervision of the department of banking, and it seems to me that the companies which had been by chapter 333 put in the class with building and loan associations, passed under your supervision, and this opinion is confirmed by the fact that other financial corporations not hereby provided for did the same. The act creating the department of banking, although approved April 17th, did not take effect until August 1st and then operated upon the affected provisions of chapter 58, R. L. 1905, as though said chapter 201 had been approved on that day.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Aug. 14, 1909.

30

BANKING DEPARTMENT—Communications to, confidential.

Attorney General's Office.

Hon. J. B. Galarneault, Superintendent of Banks.

Dear Sir: In reply to your inquiry as to whether or not you should furnish copies of matters on file in your office to individuals requesting the same, I have to say that as a rule you should not do so. The information which you obtain is given to you practically under the seal of secrecy and is to govern your conduct and not that of persons not occupying an official position in a department which is entitled to know all the business secrets of banking institutions. A decision in the supreme court of the United States emphasizes strongly the propriety and legality of withholding from the public, information obtained confidentially by the government for the purpose of exercising its functions for the safety and protection of the public.

If your department were to furnish information of all of the details of banking operations to the public, it would be equivalent to preventing financial

institutions from having any private business whatever and would give to competitors full information as to the business of their rivals. The purpose of the banking department is not to injure banks by informing their competitors of the details of their private business, but for the purpose of protecting the public through a knowledge of the condition of banks and other financial institutions, obtained because of the absolutely confidential relations which exist between the banking officers and the department, and which should be recognized and respected on all occasions by the department, excepting when public necessities require it to disclose information obtained in the course of its investigations. The law affords stockholders, and largely depositors, remedies for any misconduct on the part of banking officials independently of the work of the department of banks.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Oct. 8, 1909.

31

BANKING—Institutions using name "bank" must be incorporated.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In reply to your letter of June 15, 1909, inquiring as to whether or not persons engaging in banking business can be obliged to discontinue the use of the word "bank," I have to say that it is the opinion of this office that such persons can be compelled to desist from the use of the word "bank" in a public way.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

June 17, 1909.

32

BANKING—Savings departments.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In reply to your inquiry of May 7th, I have to say that the law of this state does not now recognize any private banks, but that persons who do a banking business under the direction of the public examiner cannot be compelled to desist from doing those things along the line of banking operations which are permitted by law and the public examiner.

It is the opinion of this office that state banks can now install and operate saving departments without a separate investment of th efunds deposited in the saving departments without a separate investment of the funds deposited in the case of insolvency. In other words, a savings department in a state bank is not a savings bank within the laws of the state of Minnesota.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

June 10, 1909.

33

BANKING—Change of savings banks to state banks.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In reply to your letter of May 18th, I submit the conclusions reached by me are as follows:

1. Depositors in savings banks may withdraw their funds from such banks when such banks propose to go out of business, and receive their proportionate share of the present value of the assets of the savings bank.

2. The savings department of a state bank may receive these deposits provided they make such a contract with reference to receiving the same as is fair in the opinion of the public examiner.

3. The three interested parties, to-wit: the savings bank, and state bank, and the depositor, may enter into a contract in substantially the following terms:

In consideration of the savings bank depositing to my credit with, and the state bank crediting me with.....dollars, I withdraw my deposit from the savings bank and deposit the amount so withdrawn with and in the savings department of the state bank upon the terms fixed by its by-laws and rules, and approved by the public examiner, and I release the said savings bank from all liability and accept in lieu thereof the liability of the state bank for and on account of said deposit so transferred.

This is to be signed by all three parties.

4. If the savings bank liabilities decrease by reason of the withdrawal of deposits, its assets may be decreased proportionately by the sale of the same at a duly appraised value to the state bank under such direction as may seem proper and sufficient to the public examiner.

Yours truly,

LYNDON A, SMITH,
Assistant Attorney General.

June 12, 1909.

34

BARBERS' BOARD—Funds.

Attorney General's Office.

Mr. G. H. Becker, Secretary Minnesota State Examining Board of Barbers.

Dear Sir: You ask for the opinion of this office on the hereinafter stated questions.

1. "Has the board the right under the present law to use the money in our treasury for the purpose of prosecuting barbers who are violating the present law?"

This question should be answered in the negative.

2. "Has the board the right to use its funds for the purpose of inspecting barber shops in the state to ascertain their sanitary conditions?"

This question should also be answered in the negative.

3. "Has the board the right to use its funds to rent barber shops and fixtures for the purpose of holding examinations therein; also for postage and stationery?"

This question shauld be answered in the affirmative. The board is authorized to hold at least one examination yearly in each of four different cities, of which meetings at least ten days' published notice shall be given. The board has authority to expend its funds for this purpose and if, in its opinion, it is necessary or desirable to rent barber shops and fixtures for the purpose of holding the examinations, it is within their powers to do so. It is also within the powers of the board to use its funds for postage and stationery necessary for carrying on the business of the board.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Feb. 17, 1909.

35

BLANK CARTRIDGES—Construing chapter 28, G. L. 1907, prohibition extends to all kinds of blank cartridges.

Attorney General's Office.

Mr. Swan Boreen.

Dear Sir: You inquire relative to the law of this state regulating the sale of firecrackers, blank cartridges, etc., and inquire as to whether the sale of blank cartridges of all kinds is prohibited, or whether the law simply prohibits the sale of blank cartridges which are loaded with dynamite.

You are advised that the law in question is found in chapter 28, G. L. 1907, which reads as follows:

"Every person who shall manufacture, use, sell or keep for sale within this state any blank cartridge pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridges, caps containing dynamite, and firecrackers exceeding three inches in length, and exceeding one-half of an inch in diameter, shall be guilty of a misdemeanor."

The manufacture, keeping for sale or use of blank cartridges of any kind is prohibited under this act. The reference in the law to dynamite applies only to caps containing the same.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 12, 1910.

36

BOARD OF AUDIT—Deputies of clerk and auditor cannot act.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: You inquire whether or not the deputies of the officers designated as members of the county board of audit may serve in place of the officers so designated as members of such board.

Your inquiry should be answered in the negative. There seems to be very little or no law directly upon the subject, but this office has uniformly held that the office of member of the board of audit was an independent office and that the fact that its members were such by virtue of their holding another office did not make the duties performed by them on the board of audit a part of the duties of their respective offices.

LYNDON A. SMITH,
Assistant Attorney General.

Feb. 10, 1910.

37

BOARD OF CONTROL—Cannot make contract exceeding available funds provided for by legislative appropriation.

Attorney General's Office.

Hon. John W. Mason.

Dear Sir: You call attention to the letting of a contract by the board of control of John Lauritsen, who is your client, for the erection of a hospital for inebriates at Willmar, under the provisions of chapter 288, G. L. 1907. Inquiry at the office of the board of control confirms your statement, that the amount of the contract aggregates $180,171.38, and that the contract by is terms is to be completed January 1, 1912.

You further call attention to the provisions of section 1884, R. L. 1905, as amended by chapter 38, Laws of 1909, which so far as here material provides that "no improvements shall be made or building constructed that contemplates the expenditure for its completion of more money than the appropriation there-

for unless otherwise provided in the act making the appropriation," and further provides that "In no event shall the board direct or permit any expenditure beyond that appropriated or contemplated by law, and any member, officer or agent of the board violating this provision shall be guilty of a gross misdemeanor." To like effect note the provisons of chapter 272, Laws of 1907.

Further inquiry at the office of the state auditor discloses the fact that there is on hand in that fund at the present time about $97,500, and that the payments into the fund aggregate about $50,000 a year. You ask in behalf of your client whether in my opinion, under the foregoing statement of law and fact, the board of control is authorized to let the contract involved.

Replying thereto I beg to advise that in my opinion your inquiry should be answered in the negative.

The purpose and spirit of this law, if not the letter, forbids the board of control from letting any contract for the erection of any building, by reason of which the state would become indebted beyond the moneys appropriated therefor, and that this is sound public policy no one will deny. It is manifest that at the present time, with less than $100,000 in its possession, the state could not meet a contract aggregating over $180,000, but it is further manifest, that conceding that the fund will grow in the future as it has in the past, there will still not be sufficient funds on hand upon the completion of the contract if the ratio of increase be the same, to pay the contractor for the work done at that time. The state then would be placed in the position of being unable to meet its just obligations and the contractor would be compelled to wait for his money upon the uncertainties of the future, with a session of the legislature a year distant. Therefore, in my judgment, the only safe course to pursue both from a moral and legal standpoint, as affects both the contractor and the members of the board, is to wait until the fund reaches the amount of the contract, or until it reaches such an amount, together with expected additions as may be paid into the fund from time to time between the letting of the contract and its completion as will raise the amount of the fund to the full amount of the contract price. In other words, the state must be able to meet its obligations in full when they arise.

There is another feature of this matter which it appears wise to call to your attention. Section 9 of article 9 of the constitution provides that "no money should ever be paid out of the treasury of this state except in pursuance of an **appropriation** by law.' '

Chapter 288, Laws 1907, it is true, provides for the creation and establishment of a hospital farm for inebriates, and further directs the board of control to secure and acquire, by purchase or otherwise, suitable land, to erect suitable buildings thereon and to equip the same, and further provides that "a tax of two per cent is hereby levied upon all license fees for the sale of intoxicating liquors under the laws of this state," and directs the payment of the same "by draft to the state treasurer who shall credit the same to a fund known as the 'Inebriate fund.' " It further provides that "the costs and expenses of the maintenance" of this hospital shall be paid from such fund. But nowhere in the act, and no where in any other act, so far as I am advised, is there any "appropriation" of the moneys in this fund for the erection of the buildings involved. The words of appropriation, if any there be, apparently contemplate only the expense of maintenance of the hospital.

It would therefore seem that until an appropriation had been made therefor, no authority exists for the payment of moneys from the state treasury for the erection of the buildings already contracted for. I speak of it so that in case it be determined in accordance with my views expressed in the first part of this letter to await the growth of this fund until the law can be complied with, that the latter matter be presented to the legislature at its next session, and that such action may be taken in regard thereto as will permit the expenditure of this money in conformity with the purposes of the act and the constitutional inhibition above quoted.

Finally, there is no reason why I should not answer your inquiry. It is a

public matter in which all persons are interested, particularly the state and its contractor. I have forwarded a copy of this letter to the board of control by even mail, also to the state auditor.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

June 14, 1910.

38

BOARD OF CONTROL—Cannot release inmate of reformatory before expiration of minimum time.

Attorney General's Office.

Hon. P. M. Ringdal, State Board of Control.

Dear Sir: In reply to your letter of July 20th relative to the absolute release of an inmate of a reformatory before the expiration of the minimum term provided by law for the crime of which such imprisoned person was found guilty, I have to say that your question must be answered in the negative.

I think section 5454, R. L. 1905, is clear and specific on this point. At any time after the expiration of such minimum term, your board can grant an absolute release when it becomes acquainted with facts justifying such release, and when such release is granted the board must certify the fact and the grounds of such release to the governor. These grounds should be stated with such detail as will enable the governor to determine whether or not the person so released is entitled to be restored to citizenship.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 22, 1909.

39

STEAM BOILERS—Engineer's license not necessary under facts stated.

Attorney General's Office.

Mr. Wm. Erickson, County Attorney.

Dear Sir: In reply to your letter of July 30th to the attorney general inquiring if it is necessary for night watchmen who raises steam in a boiler preparatory to its being used by an engineer, must have an engineer's license, I have to say that I think the word "operate" as related to boilers, means to use as a source of power, and that if the watchman in question does not apply the steam to any use, he does not need to have an engineer's license.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 9, 1910.

40

STEAM BOILERS—Steam shovels are subject to inspection.

Attorney General's Office.

F. A. Edmunds, Esq., State Boiler Inspector.

Dear Sir: We are in receipt of your letter transmitting letter of William Moir in re inspection of steam shovel. You ask if a steam shovel is subject to inspection by the boiler inspectors of this state. In answer to this query I beg to advise that we are of the opinion that the same should be answered in the affirmative.

Section 2175, R. L. 1905, provides that—

"Such inspectors shall inspect all steam boilers and steam generators before the same shall be used, and all such boilers at least once each year thereafter."

Section 2186 provides that—

"The provisions of this chapter shall not apply to railroad locomotives," etc.

We are of the opinion that the words "railroad locomotives" do not apply to steam shovels even though "these shovels are self-propelling devices and not a stationary engine and boiler."

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Aug. 9, 1910.

41

BOILER INSPECTION—Ordinary heating plants not subject to inspection.

Attorney General's Office.

E. B. Schoonmaker.

Dear Sir: You state that in the basement of your building in Winona you have a 6-horsepower economy boiler which is used exclusively for the purpose of heating an office on the floor above, and also for heating in part by means of a small radiator your workroom, and the question submitted is as to whether or not under the provisions of the law of this state it is necessary that you have this boiler inspected.

In the case of State ex rel. Frank Urbach vs. Phillip C. Justus, 94 Minn. 207, our supreme court held: (See syllabus)

"Ordinary steam heating plants used for heating buildings occupied in part for business and in part for residence purposes, do not come within the scope or operation of chapter 91, Laws 1899, providing for the licensing of persons operating steam boilers and steam machinery of any kind."

The building referred to in the text of the above decision was a three-story structure with a basement; the ground floor of which was occupied by stores, the second and third floors being divided into flats and occupied for private residence purposes. The building was heated by an ordinary steam heating plant, by means of which steam was generated in a boiler in the basement, and forced through pipes in radiators in various parts of the building. The last paragraph of this decision reads as follows:

"By chapter 131, laws of 1903, steam heating plants in private residences were especially excepted from the operation of the act, insofar at least as inspection is concerned; and if the legislature did not deem it proper or necessary that plants of that character be inspected it follows as a necessary corollary that the law-makers did not intend to require that such plant should be operated by licensed engineers. For if there is no necessity of inspection to determine whether the plants were in good order and condition, it would be unnecessary that they be operated by licensed engineers. The plant operated by the relator comes within the exception just referred to."

Construing the above referred to decision this office is of the opinion that your heating plant is one that does not require inspection under the laws of this state as they now exist.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 25, 1909.

42

BONDS—Question of refunding outstanding bonds must be submitted to vote of people.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: I am in receipt of your favor of May 3d in which you inquire as to whether an independent school district may borrow $30,000 to refund out-

standing bonds, without submitting the question to a vote of the people.

Upon inquiry I find that the board of investment requires such a vote before accepting the bonds in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1910.

43

BONDS—Voting for and forms of in application for state loan.

Attorney General's Office.

C. H. McKenzie, Esq.

Dear Sir: Replying to your favor of February 10th I beg to advise that in my opinion chapter 122, Laws of 1907, furnishes the only method of voting bonds and applying to the state to purchase the same. I am therefore of the opinion that the form of bond prescribed in chapter 64, Laws 1905, would not be sufficient where an application is to be made thereon to the state.

GEORGE T. SIMPSON,
Attorney General.

Feb. 17, 1910.

44

BURNING OF SLASHINGS—When to be done.

Attorney General's Office.

Chester McKusick, Esq., County Attorney.

Dear Sir: At the request of General C. C. Andrews, forestry commissioner, I am advising you that this department has had under consideration chapter 182, G. L. 1909, and has rendered an opinion to the effect that "slashings must be burned in any event before May 1st in each year and should be so burned at the first time such burning is practicable and can be done without danger. It is not permissible to wait until May 1st, providing the conditions as to practicability and absence of danger occur prior to that time."

In the same connection it may be stated that we were of the opinion that "if enforcement of this law is delayed until May 1st, providing conditions warrant the slashing being burned before, there is serious danger of the law being evaded on account of removal of the persons offending from the scene of the cutting or from the jurisdiction of the courts."

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 29, 1910.

45

CENSUS—When federal census figures become effective.

Attorney General's Office.

Hon. Patrick J. Ryan, Assistant County Attorney.

Dear Sir: Your letter of November 15th to the attorney general relative to the time when the federal census of 1910 would apply to matters effected by a change of population, has been referred to me for reply.

You state in your letter that the result of the count in the city of St. Paul has been announced, and a certificate under the seal of the census commissioner has been sent upon request, to one of the officers of the city of St. Paul, and that the figures so given indicate that Ramsey county has so increased in population as to make many laws applicable to it, which were not so applicable when its population was such as indicated by the state census in 1905.

It has been held that the term "population" as used by legislation, dividing cities into classes according to their population, means "population determined by an official enumeration officially promulgated." It is not to be supposed that changes are to be made in the government of a county or city except upon authentic information of the facts upon which such changes are based. "Authentic" in legal parlance, means vested with all due formalities and legally attested. Statements of the results of a census in order to be the basis of the recognition of laws made applicable only by census returns, must have an official character. The statutes of the United States requiring and regulating the taking of the federal census of 1910, authorize certain statements to be made, the director of the census to publish reports and bulletins and to furnish certain statements upon the written requests of governors and courts of record, and for certain purposes to private individuals.

These reports and bulletins are no doubt such official statements of facts disclosed by the census returns as will justify state and municipal authorities in acting upon them. Statements made to governors and courts would no doubt justify the acting upon the information contained therein, by such governors and courts as receive such statements in response to their request. The statements furnished to individuals would, in my opinion, have no controlling effect upon any official conduct.

Therefore, in the absence of a bulletin or report of the census covering the question of the population of Ramsey county, I am of the opinion that the county authorities may not act as though the population of the county had been increased so as to cause the application to its affairs of laws other than those that have been applied before the taking of the last federal census. This opinion is not applicable to any laws in which there is any express provision as to what the word "population" shall mean as our statute says this word when used in reference to population, "shall mean that shown by the last preceding census, state or federal, unless otherwise expressly provided."

I do not express an opinion as to what the result of a certificate to the governor as to the population of Ramsey county might be, as I assume that he has neither requested such statement in writing nor, if he has requested and received such statement, officially promulgated the same.

Yours truly,

LYNDON A, SMITH,
Assistant Attorney General.

Nov. 17, 1910.

46

CERTIFIED PUBLIC ACCOUNTANTS—To whom certificates may be granted.

Attorney General's Office.

H. M. Temple, Chairman State Board of Accountancy.

Dear Sir: This department is in receipt of your favor of the 9th instant, in which you ask for our opinion on the hereinafter stated questions.

1. You ask—

"If the state board of accountancy has legal authority, under the provisions of chapter 439, Laws of 1909, and the rules and regulations of the state board of accountancy, to grant the degree of 'certified public accountant 'to those persons, otherwise qualified, who have not

"(a) Resided in the state of Minnesota at least one year, next preceding the date of their application.

"(b) Acquired a legal residence in the state of Minnesota."

In answer to these queries I would say that it is our opinion that each of them should be answered in the affirmative.

By section 3 of said chapter 439, the legislature has prescribed the qualifications of the persons to whom a certificate may be issued. It is a rule of statutory construction that the enumeration of certain conditions of qualifications is an exclusion of all others required.

2. You further state that chapter 439, Laws 1909, section 3, recites as follows:

"No certificate for a certified public accountant shall be granted to any person other than a citizen of the United States, or person who has in good faith, declared his intention of becoming such citizen."

You ask—

"In the event that an applicant is a citizen of a foreign power and has taken out first papers for citizenship in the United States, what time may elapse prior to applicant's further action in the matter, before such action may be construed as not being in good faith?"

In answer to this query I would say that in our opinion the "good faith" of the applicant cannot be judged by the period of time which elapses after the first declaration before he takes any further action with reference to acquiring citizenship. Similar language is found in the United States statutes governing the naturalization of aliens. Thus in section 4 of the act of congress of June 29, 1906, it is provided that the applicant shall declare that it is his bona fide intention to become a citizen of the United States. The bonafides or good faith of his declaration must be judged by some standard other than the period of time which thereafter elapses before he makes final application for a certificate of citizenship. United States statutes provide that such final application must be "not less than two nor more than seven years after he has made such declaration."

We have not had before us the rules adopted by the board but apprehend that they have no bearing on the foregoing questions asked by you for the reason that the same are without the scope of the matters with reference to which the board is authorized to enact rules.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Oct. 18, 1909.

47

CIGARETTE LAW—Sale of tobacco for making cigarettes not prohibited.

Attorney General's Office.

Mr. R. G. Lacy.

Dear Sir: I am of the opinion that the sale of tobacco which is labeled 'specially prepared for pipe and cigarettes" is not a violation of the anti-cigarette law.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 3, 1909.

48

CIGARETTES—May be made by person for his own private use.

Attorney General's Office.

Mr. A. B. Childress, County Attorney.

Dear Sir: You inquire whether it is a criminal offense for one to roll a cigarette for his private and personal use, and whether such an act can properly be considered as a "manufacture," under the provisions of chapter 194, G. L. 1909.

Your questions are answered in the negative.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 18, 1909.

49

CITIES—Powers of city to license shows—Limitations considered.

Attorney General's Office.

R. D. Underwood, Esq.

Dear Sir: In further reply to your letter of June 10th inquiring whether your city council could pass an ordinance prohibiting the public appearance within the city of hypnotists, I have to say that after examining your home rule charter I am forced to the conclusion that your inquiry will have to be answered in the negative.

The first of the powers of your council authorizes it to "license and regulate the exhibition of common showmen and shows of all kinds." The exhibition by hypnotists would probably be considered a show, and therefore within the above cited clause relative to the powers of the council.

Under the power to license and regulate the city cannot prohibit. The supreme court of Minnesota, in the case of State vs. Schoenig, 72 Minn. 528, says

"The power to license and regulate is not a power to prohibit or destroy. * * * Granting or refusing a license always involves the exercise of a reasonable discretion."

The most that your council can do is to pass an ordinance licensing and regulating this kind of a show, and it may put such provisions into the ordinance as will prevent the objectionable features of such a show; but it cannot prohibit the show itself.

I return herewith under separate cover your home rule charter.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

June 17, 1910.

50

CITIES—May require operators of automobiles to be licensed.

Attorney General's Office.

Dr. Elmer Nicholson.

Dear Sir: I beg to acknowledge receipt of your favor of August 10th in which you ask whether in my opinion the city of Brainerd may require by ordinance drivers and operators of automobiles to have a license and charge $2.50 therefor. In my oipnion your questions are to be answered in the affirmative. The state law prescribes a license, it is true, but it is the opinion of this office that cities may require additional regulations, providing they do not conflict with the state law, and are not otherwise objectionable.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 12, 1910.

51

CITIES—Individual alderman cannot contract for a city.

Attorney General's Office.

Mr. Archie Campbell.

Dear Sir: An individual member of the village council acting without express authority from the council so to do, has no authority to hire work done at the expense of the city.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 24, 1909.

52

CITIES—Power by ordinance to regulate saloons.

Attorney General's Office.

Frank G. Sasse, Esq.

Dear Sir: Replying to your favor of March 17th relative to the right of your city to enact ordinances forbidding licensed saloons to furnish free lunches and maintain and operate pool and billiard tables, I have to inform you that it is the opinion of this office that the enactment of such ordinances would be a proper exercise of the authority vested in your city. Your charter in subdivision 31 of section 75, authorizes the city "to license and **regulate** the sale of spirituous, vinous, fermented malt or other liquors."

I call your attention to opinion No. 142, Attorney General's Opinions, 1908, bearing on this subject. In the case of the City of St. Paul vs. Stamm, 118 N. W. Rep. 154, it was attempted to have the supreme court pass upon the constitutionality of this proposition, but the court declined to decide the question.

I note the distinction you draw between the right to enact ordinances prohibiting free lunches and the right to prohibit the use of pool and billiard tables, and although there is some force to your contention I have to advise you that it is the opinion of this office that an ordinance forbidding the latter would be lawful and enforcible. A general law forbidding devices of a certain kind in a saloon, but expressly excepting pool and billiard tables would not of necessity preclude a city from prohibiting the same in the exercise of its police power.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1909.

53

CITIES—Ordinance requiring property qualification to hold office is unconstitutional.

Attorney General's Office.

Mr. George A. King.

Dear Sir: You inquire as to the legality of an ordinance of your city providing that an alderman must be a real estate holder to a certain assessable amount before he can be qualified to hold the office; and also as to the legality of an ordinance providing that the property so owned by him must have been so owned six months prior to his election.

In my judgment neither of these ordinances are valid. It is not competent for a city to, by ordinance, restrict the exercise of the elective franchise or the right to hold office beyond the limitation placed thereon by the constitution. Section 1 of article VII of the state constitution makes provision as to what persons are entitled to vote. Section 7 of the same article provides as follows:

"Eligibility to Office—Every person who by the provisions of this article shall be entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this constitution, or the constitution and laws of the United States."

See also Sec. 17, Article 1, State Constitution.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 24, 1909.

54

CLERKS, DISTRICT COURT—Fees for indexing records, are official.

Attorney General's Office.

Henry Reynolds, Esq.

Dear Sir: You inquire whether the compensation due to clerks of court by reason of the indexing of records by them pursuant to chapter 213, General Laws

of Minnesota for 1907, is to be included in and with the fees of the office, or is to be considered an independent transaction.

The compensation so earned is to be treated as a part of the fees of the office, and the provisions of paragraph 49 of section 2694, R. L. 1905, is as applicable to the compensation received for such indexing as to any other fees of such clerk.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Mar. 1, 1909.

55

CLERK OF COURT—Not entitled to pay for service on canvassing board.

Attorney General's Office.

Wm. Mallgren, Esq., Clerk of Court.

Dear Sir: You state on September 22d and 23d you were clerk of court and served two days on the county canvassing board, not being a candidate at such election yourself. As chapter 335, G. L. 1909, places the clerk on a salary you inquire as to whether you are entitled to extra compensation for services on such county canvassing board.

I have to advise you that in my opinon your inquiry is to be answered in the negative, and that you are not entitled to such compensation. See sections 198 and 341, R. L. 1905. The clerk of court does not appear to be mentioned in the last named section.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 15, 1910.

56

COUNTIES—Warrants to county officers are not preferred.

Attorney General's Office.

A. J. Anderson, Esq., County Treasurer.

Dear Sir: Replying to your favor of November 7th in which you ask whether county officials warrants may be preferred, I beg to advise that your inquiry is to be answered in the negative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Nov. 9, 1910.

57

COUNTIES—Rights and liabilties of—on formation of new county.

Attorney General's Office.

Mr. Michael Bakken.

Dear Sir: In your favor of recent date you ask what the liability is of a new county formed out of a part of an existing county for the indebtedness of the old county at the time of the division, and what right, if any, the new county has in any county buildings owned by the old county, and in any money in the treasury of the old county.

I beg leave to advise you, that the rights of the two counties, in case of such division, are fixed by section 393 of the Revised Laws. This section relates exclusively to the creation of new counties, or the transfer of territory from one county to another. The material part thereof is as follows:

"All territory so transferred shall continue liable for its proportion of the excess, if any, of the indebtedness of the original county above the value of its county buildings and of the balance of funds in its treasury. Such share shall be based upon the last assessment; and the value of the buildings, unless agreed upon by the respective county boards, shall be fixed by the sworn appraisal of three disinterested citizens, none of whom shall be a resident or taxpayer in either county, and who shall be appointed by the governor, upon the written application of the board of either county."

This provision of the law is so plain that it leaves no room for doubt or interpretation.

The value of county buildings ascertained in the manner stated, is to be added to the amount of cash balance of funds on hand, and the aggregate sum thus obtained is to be subtracted from the outstanding indebtedness of the old county. The remaining indebtedness, if any, is to be proportioned between the old and new county in proportion to their respective valuations at the last preceding assesment.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Sept. 14, 1910.

58

COUNTIES—Moneys in ditch fund cannot be borrowed for use in other funds.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In reply to your letter of September 26th to the attorney general inquiring whether surplus moneys in the ditch fund may be borrowed by the county, I have to say that the law in the present condition does not authorize such use of surplus moneys in the ditch fund, and only permits the keeping of said fund in duly designated county depositories. A different practice obtained for a time under a supposition that it was permitted by paragraph 7 of section 434, R. L. 1905. The supreme court of this state has rendered a decision which holds in effect, such practice illegal.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Sept. 26, 1910.

59

COUNTIES—County is primarily liable for drainage bonds issued by it.

Attorney General's Office.

Hon. S. G. Iverson, State Auditor.

Dear Sir: I beg to acknowledge receipt of your favor of August 11th wherein, on behalf of the state board of investment, you ask whether a county issuing bonds for the purpose of defraying in whole or in part the expense incurred or to be incurred in locating, constructing or establishing so much of a public ditch as may be located therein, is the principal debtor, or whether where such bonds have been purchased by the state board of investment the state will be compelled to look to the lands benefitted by the construction of such ditch for reimbursement

Replying thereto I beg to advise that I am of the opinion in the case you mention that the county is the principal debtor. The further question as to whether the lands affected may not constitute a secondary fund for the payment of bonds issued by the county need not be determined until it arises.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 11, 1910.

60

COUNTIES—Depositary bonds must be in double amount to be deposited.

Attorney General's Office.

W. W. Smith.

Dear Sir: Chapter 124, G. L. 1909, provides:

"Every bank or banker before being designated as a depositary, shall deposit with the county treasurer a bond to be approved by the county board, **in at least double the amount to be deposited,** payable to such county and signed by not less than five resident freeholders as sureties: who shall in the aggregate qualify for the full penalty named in such bond."

The aggregate amount qualified for must equal the penalty of the bond. Deposits may be made with a depositary not in excess of one-half of the amount of the penalty of the bond.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 13, 1909.

61

COUNTIES—Discretion of county board as to allowance for clerk hire of treasurer.

Attorney General's Office.

Mr. N. J. Robinson, County Attorney.

Dear Sir: You call attention to the provisions of chapter 118, G. L. 1907, in which provision is made for allowance by the county board of clerk hire for the county treasurer, in a sum not exceeding five hundred dollars ($500.00) per annum.

Presuming that your county comes under the limitations of the act, I have to advise you, that in my opinion the conclusion reached by you, that even if the word **may** should be construed as **shall** (which I am inclined to doubt), still the amount to be allowed as clerk hire by the county board, is to be fixed by the board at not to exceed five hundred dollars ($500.00) per annum, in other words, they cannot exceed this amount and it may be such lesser sum as the board in its wisdom may determine to be reasonable and necessary.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1909.

62

COUNTIES—County board need not employ county surveyor for work on state roads.

Attorney General's Office.

J. T. Van Metre, Esq., County Attorney.

Dear Sir: You are advised that in our opinion, under the provisions of section 9, chapter 163, G. L. 1905, the county commissioners may employ either the county surveyor or some other competent surveyor or road builder to do the work therein provided for. Such employment is not limited to the county surveyor alone.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1910.

63

COUNTIES—Transfer of funds.

Attorney General's Office.

Mr. F. F. Gaulke.

Dear Sir: Your favor of January 15th to the attorney general is before me for attention.

County commissioners may transfer moneys from one fund to another (except that moneys cannot be transferred from ditch funds to any other fund, except for the purposes of recoupment to the general fund for moneys transferred from that fund to the ditch fund). Such transfer can only be made unanimous vote and under the conditions as provided by paragraph 7 of section 434, Revised Laws of 1905, which reads as follows:

"The county board of each county shall have power * * *

7. To transfer by unanimous vote any surplus beyond the needs of the current year in any county fund to any other such fund to supply a deficiency therein, except in counties having over seventy-five thousand inhabitants."

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 20, 1910.

64

COUNTIES—Auditor's inquiries answered.

Attorney General's Office.

Ernest Shepard, Esq., Secretary State County Auditors' Association.

Dear Sir: I enclose herewith replies to quite a number of the questions asked yesterday, and which have not heretofore been answered.

1. Should petitions for change of school districts be published?

A full abstract of the substantial contents of the petitions should appear in the minutes of the proceedings of the county commisisoners. It seems to this office that no other publication of the petition is necessary. The notice which must be published pursuant to chapter 188, Laws 1907, should state enough of the petition to make the notice intelligible.

2. Under what circumstances can individual members of the board of county commissioners be paid mileage?

Chapter 204, G. L. 1907, prescribes the rule in this respect as follows: Each commissioner shall receive ten cents per mile travel each way for every mile necessarily traveled in the discharge of official duty under the direction of the board. Each board of county commissioners should determine the scope of the duty of individual commissioners and direct the performance of such duties in order that the individual commissioner may be sure of collecting mileage.

3. Shall bonds issued to the state made for any particular ditch be reduced from time to time by payments from moneys realized by ditch assessments?

They should be when it is possible to make arrangements therefor with the holder of the bonds, and there is enough money in the ditch fund to permit of such payment after providing for the contingent expenses which must be paid out of the general ditch fund.

4. What proceedings shall be taken where townships fail to pay their ditch assessment for the benefit of roads?

Under the ditch law of 1905 the amount assessed against the town if not paid within thirty days after June 1 next following the entry of the lien must be extended by the county auditor against all the property in such town liable to taxation, and a levy thereof made thereon in the same manner as other taxes are levied. See chapter 367 ,section 3½, Laws of 1907. Under the ditch law of 1907 the amount delinquent thirty days after June 1 with interest shall be enforced in the same manner as judgment against the town. The practical enforcement of this law is not entirely clear, but it seems as though a certified copy of the assessment should be presented to the next town meeting and then the board of supervisors required to add to the tax levy for the year the amount of such lien. See section 597, R. L. 1905.

5. Can collected ditch assessments be applied to outstanding ditch warrants not paid for want of funds?

This question is answered in the affirmative.

6. Do institutions exempt from taxation have to pay the taxes on land bought by them after a tax thereon has been levied and before the first Monday in January next succeeding?

They do. The lien attaches May 1 in the year in which taxes are levied as between the state and the land.

7. What form of notice of expiration of redemption shall be issued on tax certificates issued under the sale of May, 1906?

The form prescribed by section 956, R. L. 1905.

8. Is business transacted on a holiday legal?

The statute forbids the transaction of public business on a holiday except in case of necessity. This necessity must be real, and something more than a mere matter of convenience. It must depend upon circumstances, but business should not be done except in cases where the necessity is clear.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 21, 1909.

65

COUNTIES—Auditors' inquiries answered.

Attorney General's Office.

Ernest Shepard, Esq., Secretary State County Auditors' Association.

Dear Sir: Further replying to questions asked the attorney general's office by the county auditors' association, I submit the following:

9. Where the present county surveyor is incompetent to make surveys and plats of regular tracts can the auditor employ another surveyor and charge the expenses of the survey against the property if the owner refuses to pay these expenses?

This question must be answered in the negative.

10 Can the county collect a ditch assesment from a railroad company?

It cannot. See Patterson vs. C., R. I. & P. Ry., 99 Minn. 454.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 21, 1909.

66

COUNTIES—Auditor—Attorney—Commissioners—(Assessors).

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: This department is in receipt of your favor of January 26th, containing for our opinion certain inquiries submitted to you by the secretary of the auditors' association of the state of Minnesota, and I herewith transmit answers to the following questions:

"On what year does county auditor base his valuation in figuring out his salary for clerk hire?"

I am of the opinion that the assessed valuation referred to in section 492, R. L. 1905, and amendments thereto, has reference to the valuation as finally determined by the state board of equalization (Minnesota tax commission) prior to the deduction therefrom of exemptions.

"Is the county attorney entitled to compensation outside of his salary for attending ditch sessions of the county board, when he is simply looking out for the interests of the county and not appearing for or against the petition?"

This inquiry is answered in the affirmative. See paragraph 7 of section 12, chapter 469, G. L. 1909.

"If an assessor's office has become vacant since the last assessment was made, should a new assessor be elected at the coming town meeting, or should he be appointed by the town board?"

The vacancy should be filled by the town board. (Section 679, R. L. 1905.) If the vacancy is not filled by the town board by June 1st of the year in which it occurs, the county auditor shall appoint some resident of the county as assessor of such town. (Section 680, R. L. 1905.) By the provisions of chapter 316, G. L. 1909:

"Town and village assessors in all towns and villages, except those operating under special laws, shall be elected in odd numbered years and shall hold their office for two years and until their successors qualify. All assessors in towns or villages affected by this act, elected at the annual town meeting or village election in 1909, **or who are appointed to fill a vacancy,** shall hold office until their successors are elected and qualified in 1911."

"Will the assessor elected in 1909 and who holds over, have to give a new bond?"

Although it is desirable that a new bond be given in the instance referred to in the question, still it will not be necessary if the old bond provided for the performance of the duties of the assessor "until his successor is elected and qualified."

"Is a member of the county board entitled to mileage when he makes a long trip outside of his county for such a purpose as for instance to buy blooded stock for the poor farm? And can such an undertaking as buying fancy stock for the poor farm be considered an official duty?"

Both questions are answered in the negative. The latter part of the question requires a negative answer, particularly with reference to the non-allowance of mileage.

"Should the county auditor issue a statement for the county treasurer when a payment of a mortgage registry tax is made?"

This question is answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 9, 1910.

67

COUNTIES—Auditor's duty and compensation—plats of land.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In further reply to your letter of January 26th enclosing a list of questions asked your department by the secretary of the auditors' association of the state of Minnesota, I have to say that I submit the answers to certain of the inquiries which have not yet been answered by this office.

"If an error is found in the tax levy after the report is sent in to the state, what can be done to rectify the error?"

The answer to this is that so long as the tax books are in the custody and control of the auditor they are subject to correction and any error contained therein should be corrected and the correction reported properly to the state auditor. After the tax lists have passed into the custody and control of the county treasurer, it is not probable that there is any practicable method of correcting errors in them, but if the error is so great as to do serious injury, then the error might be corrected by the consent of the county treasurer provided no taxes have been paid involving the error in the tax levy.

"Can an auditor's subdivision plat be recorded if taxes are unpaid against any one of the tracts included in such plat?"

The answer to this is that the plats which are to be presented to the county auditor and receive his certificate to the same and endorsed taxes paid and trans-

fer entered, include only deeds or other instruments conveying land and plats of any townsite or addition thereto, and do not include the auditor's subdivision plat. These may be recorded without the certificate required in cases of plats to townsites and without the payment of the taxes against all the tracts included in such plat.

"Is a county auditor entitled to any compensation for making out a satisfaction of a ditch lien?"

This question should be answered in the negative. The auditor is required only to "issue under his hand and official seal, a certificate of such payment" of the amount of a ditch lien, and by fair implication the certificate so given can be recorded without witnesses or acknowledgment in the office of the register of deeds.

"Can the board of county commissioners be compelled to approve of a plat if they refuse?"

"The general meaning of the word "approve" is such as to indicate that discretion is to be used, and when the matter is subject to the approval of a board the board is to exercise its discretion and may not be compelled to act contrary to that discretion. It is only when a board refuses to act that courts will compel action and then the board will only be required to exercise its discretion.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Feb. 9, 1910.

68

COUNTIES—Auditor, duties and compensation.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In your queries submitted in behalf of the County Auditors' Association, you are advised that in making the tax abstract for the state auditor covering the bushel tax pursuant to chapter 266, G. L. 1909, the county auditor shall show the total taxes pursuant to said chapter, with a distribution thereof to the several funds entitled thereto, pursuant to section 3 of said chapter.

You are also advised that $3.00 per day is a reasonable compensation for the services of the county auditor in computing interest upon tax liens in ditch proceedings.

You are also advised that ten cents per folio and ten cents for the certified copy certificate is proper compensation for making a certified copy of ditch proceedings furnished a purchaser of ditch bonds. See section 615 and section 2706, R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 16, 1910.

69

COUNTIES—Education—County treasurer not entitled to extra compensation for acting as treasurer of county board of education.

Attorney General's Office.

Mr. P. F. Schroeder, County Attorney.

Dear Sir: You call attention to chapter 76, G. L. 1907, as amended, and inquire relative to the compensation of the county treasurer and as to his duties when acting as treasurer of the county board of education for unorganized territory.

An examination of the law does not disclose that there is any provision made for extra compensation of the treasurer, and in the absence of such statutory provision, he cannot be paid for such services. As you are aware, it is com-

petent for the legislature to put additional burdens upon public officers and not provide for extra compensation therefor; the chance of such action being taken is one of the burdens assumed by an office holder.

I am inclined to the opinion that the duties of the treasurer of the board in question as to receiving and disbursing money, are similar to those of a treasurer of a common school district, barring the question of compensation; that the board in question is vested with the powers and duties incident to those exercised by school boards and annual meetings of common school districts.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 10, 1910.

70

COUNTIES—Board of auditors should examine tax receipt books in treasurer's office.

Attorney General's Office.

J. B. Himsl, Esq., County Attorney.

Dear Sir: You state that a difference of opinion has arisen between the county treasurer and the board of auditors of your county as to the place an examination shall be made of the tax receipt books. Although the statute does not expressly provide, I am of the opinion that the treasurer is within his rights in insisting that the examintiaon be made in his office. The board of auditors is supposed to go from office to office and make the examinations required by law. The treasurer is the custodian of such receipt books and is responsible for them; he cannot be compelled to permit them to be taken from his office if he insists upon their remaining there.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 16, 1910.

71

COUNTIES—Treasurer not entitled to extra compensation for collecting ditch taxes.

Attorney General's Office.

Fritz Watterberg, Esq.

Dear Sir: You inquire as to whether a county treasurer is entitled to extra compensation for collecting ditch taxes under the provisions of section 12, chapter 469, G. L. 1909.

Replying I have to inform you that in my opinion your inquiry is to be answered in the negative.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 14, 1910.

72

COUNTIES—The chairman not paid for signing county bonds—surety bond for engineer not proper claim against.

Attorney General's Office.

Wilhelm Michelet, Esq., County Attorney.

Dear Sir: In reply to your letter of March 19th, submitting three questions, I have to say:

First—The chairman of the county board cannot charge a per diem for time spent in the signing of county bonds and attached coupons.

Second—The county is not authorized to pay for the surety bond of an engi-

neer, covering all ditch proceedings in which he may be appointed engineer within two years.

Third—The bond of a contractor erecting a building for a county must conform to the requirements of chapter 429, G. L. 1909.

LYNDON A, SMITH,
Assistant Attorney General.

Mar. 21, 1910.

73

COUNTIES—Mileage of county commissioners.

Attorney General's Office.

Mr. John A. Berg, County Auditor.

Dear Sir: You inquire as to what mileage the conuty commissioners are entitled to receive in an official year. Under the provisions of section 423, R. L. 1905, as amended by chapter 204, Laws of 1907. You state that the assessed valuation of your county exceeds seven millions and is less than twelve millions.

Assuming that your county does not come under the provisions of chapter 296, G. L. 1907, which is applicable to counties not having less than 35,000 nor more than 75,000 inhabitants, I have to inform you that under the provisions of chapter 204, Laws of 1907, your commissioners are entitled to pay for attending twelve meetings. In chapter 204 there was a mistake made in printing the law, and the word "one" as found in the seventh line of the last paragraph of section 1 thereof, should read "twelve."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1909.

74

COUNTIES—County board may not hire night watchman.

Attorney General's Office.

Mr. W. J. Hines.

Dear Sir: In reply to your inquiry of January 12th whether the board of county commissioners has the right to hire a night watch at the county jail when there are prisoners awaiting trial known to be desperate characters, I have to say that the board of county commissioners does not have such a right.

The statutes of this state require the sheriff to receive and safely keep in the county jail all persons lawfully committed thereto. Section 556. The legislature of 1907 provided a salary for sheriffs of counties having the area and population of Renville county, which salary is in lieu of all fees for official services, and further specified that the sheriff in each county should perform all duties and services now or which may hereafter be required by law to be performed by them. The same legislature also provided for the appointment by the sheriff of certain officers, provided such appointment was approved by the judges of the district court of such county.

Now, when the sheriff is given a specific duty to perform and he is not given the authority to employ any one else to perform that duty at the expense of the county, and there is an express law providing what exceptions there are to such rule, then the sheriff who employs other help than that specified by that law to perform official duties he only is liable for the compensation of such person so employed by him in the performance of an official duty.

"It is settled law that public officers entitled to fees or salaries take their offices com onere and are not entitled to compensation for services performed unless the law expressly so provides."

State vs. Smith, 84 Minn. 295.

This office has held that the acts of a deputy sheriff are covered by the salary allowed by law referred to the sheriff and I do not find any law which would permit the board of county commissioners to allow a claim for the services of a watchman for a jail when there is no statute providing for the payment for such services.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Jan. 14, 1909.

75

COUNTIES—Liability for costs in case of acquittals in district court on appeals.

Attorney General's Office.

Isaac La Bissonniere, Jr.

Dear Sir: In reply to your letter of December 14th, relative to costs in a certain criminal case tried before you and appealed, I have to say that by section 2720, R. L. 1905, it is provided that:

"Whenever a prosecution in the name of the state fails, or the defendant proves insolvent, escapes, or is unable to pay the fees when convicted, the same shall be paid out of the county treasury, unless otherwise ordered by the court."

Many years ago this office held that costs in criminal cases before a justice of the peace, which have been appealed by the defendant, are not to be allowed by the county board before the final determination of the action. Consequently, this office has to say that the question of whether the county is held for all costs in the case before you, cannot be answered until after the final issue in the case, and will depend upon whether or not the costs can then be collected from the defendant.

There may be cases in which the county would not be liable for costs on account of the prosecution being entered outside of the law of the state, but under ordinary circumstances the expression, "Whenever the prosecution in the name of the state fails," etc., will be held to indicate that the county must pay the expenses of the prosecution, when the defendant fails to do so.

This letter only refers to cases in which there is in appeal from the conviction in justice court to the district court, and the case is pending in said appellate court.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 17, 1909.

76

COUNTIES—Legislature may authorize county boards to issue bonds.

Attorney General's Office.

W. V. Kane, Esq., County Attorney.

Dear Sir: In reply to your letter of September 14th to the attorney general, I have to say that this office held upon hearing and due consideration, under date of September 18, 1893, that the law permitting county commissioners to issue bonds without authorization therefor by the electors, was constitutional and valid. After an examination of the amendments to that law and the provisions of Revised Laws, 1905, and other statutes, including those referred to by you, no reason occurs to me why the opinion of General Childs referred to hereinbefore should not be adhered to by this office and considered by you as the proper interpretation of the law relative to bonding counties for the construction of jails.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 18, 1909.

77

COUNTIES—Physician, an employe.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In reply to your letter of December 14th inquiring whether or not a charge of $3,150 for preparing form of bonds for Cass county is a fair charge, I have to say that this is a question of fact, but this charge seems to this office to be exorbitant.

Your second question is whether a county physician is a county officer within the meaning of the law which prohibits such an official from being directly or indirectly interested in any contract to which the county is a party. It is my opinion that a county physician is not such officer.

There have been two decisions of our supreme court which seem to me to lead to the inference that under the circumstances under which a county physician acts is not so much an officer of the county as an employe. I do not think of any function which the county physician may perform as a county officer. His duties are simply to perform professional services, and therefore he becomes an employe of the county rather than an officer. See 89 Minn. 405; 122 N. W. 628. These cases are not exactly in point, but they seem to lead to the proposition as stated above. The terms of a county's contract with a county physician would not determine the question whether or not he is a county officer.

We do not approve of the contract referred to in your letter, and think that the action of the county board in giving to the county physician the entire charge and support of the poor is unwise as a matter of policy, and this office would be disposed to scrutinize any contract of this kind very closely with a view to finding it irregular if it could do so.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 17, 1909.

78

COUNTIES—Officers' salaries—Jail bills for board of prisoners.

Attorney General's Office.

Robert Burns, Esq., County Auditor.

Dear Sir: In reply to your letter of December 23d submitting two inquiries, I have to say:

1. County officials are entitled to salaries according to a general law when that general law clearly repeals a special law governing such salary in the locality in which it is earned. The law now seems to be settled that a special law may be repealed by a general law when such is the intent of the legislature. If, therefore, since the Revised Laws of 1905, there has been any general law passed regulating the salary in all counties of the state, or any specified county officer, then such officer may draw salary as is provided for by such general law.

2. Sec. 5473, Revised Laws of Minnesota 1905, provides: that at the end of every month the sheriff of each county shall render to the auditor a statement showing among other things, the name of each person committed by virtue of any city or village ordinance, the amount due the county for board of each and from whom. The county auditor should submit to each village a statement of the amount due from each for the board of prisoners committed to the county jail by virtue of any of its ordinances. If the village does not issue an order to the county for the payment of the amount so stated to be due from it for the board of prisoners, then the county attorney should be consulted in the matter and he should proceed to enforce the claim of the county according to law.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 29, 1909.

79

COUNTIES—What expenses may be incurred.

Attorney General's Office.

Chester McKusick, Esq., County Attorney.

Dear Sir: In reply to your letter of January 13th, inquiring as to the law on the question of the payment of current expenses in Beltrami county, I have to say that this office has considered the question and has come to the following conclusions:

1. The primary object for which taxes are levied by counties is to pay current expenses. Such taxes are required to be based—

"Upon an itemized statement of the county expenses for the ensuing year." Revised Laws 1905, section 868.

Another reason for taking this position is that the supreme court of this state his intimated that the absolutely necessary current expenses of a county must be paid without reference to the tax limit.

Upton vs. Strommer, 101 Minn. 97.

2. If the current expenses exceed in amount the sum which can be raised within the limits prescribed for county taxation, then no expenses can be incurred by the board of county commissioners for any purpose other than such necessary current expenses, except within the rule laid down in Rogers vs. Le Sueur County, 57 Minn, 434. If the outstanding indebtedness for current expenses together with prospective current expenses for the ensuing year exceed the amount probably available during the succeeding year, then nothing but current expenses can be incurred.

3. The construction thus placed upon the limits of taxation requires a division of county funds other than that expressly provided by statute. This division would be into fund for current expenses and general revenue funds for other than current expenses. There would be nothing in the second fund until all current expenses, past and present, were provided for. By current expenses we mean the expenses for running the county and providing for the performance of its ordinary functions as a county and not merely the debts contracted within any specified period of time.

4. Section 524, R. L. 1905, must be read in connection with section 497, which requires the county treasurer to keep funds distinct and —

"Every warrant shall be paid only from the cash on hand in the fund from which it may be properly payable."

When no fund existed for the payment of expenses other than current expenses, the prohibition contained in section 874, G. L. 1905, would come into operation and no contract could be made by which any debt or any pecuniary liability would be incurred, other than current expenses, and if such liability was attempted to be incurred the public officers participating in such attempt would become personally liable. The warrants issued in payment of any such liability would be void and the treasurer would have constructive notice, at least, of their invalidity.

5. It seems to this office from the information it has at hand, that the floating indebtedness of your county should be refunded and that your county should begin a new course financially by which it should raise each year enough money to cover current expenses, both prospective and over-due, and if possible a surplus above such amount, to be used in the payment of contracts and liabilities incurred for other purposes than current expenses.

It may be that it will be necessary for the legislature to pass a curative act in order to validate some of your outstanding warrants which may have been issued contrary to the provisions of section 874 of the Revised Laws of Minnesota, 1905.

Yours truly,

LYNDON A. SMITH,

Assistant Attorney General.

Jan. 18, 1909.

80

COUNTIES—Chairman of board may cast deciding vote—when.

Attorney General's Office.

Mr. Gerhard Kimpel, Chairman County Board.

Dear Sir: You inquire as to when, upon a tie vote or any question before the county board, the chairman should cast the deciding vote; whether he should do so at once or whether his action in that regard can be disposed of at some future time.

A question to be carried by the county board must receive a majority vote; in case of a tie the chairman has the deciding vote, and such vote should be cast at the session then being held, and presumably within a reasonable time for the chairman to make up his mind as to how he wishes to vote, and before any other business is transacted. If he fails to vote, or votes in the negative, then the motion is lost in either event in not having received a majority vote.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 28, 1909.

81

COUNTIES—Moneys may be transferred from one county fund to another—when.

Attorney General's Office.

Mr. Anton Thompson, County Attorney.

Dear Sir: You state that your county has incurred a liability approximating $1,400 on account of work done by authority of the county commissioners upon the public highways of the county, and that no money remains in the general road and bridge fund with which to pay such claim. You further state that a large surplus exists in the county poor fund approximating the amount above referred to beyond the needs of the current year for the county poor fund, and you inquire whether the county board is authorized to transfer the surplus fund from the county poor fund to the road and bridge fund.

Section 434, R. L. 1905, so far as here applicable, reads as follows:

"434. General Power of Board—The county board of each county shall have power; * * *

7. To transfer by unanimous vote any surplus beyond the needs of the current year in any county fund to any other such fund to supply a deficiency therein, except in counties having over 75,000 inhabitants."

I have to advise you that in the opinion of this department your inquiry is to be answered in the affirmative, and under the circumstances as set forth in your communication your county board is authorized to make such transfer.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 21, 1909.

82

COUNTY FUNDS—Depositary.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: This department is in receipt of your favor of the 7th instant in which you ask for our opinion on the hereinafter stated questions: You state.

"A county board fixes the limit of deposit of county funds in banks at not to exceed fifty per cent of the amount of the bonds."

You ask:

"Shall the county treasurer be guided by the law governing this matter, or by the fiat of the county board?"

In answer to this question I would say that the statutes prescribe the limitations on the amount of county funds which may be deposited in a given bank. Thus section 500 of the Revised Laws 1905, as amended by chapter 352 of the Laws of 1907, provides that the amount deposited in any bank shall not exceed the capital stock and permanent surplus thereof. Section 502, R. L. 1905, as amended by chapter 124 of the laws of 1909, provides that the amount deposited in any bank which has given a personal bond shall not exceed one-half of the amount of the penalty of the bond, but where a surety company bond is given, an amount equal to the amount of the bond may be deposited. So, too, the amount which may be deposited in a bank which has deposited the securities authorized by chapter 362 of the Laws of 1909, cannot exceed the amount of the par value of the securities so deposited.

Subject to the foregoing limitations, the county treasurer can deposit county funds in banks designated as depositaries by the county board of auditors without regard to any further limitations attempted to be imposed upon his action in regard thereto by the board of county commissioners.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Sept. 9, 1909.

83

COUNTIES—Surety on county depositary bond need not be resident of the county.

Attorney General's Office.

Mr. Frank Hopkins.

Dear Sir: You inquire as to whether a surety on a county depositary bond must be a resident of the county.

Construing sections 502 and 4523, R. L. 1905, I have to advise that in my opinion a person who otherwise qualifies and who is a resident freeholder of the state of Minnesota, may be accepted as a surety on a county depositary bond.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 16, 1909.

84

COUNTY ATTORNEY—May receive compensation for acting as attorney for village.

Attorney General's Office.

Mr. O. N. Lindh.

Dear Sir: You inquire whether a county attorney can ask and receive compensation for advice that he may render to a village council. Your inquiry is answered in the affirmative. It is nowhere made the duty of the county attorney to act as counsel for villages. Villages are empowered to employ an attorney for necessary purposes.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1909.

85

COUNTY ATTORNEY—Use of contingent fund—duty as to trials of misdemeanors.

Attorney General's Office.

Mr. J. J. Woolly, County Attorney.

Dear Sir: You inquire whether under the provisions of chapter 233, G. L. 1909, a county attorney is entitled to be reimbursed for expenses such as hotel bills and livery hire when forced to leave home to attend to the business of the

county. I am of the opinion that this question should be answered in the affirmative insofar as necessary and legitimate expenses are concerned.

You further inquire whether under section 565, R. L. 1905, a county attorney is required to attend trial of misdemeanors. I am inclined to the opinion that this question should as a general proposition be answered in the negative. There are some prosecutions, however (for misdemeanors and otherwise), which the statute makes it expressly the duty of the county attorney to prosecute, one of such number being for violation of the intoxicating liquor laws. Although perhaps not strictly the duty of the county attorney to prosecute all misdemeanors, still in the interests of justice, enforcement of law and the welfare of the county, the county attorney should in all possible instances appear for the state and conduct the prosecution. This is especially true when the matter involved is one of considerable local interest and when the defense is to be represented by counsel.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 30, 1909.

86

COUNTY ATTORNEY—Allowance of claims of, for expenses.

Attorney General's Office.

Don M. Cameron, Esq., County Attorney.

Dear Sir: Yours of 12 inst., in which you ask for the opinion of this office as to whether the word "may" as used in the hereinafter quoted excerpt from chapter 339, Laws 1907, is permissive or mandatory, was duly received.

The latter part of said chapter provides—

"And the board may also allow itemized claims for the necessary expenses of the county attorney incurred in the business of the county for stationery, telegraph and telehone charges, and postage."

In answer to your query I would say that we are of the opinion that the word "may" as herein used is permissive and not mandatory. The rule of construction is that the word is to be given its ordinary signification, unless it appears from the context that it should be construed as "shall."

It is to be observed that in the first line of the section as amended by chapter 338 the word "may" is used, and unquestionably it is there used in the permissive sense. The rule has also been laid down by the decisions that where the word "may" is used in one sense in an act that it is to be construed in a similar sense wherever it occurs in subsequent parts of the act, unless it clearly appears from the context that a different sense was intended.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Jan. 16, 1909.

87

COUNTY ATTORNEY—Fees and expenses in ditch proceedings.

Attorney General's Office.

Arthur B. Church, County Attorney.

Dear Sir: This office is in receipt of your favor of May 24, from which it appears that a contract was let for the construction of a county ditch in Todd county, Minn.; that said ditch was not completed within the time provided for in the contract, whereupon the county auditor, under the statute, proceeded to resell the ditch job. Pending the proceedings for a resale, the contractor instituted an action against the county auditor to enjoin the resale of the ditch job, and upon an order to show cause in the premises, you appeared as attorney for the county auditor. The hearing upon the order to show cause was held

at Detroit, Becker county, Minn. Upon the hearing the court discharged the order to show cause, holding in effect that the auditor was justified in the proceedings to resell. As a result of the resale of the ditch job, the contract price for the work is much lower than the former contract price, resulting in a considerable saving to the persons liable to be assessed for the construction of the ditch.

You inquire whether a bill for your services, and your expenses in going from Long Prairie, Todd county, Minn., to Detroit, Becker county, Minn., and return, in the matter of said hearing, is chargeable against the ditch fund of the particular ditch.

In this connection I call your attention to opinion No. 47 of the report of the attorney general for the biennial period, 1907-1908. Said opinion holds generally that the allowance of attorney's fees to a county attorney in ditch proceedings is improper. This is based upon grounds of policy and incompatibility.

In passing it is proper to state that section 12 of chapter 469, G .L. 1909, which allows compensation to county attorneys is not applicable for the reason that the services in question were performed before April 23, 1909, the date when chapter 469 went into effect.

This department, in an opinion of date June 19, 1907, held that the allowance of expenses to a county attorney in attendance upon duties outside of the county was proper. It follows that it is proper for the county board to allow your disbursements in the premises and pay the same out of the particular ditch fund.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 5, 1909.

88

COUNTY AUDITOR—Salary of.

Attorney General's Office.

J. H. Moore, Esq., County Auditor.

Dear Sir: In your favor of February 18th you state that the auditor has drawn his salary based upon the assesed valuation of the county less the $100 exemption, and not upon the valuation as determined by the state board of equalization; that he has now discovered the error and you ask whether he is entitled to the undrawn portion of the compensation.

Replying thereto I beg to advise that in my opinion your inquiry is to be answered in the affirmative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Feb. 19, 1910.

89

COUNTY AUDITOR—May act by deputy auditor.

Attorney General's Office.

Hon. Samuel Lord, Chairman Tax Commission.

Dear Sir: In answer to your favor of recent date you are advised that in the opinion of this office the recommendations of the county auditor, pursuant to section 801, R. L. 1905, in the matter of the abatement or refundment of taxes, may be made and signed by the deputy auditor.

In this connection I call your attention to section 487, R. L. 1905, which provides--

"Deputy auditors may sign all papers **and do all other things** which county auditors may themselves do."

My opinion is that the action of the county auditor in the premises is discriminatory and quasi judicial as distinguished from ministerial, but that under section 487, supra, the deputy county auditor may exercise discretion in all cases where the county auditor may exercise discretion, and that the act of the deputy county auditor is the act of the county auditor.

The form of action by the deputy county auditor should in all cases be the signature of the county auditor by the deputy county auditor.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 11, 1909.

90

COUNTY AUDITOR—Local assessments to be paid before transfer and record of deed, under municipal charter.

Attorney General's Office.

James W. Trenda, Esq., County Auditor.

Dear Sir: In answer to your oral inquiry you are advised that in my opinion the delinquent and current installments of local assessments levied under and pursuant to section 14 of the charter and ordinances of the city of Northfield, are to be paid before a deed is entitled to record, under and pursuant to section 985, R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 29, 1909.

91

COUNTY BOARD—Duties as overseer of poor, compensation.

COUNTY TREASURER—May not receive real estate taxes exclusive of ditch tax.

Attorney General's Office.

H. L. Horgendale, Esq.

Dear Sir: In answer to your letter of January 11th, you are advised that the county treasurer may not lawfully accept the general real estate taxes on land without at the same time receiving the ditch assessment levied against the land.

You are also advised that the county board may not appoint one of their own number as overseer of the poor farm. The board may lawfully appoint one of their members as a committee to supervise the poor farm, and see that the same is conducted generally accordingly to law and subject to the county board. In such case the member of the board is entitled to his mileage. Members of the county board are superintendents of the poor, and compensation of a member of the county board in the supervision of the poor is covered by the annual salary. See section 1495, R. L. 1905. Mileage is allowed to such committeemen under and by virtue of chapter 204, G. L. 1907, such mileage being included in the discharge of official duty under the direction of the board.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 14, 1909.

92

COUNTY BOARD—Cannot legalize illegal warrants.

Attorney General's Office.

Mr. Richard M. Funck, County Attorney.

Dear Sir: No authority of law is vested in the county board to legalize warrants that may have been issued illegally to grand and petit jurors and witnesses by county officials.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 6, 1909.

93

COUNTY BOARD—May expend money for poor person not a regular pauper.

Attorney General's Office.

Arthur B. Church, Esq., County Attorney.

Dear Sir: This department is in receipt of your letter of recent date and I quote therefrom as follows:

"A four-year-old child whose parents reside in this county and are in poor circumstances, became affected with hip disease requiring for its treatment the services of a specialist, and special hospital treatment. Private parties contributed enough to send the child to St. Paul where an operation was performed and several weeks' hospital treatment secured. The money donated by these parties is all used and there is no more in sight and the parents have no money for further treatment, and application has been made to the board of county commissioners for assistance. If the child can be given further treatment there is a possibility that she may be cured; if not, she will probably become a cripple."

You inquire whether, in the opinion of this office, the county board may properly appropriate and expend county money in said case.

In answer I call your attention to section 1486, R. L. 1905, which reads as follows:

"When any such poor person has none of the relatives named in section 1485, or they are not sufficiently able, or refuse or fail to support him, he shall receive such support or relief **as the case may require from the county** * * * * in which he has a settlement at the time of applying therefor, as hereinafter provided."

I also call your attention to the fololwing language:

"The duty to provide for the poor thus imposed by statute was undoubtedly intended to regulate the obligation, rather than to permit an evasion of it. This goes upon statement. Neither the county commissioners, where the county system prevails, nor the town supervisors, where they are the superintendents of the poor, can turn their backs upon the proper claim of the poor person. The officials may and should exercise their judgment to prevent improper persons from having relief, but for those who require it they are required to perform this function honestly and efficiently. But a case may arise where such officials cannot, in the nature of things, perform the trust. Under such circumstances, it does not seem just or consistent with sound public policy that the duty should not be performed at all, nor can it be said that the unfortunate pauper who has met with an accident requiring instant succor is to be remediless. The county or town must provide for him as soon as may be. To decline this mandate of humanity and duty willfully by those upon whom it is imposed would subject such officials to prosecution for misconduct in office."

Robbins vs. Town of Homer, 95 Minn. 204.

In my opinion a county board in the case of the care of the poor under the county system, has the power to expend money for necessary medical service in the care of a poor person. 30 Cyc. P. 1149, Cases Cited.

Accordingly, if it appears to the county board that the proposed medical services are necessary and that the case in question is a proper one for relief, in my opinion the county board has power to provide for the same by incurring the necessary expenses for medical treatment and you are so advised.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 9, 1909.

94

COUNTY BOARD—Employment and compensation of attorney in place of county attorney.

Attorney General's Office.

Wilhelm Michelet, County Attorney.

Dear Sir: In answer to your favor of recent date, you are advised that it is competent for the board of county commissioners, acting under and pursuant to **section 569, R. L. 1905,** to employ an attorney to appear for the county in an action to which such county is a party, to the exclusion of the county attorney, and such attorney may be paid out of the funds of the county.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 12, 1909.

95

COUNTY BOARD—Fees of architect not included in limitation on expenditures for court house.

Attorney General's Office.

Wilhelm Michelet, County Attorney.

Dear Sir: This department is in receipt of your favor of recent date. The facts in the case are as follows:

The board of county commissioners of Red Lake county, pursuant to agreement regularly made and entered into, accepted plans and specifications prepared by Fremont D. Orff, Minneapolis, Minn., for the erection of a court house at an estimated cost of $35,000. Mr. Orff was to receive as compensation the sum of $875, being two and one-half per cent of $35,000. If for any reason the plans, details and specifications were to be changed, in such event Mr. Orff was to prepare new plans, details and specifications without extra charge. The board of county commissioners were about to advertise for the letting of a contract for the construction of a court house at the estimated cost of $35,000. An injunction was sued out and the court made an order, subject to the provisions of subdivision 3 of section 434, R. L. 1905, limiting the cost of the court house to $15,500. Fremont D. Orff, the architect, pursuant to his former agreement, made new plans and specifications for a court house at an estimated cost of $15,500. On September 14, 1909, the board of county commissioners let a contract for the erection of a court house at a cost of $15,331, pursuant to the new plans, details and specifications prepared by the architect. The bill for the plans, details and specifications, in addition to the contract price brings the total cost of the court house and plans to $16,206.

You inquire whether the board of county commissioners may lawfully pay the architect the sum of $875.

Your query is answered in the affirmative.

Before the board of county commissioners can proceed to the letting of a contract for the erection of a court house, it is necessary to have plans, details and specifications.

Fones Bros. Hdw. Co. vs. Erb, 54 Ark. 645, 13 L. R. A. 353. 11 Cyc. 481, two case cited.

In my opinion the cost of the plans, details and specifications are not a part of the cost of the court house within the purview of subdivision 3 of section 434, R. L. 1905, supra.

In my opinion it is competent for the board of county commissioners to contract with the architect for the furnishing in the first instance of definite specifications, and if for any reason such specifications furnished were not in compliance with the law, then plans, details and specifications were to be furnished which would comply with the law, and for the services of the architect in the premises the sum of $875 should be paid. In short, the furnishing of plans, details and specifications on the estimated cost of $35,000, which is in excess of the limitations of law, upon the facts in this case does not defeat the right of the architect to recover. In my opinion the bill of the architect should be made out substantially in the following form:

"For furnishing plans, details and specifications for the erection of a court house at the estimated cost of $35,000, and for furnishing plans, details and specifications for the erection of a court house at the estimated cost of $15,500, as per agreement with board of county commissioners—$875.00."

A bill in this form, duly verified, in my opinion is valid and should be allowed.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Sept. 21, 1909.

96

COUNTY BOARD OF AUDITORS—Banks in which members of board are stockholders cannot be designated as depositories.

Attorney General's Office.

Alfred P. Stolberg, Esq., County Attorney.

Dear Sir: By your letter of March 12th you submit the following propositions and inquiries:

"A is chairman of the county board and as such a member of the board of auditors. A is a director and vice president of a local bank X.

"B is clerk of court and as such a member of the board of auditors. B is a stockholder (but not an officer) in a local bank Y.

"C is a member and vice chairman of the county board and a director of a local bank Y.

"D is a member of the county board and president of a local bank Z.

"1. Has the board of auditors authority to designate, X, Y or Z as county depositories? If so, which?

"2. As I understand it, the county board approves the bonds of the depositories. That being the case, can a board so constituted approve the bonds of X, Y or Z?"

The answer to your first question is that the board of auditors have no authority to designate any of the banks above referred to as county depositories under the provisions of section 617, R. L. 1905, which reads as follows:

"No county official, or deputy or clerk of such official, shall be directly or indirectly interested in any contract work, labor, or business to which the county is a party, or in which it is or may be interested, or in the furnishing of any article to, or the purchase or sale of any property, real or personal, by the county, or of which the consideration, price, or expense is payable from the county treasury. Any violation of the provisions of this section shall be a gross misdemeanor."

The answer to your second question is that the county board could not legally approve of the bonds of these banks, or any of them, given under the circumstances indicated above.

LYNDON A. SMITH,
Assistant Attorney General.

Mar. 15, 1910.

97

COUNTY COMMISSIONERS—Must audit accounts as a board, not as individuals.

Attorney General's Office.

Hon. A. Schaefer, Public Examiner.

Dear Sir: In your favor of recent date you ask when the law provides that a voucher shall be audited by a board or commission, as for instance the board of county commissioners of a county, is the same to be construed as meaning that the voucher may be passed upon by the different members of the board signing their names on the same, otherwise than when the board is in session. In reply thereto I beg to advise that in my opinion your inquiry is to be answered in the negative.

While a board is composed of different members, the different members, unless the board is in session, do not constitute a board.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

May 17, 1910.

98

COUNTY COMMISSIONERS—When vice chairman may act.

Attorney General's Office.

Hon. S. G. Iverson, State Auditor.

Dear Sir: I herewith return the bonds of state ditch No. 88, Aitkin county, $33,784, without the approval of this office, for the reason that the same are not signed by the chairman of the board. I also return a certificate which appears to be made by Thor Anderson, who claims to be chairman of the county board of Aitkin county, to the effect that one L. E. Turner, who claims to be vice chairman of such county board, and who signs the bonds is authorized to sign in behalf of Thor Anderson.

It is true that the statute provides in effect that the vice chairman of the board may preside at meetings and perform the duties of the chairman of the board when the latter is absent, but the statute, insofar, impliedly refers to meetings of the board only, and not to acts which the chairman of the board may perform at other times when able to do so. If the chairman of the board were present at the meeting it would have been his duty to sign the bonds. If they were presented to be signed at a meeting when the chairman of the board was not present, perhaps the vice chairman might legally sign them. If presented for signature at any other time that at the meeting of the board, and when the chairman of the board was competent to sign them, they should have been signed by him. If signed by the vice chairman under any circumstances, the reason therefor must clearly appear. The state would very much prefer that they be signed by the chairman. No showing is made at the present time why the chairman did not, or rather, could not, sign them. Assuming, then, that he could sign the same, no good reason suggests itself why they could not at least be forwarded to the chairman for his signature, and therefore the same are returned to you for such disposition.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

July 5, 1910.

99

COUNTY COMMISSIONERS—Not compelled to relocate and establish lost corners.

Attorney General's Office.

Mr. Luke K. Sexton.

Dear Sir: You inquire as to interpretation to be given to section 448, R. L. 1905, relating to the establishment of lost corners, and ask whether the word

"may" therein can be construed as meaning "shall." Your inquiry is answered in the negative.

It was manifestly the intention of the legislature in enacting the law in question to give county commissioners the authority to employ a surveyer, and relocate and re-establish such lost corners if in their discretion and judgment it seemed advisable. The county board is not compelled to do so.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 26, 1909,

100

COUNTY COMMISSIONERS—Vacancy in—how filled.

Attorney General's Office.

Mr. Louis Hallum, County Attorney.

Dear Sir: You state that a vacancy exists in the county board and that the commissioners district in which the vacancy exists is composed of one village and one township and therefore the appointing power rests in the village president and the chairman of the town board. You further state that the two cannot agree, and inquire as to how the vacancy can be filled.

I have to inform you that no appointment can be made without the concurrence of the two officers in question. If they cannot agree upon any suitable man for the appointment, then the vacancy will continue. The only way to settle the question is for them to get together on some man for the place.

You further inquire as to whether, under chapter 182, G. L. 1909, the fines collected should be paid to the county treasurer or to the state, and I have to inform you that they should be paid into the county treasury.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 28, 1909.

101

COUNTY COMMISSIONERS—Must file annual statement of fees, etc.

Attorney General's Office.

Mr. M. J. Bothne, County Attorney.

Dear Sir: You inquire whether it is necessary for county commissioners to file with the county auditor an annual statement of their fees, gratuities and emoluments received by them in connection with their official work.

Your question is answered in the affirmative. Section 603, R. L. 1905, provides fo rthe filing of such statement "by every county official," and there is no escape from the conclusion arrived at.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1909.

102

COUNTY OFFICERS—Member of board of audit cannot delegate his powers to another.

Attorney General's Office.

August G. Obernolte, Esq., County Treasurer.

It is the holding of this office that the chairman of the board of county commissioners, being a member of the board of audit, must act himself on

such board of audit and cannot delegate his duties to any other person as a substitute or otherwise.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 23, 1910.

103

COUNTY OFFICERS—Eligibility to hold office by appointment.

Attorney General's Office.

William M. Erickson, Esq., County Attorney.

Dear Sir: You have submitted the following oral statement and query to this department:

A certain person otherwise qualified moved into and became a resident of Goodhue county on July 28, 1910. The present county superintendent of Goodhue county has resigned and the board of county commissioners are in session for the purpose of making an appointment under the statute to fill out the unexpired term. The resignation in question is to take effect on October 1st next, and naturally the appointment will cover the unexpired term beginning on October 1st next.

You inquire whether it is competent for the board to appoint the said person who became a resident of Goodhue county on July 28th, to the office of county superintendent.

The question involves a consideration of section 7 of article VII of the state constitution which reads as follows:

"Every person who, by the provisions of this article, shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this constitution, or the constitution and laws of the United States."

It appears from the statement of facts above set forth that by October 1st, the person in question will have been a resident of Goodhue county more than thirty days. In the case of Taylor vs. Sullivan, 45 Minn. 309, it was held under the constitutional provision in question that a person who was not eligible at the time of the election to the office of county attorney was not rendered eligible to the said office because, at the time he was to enter upon the office and hold the same, he had become eligible.

In this connection I call your attention to the following exerpt:

"This (constitutional provision) was intended as a restriction, and it has the effect of a constitutional declaration that only such persons as by the provisions of this article are entitled to vote shall be eligible to any elective office."

Taylor v. Sullivan, supra, 311.

The office of county superintendent is an elective office, and in my opinion the rule as above set forth obtains in the case of an original election to the office and in the case of an appointment to fill a vacancy.

It accordingly follows that the person in question is not eligible to appointment now to the office of county superintendent of Goodhue county for the reason that he has not been a resident of Goodhue county for thirty days, and you are so advised.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 18, 1910.

104

COUNTY OFFICERS—County commissioner may file as candidate for county auditorship.

Attorney General's Office.

Mr. J. J. Jacobson.

Dear Sir: In your favor of August 4th you state that you hold the office of county commissioner, and that you have recently filed for county auditor.

You ask whether the fact that you are county commissioner legally prevents you from so filing, and also whether, in view of the fact that you are chairman of the county board, and, as such, a member of the county canvassing board, you are thereby prevented from becoming a candidate for county auditor.

Replying thereto, I beg to advise that both your inquiries are answered in the negative. In the first place, it is a long call many times from nomination to election, and on the other hand, if you be nominated at the primary election and should be elected at the general election, the county canvassing board is composed of the auditor, the chairman of the county board and two justices of the peace—any three of whom have power to act.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 9, 1910.

105

COUNTY OFFICERS—Compensation of county surveyor.

Attorney General's Office.

Mr. Chas. E. Leith.

Dear Sir: The law with regard to the payment of county surveyors now permits them to receive $5.00 a day, when the county board so decides, and to be reimbursed for the necessary expenses. (See chapter 303, G. L. of Minnesota, 1909.)

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 9, 1910.

106

See 129 Minn 359

COUNTY OFFICERS—Duration of term of county commissioner appointed to fill vacancy.

Attorney General's Office.

Mr. Jno. W. Hopp.

Dear Sir: This office has concluded to adhere to the very well considered opinion of Attorney General Young, by which he overrules his own opinion that a county commissioner, holding by appointment, continues in office until the expiration of the term of the person in whose place he was appointed, in cases in which an appointment was made during the first twenty-one months of the term of a county commissioner.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 3, 1910.

107

COUNTY OFFICERS—Woman may be appointed as deputy county auditor.

Attorney General's Office.

Mr. T. L. Phelps, County Auditor.

Dear Sir: I beg to acknowledge receipt of your favor of July 25th, in which you ask whether, as county auditor, you may appoint a woman to act as deputy county auditor.

I reply thereto I beg to advise that in my opinion your inquiry is to be

answered in the affirmative. The office is appointive, and I know of no reason why a woman is not eligible thereto, providing she he otherwise qualified.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

July 28, 1910.

108

COUNTY OFFICERS—Powers and duties of vice chairman of county board.

Attorney General's Office.

W. H. Hamlin, Esq., County Auditor.

Dear Sir: In reply to your letter of April 7th I have to say that the duties of the vice chairman of the county board are to perform the duties of the chairman in case of his absence or incapacity. The word absence in this connection means the failure of the chairman to be at his post of duty at a time when some duty must be performed by him as chairman or else some substantial injury or inconvenience is to be suffered by the public, or possibly by some individual specially interested. For instance, the chairman of a county board might be present at a time when it is required that the board should meet, and yet refuse to sit as chairman. In this case the vice chairman should act, even in the bodily presence of the chairman. On the other hand, the vice chairman should not act in place of the chairman when the chairman will be present to act within a reasonable time after action might properly be taken; for instance, if, at the time county warrants might be signed by the chairman he should be on his way to the county seat or coming to the county seat, without unreasonable delay, then the vice chairman should not act. A great deal has to be left to discretion, but the general rule is as I have stated it.

If the chairman of the board resides at a distance, and does not appear for the purpose of signing warrants or other papers requiring his signature, within a reasonable time, all things considered for the doing of such acts, or if he signifies his intention not to be present and to attend to such duties then the vice chairman may properly act. It would be well for the vice chairman not to act on the first day on which the chairman might act in any matter, but I would think that after one day's delay the vice chairman might properly act unless some unusual circumstances arose indicating the intention of the chairman to act as soon as possible.

This office has held that the county board of audit is an independent body, and that the deputies of various members could not act for them on such board. Following the logic of these holdings I am constrained to give it as my opinion that the vice chairman of the county board is not a member of and cannot act on the county board of audit even though the chairman of the county board be absent therefrom or incapacitated to perform his duties as such member.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

April 11, 1910.

109

COUNTY OFFICERS—Clerk hire.

Attorney General's Office.

L. O. Myhre, Esq.

Dear Sir: In reply to your letter of January 13th, which has been referred to me for answer, and which inquires whether a county officer may be allowed to incur an obligation for clerk hire in addition to what is authorized by statute, I have to say that he may do so in case of absolute necessity, and the question of necessity is to be passed upon by the county board as a matter of fact when the bill for such services comes before the board. If it was within

the possibility of an officer of ability and capacity to have done the work of his office with the assistance prescribed by law, he is not permitted to employ further help.

Yours truly,
LYNDON A, SMITH,
Assistant Attorney General.

Jan. 10, 1910.

110

COUNTY OFFICERS—Compensation of until successor qualifies.

Attorney General's Office.

Mr. John Bouck.

Dear Sir: You state that you were county treasurer of your county and that your term of office expired on January 4th, 1909; that your successor qualified on January 5th, you serving the first five days in January of this year. You ask whether you are entitled to pay for the five days in question, or whether the new treasurer should be paid therefor.

Replying, I have to say that it is the opinion of this office that you are entitled to the pay for the days in question. The new treasurer did not perform the duties of the office during those days and hence is not entitled to pay therefor. You held the office until your successor was qualified and hence are entitled to one-sixth of the salary for the month of January.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 11, 1909.

111

COUNTY OFFICERS—No compensation payable to heirs of deceased officer after his death for interim before qualification of successor.

Attorney General's Office.

Mr. Wilhelm Michelet, County Attorney.

Dear Sir: You state that your county treasurer died on June 2, 1909, and that his successor did not qualify until June 19, 1909, and you inquire as to whether the county treasurer's salary for the time between the two above named dates may be paid by the auditor upon a warrant to the heirs of the former treasurer.

Your question is answered in the negative. No salary can be paid to any one as county treasurer for the time stated.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 31, 1909.

112

COUNTY TREASURER—Duties of—When taxes are paid by municipal orders.

Attorney General's Office.

A. J. Anderson, County Treasurer.

Dear Sir: I quote from your letter of March 10th as follows:

"Referring to section 882 Revised Laws of Minnesota for 1905, does this mean that the treasurer shall receive town, school and county orders for taxes and shall hold the same in his possession as cash until such order or warrant is paid according to date it was registered, or will these have to be paid after

the first apportionment that such town, school, or county receives? In other words, will these warrants or orders be paid at once regardless of prior warrants or orders?"

In answer you are advised that the orders in question pursuant to said statute are legal tender in payment of taxes to the amount of the tax for the fund in question, and are entitled to priority without regard to the number of such orders.

Your query is answered in the affirmative.

GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 16, 1910.

113

CLERK OF COURT—Fees.

Attorney General's Office.

B. J. Reck, Esq.

Dear Sir: Replying to your letter of February 1st, 1909, referred to me by the attorney general, I have to say that you are required by law to report to the county all the fees earned by you or by the clerk of the court under and by virtue of section 2694, Revised Laws of Minnesota for 1905. This question has been up several times, and everything must be reported which is covered by that fee bill, even though the clerk of court does not collect for the services rendered. The difference between the total of such fees and one thousand dollars is the sum to be paid by the county.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Feb. 3, 1909.

114

CLERK OF COURT—Duties in issuance of marriage license.

Attorney General's Office.

C. K. Semling, Clerk of Court.

Dear Sir: In answer to your favor of recent date, you are advised that if any female intending to marry shall be under age, and shall not have had a former husband, in case her parents are dead and she has no guardian, a license to marry shall not be issued unless a guardian is appointed and said guardian shall personally give consent before the clerk of court, or such consent shall be duly certified under the hand of such guardian attested by two witnesses, one of whom shall appear before such clerk and make oath that he saw the guardian subscribe or heard him acknowledge the same.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Sept. 8, 1909.

115

CLERK OF COURT—Not entitled to fees in personal property tax matters.

Attorney General's Office.

Mr. H. P. Bengtson, County Attorney.

Dear Sir: You submit the following inquiry:

"Is the clerk of district court entitled to 25 cents for issuing personal property tax warrants that have been collected by the sheriff; and, when citation

is issued and judgment entered and paid to the county, is he entitled to $1.50 for his services for the same?"

Your query is answered in the negative. The salary provided for by chapter 335, G. L. 1909, covers all services rendered to and paid for by the county, except in real estate tax proceedings. The services of the clerk in personal property tax proceedings are rendered for the county and before the salary law was enacted the clerk was not dependent upon the collection of the judgment for his fees, but the county paid them. In view of the fact that there is specific reference allowing the clerk fees in real estate tax proceedings and an omission in the laws covering his services in personal property tax proceedings, I am satisfied the intention of the legislature was that such services were covered by the salary. In my opinion, however, it is the duty of the clerk to tax his costs and insert them in the judgment and when the same are paid they belong to the county. Sec. 897, R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 15, 1910.

116

CLERK OF COURT—Compensation of under old law for services rendered in matter of vital statistics.

Attorney General's Office.

H. P. Bengtson, Esq., County Attorney.

Dear Sir: You ask:

"Under chapter 23, General Laws of Minnesota for the year 1909, is the clerk of the district court entitled to a filing fee of five cents for filing each return of birth and death, in addition to the fee of ten cents for recording the same?"

In answer to this question I beg to advise you that we are of the opinion that the same should be answered in the negative. It is to be noted that the statute requires the filing of a record, and not a number of records; that is, the statute does not contemplate the filing of a separate record for each birth and death to be recorded.

I also beg to call you attention to the fact that all such services rendered by the clerk subsequent to April 21, 1909, are compensated for by the salary which he receives from the county pursuant to the provisions of chapter 335, Laws 1909.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

July 15, 1910.

117

CLERK OF COURT—Entitled to per diem for serving on board of auditors—Salary of.

Attorney General's Office.

S. B. Rockey, Esq., Clerk of District Court.

Dear Sir: You are advised that you, as clerk of the district court, are entitled to receive and retain $3.00 per day while acting upon the county board of auditors in making the examinations required by law. You are not entitled to 25 cents each on tax warrants issued for personal property taxes.

In case your salary and fees received by you as clerk of court for services not covered by your salary do not amount to $1.000 per year, then under the

provisions of paragraph 49 of section 2694, R. L. 1905, you are entitled to receive from the county an amount equal to the difference between such salary and fees and one thousand dollars.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 2, 1910.

118

CLERK OF DISTRICT COURT—Salary and fees.

Attorney General's Office.

Mr. D. B. McAlpine, County Attorney.

Dear Sir: Your favor of January 22d to the attorney general before me for attention.

You state that the clerk of your district court has applied to the county board for an allowance of $252.54, the same being the difference between $1,000 and the amount received by him in fees and salary for the year 1909. You inquire as to whether or not he is entitled to receive the amount stated. Your inquiry is to be answered in the affirmative.

If the salary received by the clerk of court in any county falling within classes A, B, C and D mentioned in chapter 335, G. L. 1909 (and it appears your county comes within one of these classes), together with the fees received by him in real estate tax proceedings and fees received from private persons and corporations aggregate less than $1,000, then in such cases, under section 2694, R. L. 1905, subdivision 49, he is entitled to receive from the general revenue fund an amount equal to the difference between such aggregate and $1,000.

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 27, 1910.

119

CLERK OF COURT—Fees in real estate tax proceedings.

Attorney General's Office.

L. K. Sexton, Esq., County Attorney.

Dear Sir: In answer to your favor of recent date, you are advised that in my opinion chapter 335, G. L. 1909, which is an act fixing the salaries of clerks of the district court of certain counties, does not include the fees of the clerk of court on real estate tax proceedings.

In other words, the clerk of court is entitled to his fees in real estate tax proceedings including his fees for making a return to the supreme court in real estate tax proceedings which have been appealed.

GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 12, 1910.

120

CLERK OF COURT—Compensation of deputies appointed for sessions of court.

Attorney General's Office.

W. G. Weldon, Esq., Clerk of the District Court.

Dear Sir: You inquire as to the construction to be placed on S. F. No. 275, now found in chapter 355, G. L. 1909, and I have to inform you that it is the

opinion of this department that deputies appointed by order of the court to attend during court sessions are entitled to $3 per day for such attendance, in the same manner as has heretofore prevailed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1909.

121

COMMON CARRIERS—Cannot discriminate between patrons.

Attorney General's Office.

Clerk of the Village of Columbia Heights.

Dear Sir: Your letter of July 25th is before me for answer.

You ask the following question:

"Would it be unlawful for the Northwestern Telephone Company to contract with patrons of Columbia Heights at any rate differing from those in Robbinsdale, said rate to be fixed by joint agreement of village council and Northwestern Telephone Company, so long as all patrons in Columbia Heights had same rate."

In reply to this question I have to say that section 2928, R. L. 1905, is as follows:

"Persons and corporations engaged in the business of transmitting messages by telegraph lines are common carriers, and as such shall serve all persons, without discrimination or preference, for reasonable compensation, and every contract, notice, or condition stipulating for exemption from liability for the consequences of their neglect shall be void."

This section of the Revised Laws is a state regulation of the business of telephone companies. Being by its terms common carriers they must treat all persons alike under similar circumstances. The fact that different persons live in different villages is not material in matters subject to regulation by the state and which actually have been regulated by its laws. Consequently the Northwestern Telephone Company must treat its patrons alike in the matter of rates without reference to the municipalities in which they live.

It seems to be settled law that a village has not the right of fixing telephone rates, but that this right belongs in the state and may be exercised by the legislature. The opposite has been claimed but has never been held by any court of last resort so far as I have been able to find.

In a recent case in Wisconsin the supreme court of that state said:

"The argument in behalf of the city is based entirely upon the power of the city to regulate and remove encroachments on its streets and to regulate trade and commerce. The fixing of maximum charges for use of telephones or service in the city is said to be a lawful police regulation to prevent extortion. That is based upon the assumption that the power of police control possessed by the city is unlimited. That is not the fact. Such power is inherent in the state, and is a necessary attribute of sovereignty. It does not pass to the minor divisions of government except by express grant, or by necessary implication from other powers granted."

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 10, 1910.

122

CONSTABLE—Removal of.

Attorney General's Office.

Fred L. Hutchins, Esq.

Dear Sir: In replying to your letter of January 18 relative to alleged misconduct of a constable, I have to say that there is no specific provision for the removal of a constable for the failure to perform his duty. Matters of the

kind you mention should be laid before the next grand jury, and complaint can be made to a justice of the peace and an examination had as to offenses committed by him. I might further call your attention to the law that every office becomes vacant when the holder of that office is convicted of any offense involving a violation of his official oath. Should you prosecute your constable and be convicted that conviction would create a vacancy in such office.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 22, 1909.

123

CORPORATIONS—Endorsements and approval of certain officers must be published with articles of incorporation.

Attorney General's Office.

Mr. W. L. Kraemer.

Dear Sir: Answering your inquiry, I have to advise that in my opinion the publication referred to in section 2851, R. L. 1905, contemplates the publication not only of the articles of incorporation but also the approval of the public examiner and the endorsement of the secretary of state and register of deeds.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 3, 1909.

124

CORPORATIONS—Classification of.

Attorney General's Office.

Hon. J. B. Galarneault, Bank Examiner.

Dear Sir: Shortly before the law organizing the banking department went into effect, your predecessor inquired of this office relative to the positions occupied by foreign corporations organized for many different purposes, including the handling of investments. ?

It is practically impossible to answer his questions exactly as they are asked, but certain principles seem to be well established with reference to the standing of such foreign corporations. Among them are the following:

1. A corporation cannot conduct several kinds of business for the doing of which corporations are differently organized or differently regulated by the statutes of Minnesota.

2. Foreign corporations are governed by the same rule in this respect as domestic corporations.

3. The articles of any corporation should show the main purpose for which it is organized, and this purpose should belong to some of the classes for which corporations may be organized in Minnesota. The corporation should be deemed to be of that one class, and subjected to the regulations prescribed for that class of corporations, and restricted to the exercise of such powers as corporations of that class may legally possess and exercise.

The company cited as an illustration was the Corporation Securities Company. So far as it appears from the letter of your predecessor, the main purpose of this company is to handle stocks, bonds and investment securities. Assuming this to be the case it would seem that this company was a corporation organized more nearly for the purposes specified in section 2845, Revised Laws of Minnesota, than for any other purpose. It may be that a full knowledge of the nominal powers of this company as stated in their articles of incorporation would lead to a different conclusion.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 1, 1909.

125

CORONER—Not entitled to fees for viewing body unless actual viewing take place.

Attorney General's Office.

Mr. P. F. Schroeder, County Attorney.

Dear Sir: You state that the coroner of your county was advised by telephone that a certain person in the northeastern part of the county had been killed and he was requested to view the body. He started for the place in question, and after having traveled about fifteen miles, was met by relatives of the deceased who informed him that the death was purely accidental, whereupon the coroner returned home, and you ask whether the coroner is entitled to fees prescribed by section 2699, R. L. 1905.

I agree with you in holding that he is not entitled to the $5 fee prescribed for viewing the body, but I am inclined to think under the circumstances it would be proper to allow him mileage at 10 cents per mile for the distance of 30 miles.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 16, 1909.

126

CRIMINAL LAW—Fraudulent conviction secured by a defendant is not "former jeopardy."

Attorney General's Office.

George Gerritz, Esq.

Dear Sir: In reply to your letter of March 12th relative to the question of the former jeopardy of a man brought before you for trial for an offense for which he had been previously fined through the action of his friend, I have to say that our supreme court has decided that—

"A conviction of a criminal offense fraudulently obtained by the offender for the purpose of protecting himself from further prosecution and adequate punishment is no bar to a subsequent prosecution for the same offense."

State v. Simpson, 28 Minn. 66.

It is within your powers to hear evidence upon the question of whether or not the conviction and fining of the man in question before he was brought before you was fair or fraudulent. When you have heard this evidence you may then decide upon it whether or not the former prosecution was fraudulent and for the purpose of protecting the defendant from further prosecution and adequate punishment.

LYNDON A. SMITH,
Assistant Attorney General.

Mar. 16, 1910.

127

CRIMINAL LAW—After commitment under sentence, the sentence cannot be suspended.

Attorney General's Office.

F. A. Alexander, Esq., County Attorney.

Dear Sir: You state that on August 15th "A" was convicted for drunkenness in the municipal court, under chapter 208, Laws of 1907, and was sentenced to sixty days in the county jail, and that he was committed and has since that time been serving his sentence.

You inquire as to whether or not a part of the sentence imposed upon him under this law can be suspended by the municipal court, the prisoner having been unconditionally sentenced to serve his time. I have the honor to advise you that your inquiry must be answered in the negative. After the pronounce-

ment of sentence, issuance of commitment by the court and incarceration of defendant thereunder, it is not competent for the committing court to suspend the sentence or any part thereof.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

128

CRIMINAL LAW—Village council has no power to fix fines to be imposed.

Attorney General's Office.

Mr. J. H. Sand.

Dear Sir: You state that upon a warrant issued by you based on a complaint charging a man with selling liquor to a minor, you imposed a fine of $50, and that before the fine was paid the village council decided that the defendant should only be fined $5. This is a matter that the village council has absolutely nothing to do with, and the fine as imposed by you should have been paid at once upon its imposition.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 31, 1909.

129

DELINQUENT TAX LIST—Requisites of publication.

Attorney General's Office.

Wilhelm Michelet, County Attorney.

Dear Sir: This office is in receipt of your favor of February 19th. It appears that in the list of real property for the county of Red Lake, on which taxes remain delinquent on the first Monday in January, 1910, covering a certain town, township and range, the year for which the taxes are delinquent is stated in a separate column, under a separate caption, in which column there is placed opposite each name of the owner and each description of the premises, the year 1908. It is here noted that the year for which the taxes are delinquent is not set forth in a separate column in the statutory form found in section 906, R. L. 1905.

In the published notice of the delinquent list in question, the printer, after printing the town, township and range, has printed in a line running across the column the following words: "Year for which taxes are delinquent, 1908." Under the above the printer then complies with the statutory form set forth in section 906 supra.

You inquire whether the publication in question in a valid one.

Your query is answered in the affirmative.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 24, 1910.

130

DISTRICT COURTS—When foreign receivers may sue.

Attorney General's Office.

W. F. Jackson, Esq.

Dear Sir: In partial reply to your questions of January 18th, I have to say:

First—We have no statute allowing foreign receivers to sue in our state courts.

Second—Our state gives the right to foreign receivers to sue in our courts by virtue of the rules of comity. See Constock vs. Frederickson, 57 Minn. 350.

Third—The supreme court does not appear to have determined as to what showing a foreign receiver must make before he may sue.

Fourth—A foreign receiver cannot sue in this state when such suit might prejudice the rights of our own citizens. See Gilbert vs. Hewitson, 79 Minn. 326.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 25, 1909.

131

DISTRICT COURTS—Appointees for the town, how paid.

Attorney General's Office.

N. J. Palmer, Esq., Clerk of District Court.

Dear Sir: In reply to your letter of June 19th, I have to say that so far as I have learned by inquiry and observation, the common practice is for clerks of court to issue certificates upon the order of the district court entered on the clerk's minutes, for the payment of officers of court appointed by the judge for the term of court, or portion of a term of court, then being brought to a close.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 25, 1909.

132

DOGS—Village council may require a license for.

Attorney General's Office.

Messrs. Forbes & Peregrine.

Dear Sirs: In your letter of July 13th you ask the attorney general the following question:

"Does a village council have power to pass an ordinance imposing an annual tax upon dogs and providing for the summary destruction of all dogs whose owners or keepers do not pay such tax?"

This office has held that a license may be imposed upon dogs by the villages of this state and dogs whose owners do not pay such license may be destroyed when found running at large.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 25, 1910.

133

DRAINAGE—Grantor in warranty deed covenants against ditch assessments.

Attorney General's Office.

Hon. George E. Perley.

Dear Sir: You request a copy of any opinion this office may have given as to the liability of a grantor in a deed containing a covenant of warranty for the protection of the grantee against a ditch assessment. I do not find that this office has ever exactly passed upon this question, but the supreme court has considered one which is very close to the one you ask and I quote so much of its opinion as throws light upon your inquiry.

"A ditch assessment properly levied in an action or proceeding actually pending to lay out and construct a ditch takes precedence over the mortgages given by the owner of the land prior to the commencement of the ditch proceedings. The general rule is laid down by Dunnel in his 'Minnesota Tax Law' as follows:

" 'The lien created by a special assessment is paramount to all prior private liens of whatever nature. It extends over all interests in the land and is coextensive with the entire interest benefited, but its existence and extent depend entirely on statute.'

"See Morey v. City of Duluth, 75 Minn. 221, 226.

"Lawton v. Barker, 117 N. W. 249."

I do not see any reason why a person who grants the title to a piece of land should not protect his warranty against ditch liens which had attached to the land at the time of the delivery of the deed.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 14, 1910.

134

DRAINAGE—Meandered lake, drainage of.

Attorney General's Office.

Mr. S. H. Stauffer.

Dear Sir: You inquire if you would have the right to drain a meandered lake with a private ditch.

Your question is answered in the negative. Section 5146, R. L. 1905, provides as follows:

"Every person who shall drain or cause to be drained, or shall attempt to drain in any manner any lake, pond or body of water which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a gross misdemeanor, and punished by a fine of not less than twenty-five dollars nor more than five thousand dollars. * * * * and none of the provisions of this section shall apply to any case where the county board shall drain such body of water under the provisions of law."

Chapter 230, G. L. 1905, provides the powers of a county board in relation to meandered lakes. Your attention is particularly called to section 1 of this chapter, which prevents the draining of meandered lakes by the county board—

"Except in case such lake is normally shallow and grassy and of a marshy character, or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 5, 1909.

135

DRAINAGE—Compensation of county auditor in drainage matters.

Mr. J. B. Lemire, County Auditor.

Dear Sir: The amount of compensation that shall be allowed to a county auditor for service rendered in ditch proceedings may not exceed reasonable compensation, and the question as to what is reasonable, in the first instance, rests within the sound discretion of the county board.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 20, 1909.

136

DRAINAGE—Priorities of lien of assessments.

Attorney General's Office.

Eric L. Thornton, Esq., County Attorney.

Dear Sir: In reply to your letter of March 20th relative to the defense interposed to the payment of certain real estate taxes, I have to say that a ditch assessment properly levied in an action or proceeding actually pending to lay out and construct a ditch takes precedence over mortgages given by the owner of the land prior to the commencement of the ditch proceedings. The general rule is laid down by Dunnell in his "Minnesota Tax Law" as follows:

"The lien created by a special assessment is paramount to all prior private liens of whatever nature. It extends over all interests in the land and is co-extensive with the entire interest benefited; but its existence and extent depend entirely on statute."

See Morey vs. City of Duluth, 75 Minn. 221 Lawton vs. Barker, 117 N. W. 249.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 23, 1909.

137

DRAINAGE—Payment of outstanding warrants when ditch not established.

Attorney General's Office.

Norman E. Peterson, Esq., County Attorney.

Dear Sir: This office is in receipt of your favor of recent date. I quote from your letter as follows:

"In February, 1903, one O. K. Helle and certain other persons filed with the county auditor of Freeborn county a petition signed by them, praying that a certain ditch be established with the proper description of said proposed ditch. Due and legal proceedings were had with reference to the statutory requirements in laying said ditch to and until the final hearing before the board of county commissioners with reference to said matter. This final meeting was held on the 26th day of May, 1903, when the final order was made. The district court, in an injunction suit brought by an objector, held the order to be without jurisdiction, and void. The petitioners proceeded no further in attempting to get the ditch in question laid, and subsequently the county brought action on the petitioner's bond to recover the preliminary expenses incurred by it by reason of the filing of the petition. The supreme court in this case held that the county, havini lost jurisdiction of the meeting of May 26, 1903, by reason of the failure to properly adjourn a prior meeting, was not entitled to recover as against the bondsmen. (Freeborn County vs. Helle, 117 N. W. 153.) In this matter the county expended some $500.00 in preliminary expenses and has never collected any part of it from the petitioners or otherwise.

County warrants were issued against county ditch No. 8, that being the number of this particular ditch, but none of these warrants have been paid, as the treasurer has never had any funds to pay the same."

On the above statement of facts you submit the following queries:

(1) "Can the county pay out of its general funds these outstanding warrants?"

(2) "There are no funds on hand in the county treasury belonging to county ditch No. 8. Can money be appropriated by the board from any of its funds to the general ditch fund, and made available to pay these outstanding warrants?"

(3) "Would the fact that these warrants are drawn on a particular fund relieve the county as to payment of the indebtedness provided no money came into such fund?"

Your first query is answered in the affirmative. In my opinion the warrants in question were made obligations of the county when the same were issued.

An answer to your second query involves, in my opinion, merely a question of bookkeeping. In view of the fact that the ditch funds in your county are kept separate, it would appear that sufficient money might be set aside from the general revenue fund of the county to ditch fund No. 8, to take up the outstanding warrants against ditch fund No. 8. This necessarily follows from the answer which I have given to query No. 1.

Section 18 of chapter 230, G. L. 1905, provides that the board of county commissioners may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can properly be used therefor into the several ditch funds.

Your third query is answered in the negative.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 2, 1909.

138

DRAINAGE—Limitations on issues of ditch bonds.

Attorney General's Office.

Louis Hallum, Esq., County Attorney.

Dear Sir: In reply to your inquiry contained in your letter of January 14th, I have to say that this office answers the first inquiry, to-wit: "Is it necessary to advertise for bids for county ditch bonds when borrowing from the state?" in the negative.

Your second inquiry is answered as follows: The limit of the amount of ditch bonds a county may issue is the amount that has been assessed against and is a lien upon the lands benefited by the ditch for the construction of which the bonds are issued. The ten per cent limitation provided for in section 280, R. L. 1905, does not apply to ditch bonds. The school funds are not loaned upon any bonds the issuance of which creates a total bonded indebtedness of any county in excess of fifteen per cent of the assessed valuation of the taxable real property of the municipal corporation issuing such bonds.

Your question as to whether there is any way in which disbursements for a non-resident pauper can be recovered from the state of his residence, must be answered in the negative.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 15, 1909.

139

DAIRY LAWS—Cream must contain 20 per cent of butterfat, though not sold for domestic use.

Attorney General's Office.

Mr. Walter A. Plymat, County Attorney.

Dear Sir: I beg to acknowledge receipt of your letter inquiring whether or not cream must be sold for domestic uses only in order that the seller may be within the purview of the law forbidding the sale of cream containing less than 20 per cent butterfat.

I have to say that such is not a correct interpretation of the law. We think that every person who sells cream for any purpose containing less than 20 per cent butterfat is clearly an offender against the dairy laws of the state.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 25, 1910.

140

DRAINAGE—Certified checks accompanying bids.

Attorney General's Office.

A. A. Miller, Esq.

Dear Sir: In answer to your favor of February 25th, you are advised that under and pursuant to section 14 of chapter 230, G. L. 1905, which section remains the same in the several drainage laws, a bidder for a ditch contract may bid upon the "work as one job, and also for any one or more of the sections," and the bid must be accompanied by a certified check "for not less than 10 per cent of the bid."

This means 10 per cent of the bid for the whole work if that is bid for, and if certain sections are bid for, then 10 per cent of the bid therefor.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 28, 1910.

141

DRAINAGE—Powers of county board.

Attorney General's Office.

Anton Thompson, Esq., County Attorney.

Dear Sir: You state that of date March 15, 1910, the board of county commissioners of Otter Tail county established a county ditch under and pursuant to chapter 230, G. L. 1905, as amended; that the description of the ditch as established is incorrect, indefinite and erroneous; that by correction thereof and by making the same comformable to the facts, said description can be made definite and valid.

You inquire whether the board of county commissioners, at a meeting to be held on March 22, 1910, have the power to file an order nunc pro tunc in the premises, re-establishing the ditch, making the description conformable to the definite and valid.

In answer you are advised that the county board have not lost jurisdiction and have the power to make the order in question.

GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 19, 1910.

142

DITCHES AND DRAINS—Bonds under repealed laws.

Attorney General's Office.

A. O. Houglum, County Auditor.

Dear Sir: You state that certain outstanding drainage bonds will mature in 1919; that the same were issued under and by virtue of chapter 98 of the General Laws of 1887, which has been repealed.

You inquire what effect the repeal of said chapter has upon the bond issue in question.

In answer I call your attention to section 793, R. L. 1905, which reads as follows:

"793. Laws as to outstanding bonds continued. Notwithstanding the repeal by the Revised Laws of statutes relating to bonds theretofore issued by any municipality, the obligations of such municipalities thereunder, and the duties of all public officers in any way relating thereto, shall continue in respect to such bonds until the same are fully paid."

I also call your attention to section 5512, R. L. 1905, which reads as follows:

"5512. Effect of repeal—Whenever a law is repealed which repealed a former law, the former law shall not thereby be revived, unless it is so specially

provided, nor shall such repeal affect any right accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the law repealed."

It accordingly follows that the outstanding bond issue is valid and levies must be made to meet the same.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 17, 1910.

143

DITCHES AND DRAINS—Attorney's fees.

Attorney General's Office.

J. J. Stennes, County Auditor.

Dear Sir: This department is in receipt of your favor of recent date covering the validity of a claim filed with you against Chippewa county, in favor of James Haukland and W. C. Thompson, said claim covering attorney's fees and expenses paid to C. A. Fosnes in ditch proceedings involving the laying out and establishment of county ditch No. 11 of Chippewa county. You inquire whether the claim in question is a legal charge against your county.

In answer I call your attention to opinion No. 48, rendered by the undersigned, bearing date December 28, 1907, of the attorney general's report for the year ending 1908. Said opinion holds in effect that it is competent for the county board to allow a claim for attorney's fees in county ditch proceedings. You are accordingly advised that it is competent for the county board to allow the claim in question, provided the same is reasonable in the opinion of the board, and that the same shall be paid out of the ditch fund and recouped by assessments against the benefited lands. In short, the claim in question is a part of the expenses of the ditch assessible against the land.

GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 27, 1910.

144

DRAINAGE—Abatement of interest permitted.

Attorney General's Office.

J. E. Palmer, County Attorney.

Dear Sir: This department is in receipt of your letter of April 15th. It appears therefrom that in January, 1909, the county board of Martin county made an order establishing county ditch No. 11. In April following the auditor filed his lien statement establishing liens aggregating $60,000. Within the year thereafter the county paid out about $12,000. This includes all costs and all sums due the contractor to date. The contractor is not in default. No bonds have been sold. The land owners assessed for the ditch have made application to the county board for abatement of four-fifths of their interest for the first year.

You submit the following queries:

1. Has the board the power to grant such abatements?

2. Shall the auditor make the notation of abatement on the current tax records or on the tax records made up for the taxes of 1910?

In answer to your first query I call your attention to section 8 of chapter 469, G. L. 1909, which as far as material reads as follows:

"Provided, that in case of delay in the construction of the ditch or in the proceedings therefor, or in the payment therefor to the contractor, the county board, or the judge of the district court, as the case may be, may each year during such delay, except after ditch bonds for such ditch have been issued and sold upon verified petition therefor in such ditch proceedings by any party interested and upon proper proof of facts, order the abatement of such proportion of the interest on such liens due that year as the cost and expense of such

ditch paid to date bears to the total estimated cost of such ditch, including the cost of preliminary proceedings, and it shall thereupon be the duty of the county auditor to make such entries and notations in his books as is necessary in complying with such order of abatement."

It is clear that the intention of the legislature by this provision was to provide that interest upon the unpaid portion of the cost and expenses might be abated. The proportion of interest to be abated, is by mistake stated inversely in the statute. I am disposed to construe the statute so as to carry out the intention of the legislature.

State vs. Small, 29 Minn. 216.

Grimes vs. Bryne, 2 Minn. 89, (Gil. 72).

Your first query is answered in the affirmative.

In answer to your second query you are advised that the abatement of interest in question shall be granted covering the taxes for the year 1909 as the same are extended upon the tax rolls which are now in the hands of the treasurer for collection. I think the practice better be to have the taxpayer obtain a statement from the auditor showing the abatement in question, and on presentation thereof to the treasurer, the treasurer is authorized to honor the same, making his receipt and the notations upon his records accordingly.

If there be any payment of interest by a land owner before an application for abatement and refundment is made, I think power exists in the county board under this statute to order a refundment, in which case the interest would be refunded out of the ditch fund.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 20, 1910.

145

DRAINAGE—Of highway—Liability of town.

Attorney General's Office.

Frank Maack, Esq.

Dear Sir: In answer to your favor of June 7th, you are advised that the town having constructed a ditch along the graded portion of a highway and within the limits of the same, is required to keep the same open and thus avoid flooding of abutting lands.

Peters vs. Town of Fergus Falls, 35 Minn. 549.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 16, 1910.

146

DRAINAGE—Township ditch law of 1909 valid.

Attorney General's Office.

Edw. C. Farmer, County Attorney.

Dear Sir: In answer to your favor of June 10th, you are advised that in the opinion of this department chapter 127, G. L. 1909, the township ditch law, is constitutional. The act in question was drawn with a view to avoiding the weakness of chapter 191, G. L. 1907, a township drainage act which was declared unconstitutional in State ex rel. vs. Board of Supervisors, 102 Minn. 442.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 14, 1910.

147

DRAINAGE—Interest on liens.

Attorney General's Office.

J. E. Phillips, Esq., County Attorney.

Dear Sir: In your favor of recent date you state that on December 27, 1909, the county auditor filed with the register of deeds of your county the lien statement provided for by chapter 469, G. L. 1909, in the matter of a judicial ditch. You state that some of the land owners desire to pay the ditch assessments at once to avoid interest. You inquire:

"1. Can payment be so made, and is our county auditor authorized and required to accept it?

"2. Since the county has become obligated for the interest accruing upon the amount of every property owner's lien when paid in fifteen annual instalments, how is the interest to be computed by the auditor if he accepts the payment of the whole amount now or at some subsequent time within the fifteen years?"

Your first query is answered in the affirmative. Section 8, chapter 469, supra.

In answer to your second query you are advised that the ditch assessments bear interest at not exceeding six per cent from the date of the filing of the lien statement in the office of the register of deeds, and upon payment of said assessments in full or in part from time to time the interest is to be figured to the time of payment.

It is not the theory of the ditch law that the amount due on the bonds from time to time and the amounts paid in ditch assessments and interest shall absolutely balance. The county board must finance the situation as best it may, the right existing in the land owners to pay the amount due in ditch assessments with accumulated interest at any time.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 24, 1910.

148

DRAINAGE—Viewers are only entitled to per diem of $3, even if several ditches are viewed in one day.

Attorney General's Office.

Mr. W. E. Ebling.

Dear Sir: I quote from your letter as follows:

"A, B and C are appointed as viewers of two county ditches. They proceed to view both ditches at the time especified in the order of the county auditor and complete the viewing of both ditches in one day. Query 1: Are said viewers entitled to one day's pay for each ditch. The hearing on both ditches is set for the same day and the county board requires the presence of said viewers. Query 2: Are said viewers entitled to one day's pay on each ditch?"

In answer I call your attention to section 12 of chapter 469, G. L. 1909, which, so far as material, reads as follows:

"To each viewer the sum of $3 per day for every day necessarily engaged in viewing ditches, in traveling therefor, and in making up their reports, and actual and necessary expenses."

Both of your queries are answered in the negative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 11, 1910.

149

DRAINAGE—Penalties do not attach to unpaid installments of ditch liens.

Attorney General's Office.

H. J. Maxfield, Esq., County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that the effect of section 8, chapter 469, G. L. 1909, is to relieve ditch liens from the penalties which attach to real estate taxes. They theory of this is that, in order to recoup the ditch fund for the payments of outstanding bonds, the installments of the ditch liens and interest are sufficient without added penalties.

Where interest is provided for after a sale of land for taxes, including ditch liens, this interest on redemption goes to the holder of the tax certificate.

You are also advised that the effect of section 8, supra, is to relieve from penalties all unpaid installments in regard to ditches constructed under laws referred to in the title of chapter 469, supra.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 30, 1910.

150

DRAINAGE—Expenses of litigation a proper charge in drainage proceedings.

Attorney General's Office.

Mr. N J. Bothne, County Attorney.

Dear Sir: I quote from your letter of August 20th, as follows:

"The contractor for one of the county ditches in this county brought an action of mandamus against the county board to compel them to approve the engineer's certificate of the completion of said ditch, the county board having refused to approve the same on the ground that the ditch had not been constructed and completed according to plans and specifications. Issues were framed and the action was tried in court and lasted several days. The members of the county board attended court and testified in said proceedings.

"Questions:

"1. Are the members of the county board entitled to pay for so attending court and testifying in said mandamus proceedings?

"2. Is the county attorney entitled to compensation, under the provisions of section 12 of chapter 469 of the General Laws for the year 1909, for representing the county board in said mandamus proceedings and trying and conducting the same in court?"

In answer to your first query, I call your attention to section 12 of chapter 469, G. L. 1909, which, so far as material, reads as follows:

"Al lother fees, per diem, compensation and expenses provided for in this act, and such other legal services or expenses as may be necessary, shall be fixed, audited, allowed and paid upon the order of the county board * * *."

A suit of the kind set forth in your letter may be inevitable in the construction of a public drain. I do not think the members of the county board should be required to attend court and give testimony in such a proceeding without compensation therefor. It is a necessary expense in the course of the ditch proceedings, and I think may be properly paid out of the ditch fund. The amount to be allowed, however, is the sum of one dollar per day, and mileage—that is the usual witness fees.

Your second query is answered in the affirmative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 29, 1910.

151

DRAINAGE—Ditch contractor not required to build bridges on public highways unless required by his contract.

Attorney General's Office.

Mr. H. Kulle.

Dear Sir: A drainage company that has a contract for constructing a public ditch, is not required to build bridges over such ditches where the same intersects public highways, unless such construction is called for in the contract that the company has entered into. The general practice is for an award to be made by the county board in case of county ditches, or the court in case of judicial ditches, to townships through which a ditch may run intersecting highways, and by means of such award, the townships are supposed to be compensated for building the bridges that are necessary.

Yours truly,
CLIFFORD L. HILTON.
Assistant Attorney General.

Aug. 3, 1910.

152

DRAINAGE—Certain expenditures not authorized.

Attorney General's Office.

Mr. A. M. Hopeman, City Engineer.

Dear Sir: In answer to your letter of September 22d, you are advised that the board of county commissioners are not authorized to allow an account for five pairs of hip boots used for a few days by the men employed in surveying a drainage ditch, said boots belonging to the men and not to the county.

You are also advised that the men employed in and about the survey of a drainage ditch are paid by the day and may not be allowed for overtime.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Sept. 26, 1910.

153

DRAINAGE—Town ditch may not be laid in towns in adjoining counties; council may not act conjointly with town board.

Attorney General's Office.

Sam G. Anderson, Jr., County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that a town ditch may not be laid in two adjoining towns situate in different counties, under chapter 127, G. L. 1909. A ditch extending into more than one county must be laid as a judicial ditch.

You are also advised that in case a town ditch, under and pursuant to chapter 127, G. L. 1909, affects land lying within a municipal corporation, it is not competent for the council to act in conjunction with the town board.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 9, 1909.

154

DRAINAGE—Ditch liens may not be changed after bond issue and tax is paid.

Attorney General's Office.

D. P. Carney, County Auditor.

Dear Sir: In answer to your favor of recent date, addressed to this department, you are advised that it is not competent for the county board to act under section 8 of chapter 469, G. L. 1909, and provide thereunder for a fifteen (15) year period for the payment of ditch liens, in a case where action has

theretofore been duly taken, under section 22, chapter 230, G. L. 1905, and the ditch lien covering a ten (10) year period has been created, such lien extended, taxes paid thereunder, and county ditch bonds issued on the basis thereof.

In my opinion section 8 of chapter 469, supra, covers cases where initial action is taken in the premises and does not empower the county board to undo antecedent action taken and consummated under the previous law.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 10, 1909.

155

DRAINAGE—Rights and duties of town and ditch contractor in matter of bridges.

Attorney General's Office.

J. L. Henjum, Chairman.

Dear Sir: In answer to your favor of recent date, you are advised that it is the duty of the local town to provide temporary bridges in the case of a county ditch traversing a highway in said town, and that it is not the duty of the ditch contractor so to do.

The town is to be protected in the premises as against such expenses, by an allowance of damages by the county, on account of the construction of the ditch.

You are also advised that a ditch contractor in crossing a public highway in the construction of a ditch may temporarily interfere with the traffic upon such highway, but the public highway in question shall not be blocked an unreasonable time.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 8, 1909.

156

DRAINAGE—County Board may change assessment without re-reference to viewers.

Attorney General's Office.

F. G. Sasse, County Attorney.

Dear Sir: In your favor of recent date you call attention to section 10 of chapter 30, G. L. 1905, commonly called the county ditch law, which as far as here material, reads as follows:

"* * * provided that in case the viewers' report is found to be defective or erroneous in any particular, the board of county commissioners shall have authority to remedy such defect, by referring to such viewers, if necessary, or otherwise * * *."

You inquire whether under the provision above set forth the board of county commissioners have authority to change the assessment of benefits and damages, as shown by the viewers' report without referring the matter back to the viewers.

In my opinion it is competent for the board of county commisisoners, upon the hearing respecting the report of the viewers, in their discretion, to change an assessment of benefits or damages, and it is not necessary, absolutely, to re-refer the original report of the viewers for a corrected or changed assessment.

In short, the board has authority under the statute, on its own motion to raise or lower assessments of benefits or damages.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 21, 1909.

157

DRAINAGE—Reassessment of benefited lands on re-establishment.

Attorney General's Office.

Mr. W. A. Fleming, County Attorney.

Dear Sir: It appears from your favor of recent date that certain work has been done under and by virtue of a contract for the construction of ditch No. 14 in your county. That further construction of the ditch by the contractor has been enjoined and the proceedings have been held to be illegal. That it is proposed to re-establish the ditch so as to include the specifications and work already done.

You inquire whether assessments may be made in the new proceedings against the lands benefited by the work already done.

In answer, I call your attention to section 9 of chapter 367, G. L. 1907, which as far as material, reads as follows:

"In all cases where ditch liens or ditch assessments are made or levied under the provisions of this law, or any other prior drainage law, by which the cost of construction was assessed against the benefited property or corporations, have been or may hereafter be set aside, vacated, annulled or cancelled for any reason, a reassessment of the estimated benefits and a reaward of damages, or either, may be made by the county board of the county in which the affected land is situated."

I take it that under and pursuant to section 9, supra, legal assessments may be made against the benefited lands in question.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 13, 1909.

158

DRAINAGE—Ditch tax may not be abated after construction of ditch.

Attorney General's Office.

Constant Larson, County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that the authorities have no power to abate any or all of the assessments which have been etended under and by virtue of the constfruction of a county ditch under the statute, where there has been jurisdiction of the property owner and the land assessed in the usual way and no objection has been raised at any stage of the proceedings by the property owner as to the amount of the benefits assessed, but after the ditch has been constructed it is found that the benefits as assessed are very much more than actual benefits to the land, the discrepancy being occasioned by an error in judgment of the engineer.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Oct. 11, 1909.

159

DRAINAGE—Penalty clauses in contracts, how construed.

Attorney General's Office.

N. J. Bothne, Esq., County Attorney.

Dear Sir: This department is in receipt of your favor of recent date concerning the interpretation to be placed upon a ditch contract which has been entered into in your county and which contains a clause providing for the payment of $5.00 for each day that the contractor fails to perform the work. You inquire whether the county board may legally waive the penalty or forfeiture provided for in the contract.

In answer I have to advise you that provisions of this kind are to be con-

strued, not as liquidated damages nor as on absolute penalty. The relief of the county in the case of such a contract is dependent upon the actual damage suffered by reason of the delay. In case the county is not actually damaged, in my opinion it is competent for the county board to waive the penalty or forfeiture and not enforce the same. ?

You are also advised that in my opinion the county board having heretofore refused to grant an extension of time in which to complete the ditch, may not now grant such an extension of time so as to relieve the contractor from the operation of the penalty above set forth.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 9, 1909.

160

DRAINAGE—Per diem to county board legalized.

Attorney General's Office.

Warren Miller, County Attorney.

Dear Sir: It appears from your oral statement and from certain official documents presented to this office, that the county commissioners of Lincoln county, in proceedings for the construction of a ditch under and pursuant to chapter 230, G. L. 1905, were allowed certain per diems on account of sessions pending the establishment of county drains. Said per diem allowances were concededly invalid. A demand for a refundment has been made by the public examiner and you inquire whether the said refundment shall be made.

In answer I call your attention to chapters 10 and 82, G. L. 1909. Said acts are acts which cure all proceedings and all assessments in proceedings for the establishment of drains under and pursuant to chapter 230, G. L. 1905. The amounts which were allowed the county commissioners in the instant case were included in the expenses of the ditch, and assessments for the purpose of recouping said expenses have been extended against the benefited lands. The county will be repaid in taxes the disbursements in question, all said assessments having been validated. The state acts, in my opinion, have cured the allowances to the county commissioners for the per diems in question. You are accordingly advised that the curative acts in question have validated the unlawful disbursements in question.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 19, 1909.

161

DRAINAGE—Interest on damages, how figured.

Attorney General's Office.

J. J. Stennes, County Auditor.

Dear Sir: This department is in receipt of your favor of June 19th from which it appears that county ditch No. 11 of Chippewa county was established by the county commissioners in an order bearing date June 22, 1907. Several appeals were taken from the order of the county commissioners in the premises and the district court of your county, by an order, a certified copy of which was filed in your office Jun 5, 1908, confirmed the establishment of the ditch and finally determined the amount of benefits and damages covering the several descriptions of land involved in the appeals. The contract for the construction of the ditch in question was let June 5, 1908.

You inquire from what date interest shall be figured upon the amount of damages allowed to the owners of the several lands which will be damaged by the construction of the ditch.

In answer I call your attention to section 11, chapter 230, G. L. 1905, and advise you that in this case the amount of damages draws interest from June 5, 1908.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 23, 1909.

162

DRAINAGE—Unauthorized act of committee may be ratified by county board in bond issue.

Attorney General's Office.

George H. Otterness, Esq., County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that it is competent for a public corporation to ratify an unauthorized act. That in a case where a committee of the county board has been designated to receive bids in a bond issue of the county and to accept the same, although such action is unauthorized, nevertheless the county board can ratify the action of the committee in the premises, and it then becomes the action of the county. See Town of Partridge vs. Ring, 99 Minn. 286.

You are also advised that, in my opinion, where the denominations of a proposed drainage bond issue are not the same as the denominations specified in the resolution of the county board, nevertheless where the proposed denominations are accepted by the county and the bonds are issued in accordance therewith, the bond issue is a lawful one.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 1, 1909.

163

DRAINAGE—Proceedings under chapter 448, G. L. 1907, must be completed under chapter 469, G. L. 1909.

Attorney General's Office.

Frank Murray, Esq.

Dear Sir: In your favor of recent date you inquire what construction shall be plased upon section 14 of chapter 469, G. L. 1909, covering ditch proceedings which have been instituted under chapter 448, G. L. 1907, and are pending at the time of the passage of chapter 469, supra.

Section 14 of chapter 469, supra, reads as follows:

"That section numbered 3½ and section numbered 10 of chapter 467 of the Laws of Minnesota for the year 1907, and all of chapter numbered 448 of the General Laws of Minnesota for the year 1907, and all of chapter 44 of the Revised Laws of 1905, be and the same is hereby expressly repealed, save as to pending proceedings under said chapter 448 of the General Laws of Minnesota for the year 1907, which pending proceedings may be completed under the provisions of this chapter, if so elected as hereinbefore provided."

In answer you are advised that in my opinion a ditch commenced under chapter 448, supra, must be completed under and pursuant to chapter 469, supra, and that it may not be completed under and pursuant to chapter 448, supra.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Nov. 22, 1909.

164

DRAINAGE—Course may be varied.

Attorney General's Office.

F. W. Mathwig, Esq., Acting County Attorney.

Dear Sir: In answer to your favor of recent date, you are advised that under and pursuant to chapter 137, G. L. 1907, authority is given under proper showing made, to vary the course of a judicial ditch over the original orders and specifications, subject to the order of the court as provided by section 2 of said chapter.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Oct. 19, 1909.

165

DRAINAGE—Area, damages for overflow.

Attorney General's Office.

A. S. Maloney, Esq., County Attorney.

Dear Sir: It appears from your favor of March 12th that a petition will be presented to the board of county commissioners of Waseca county on March 17th, asking the board to appoint viewers to ascertain and report the amount of damages occasioned to the petitioners by reason of the overflow of ditch No. 6 in Waseca county, which was constructed in January, 1907. It appears that the contention of the petitioners is that the overflow in question was caused by the construction of other ditches, particularly ditch No. 9 into ditch No. 6.

You inquire as to the proper construction of section 39 of chapter 230, G. L. 1905, under which section the petition in question is made.

A reference to the statutory language makes it apparent that the petition in question can only be made when adjoining lands are damaged—

"Subsequent to the construction of such ditch or drain by reason of a part of the soil being carried away by water flowing through said ditch or drain, or by the deposit of earth or any other foreign substance (snow and ice excepted) on said land."

It would appear that the section is not operative as against damages occasioned by the mere flooding of lands on account of the construction of additional ditches into the ditch in question.

Assuming that the petition sets forth facts bringing the case within section 39, supra, you are advised that the damages in question can only be recouped by assessments against lands originally assessed for benefits in the drainage area of ditch No. 6.

It is not permissible to include lands assessed for the construction of ditch No. 9, which is a different drainage area.

See Lyon County vs. Lien, 116 N. W. R. 1017. Opinion No. 55, Attorney General's Report, 1908.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 17, 1909.

166

DRAINAGE—Reassessment on re-establishment.

Attorney General's Office.

Don M. Cameron, Esq.

Dear Sir: I answer to your favor of recent date you are advised that in my opinion under section 9 of chapter 367, G. L. 1907, a reassessment may be made against benefited lands, and the cost of construction of a ditch may be extended against said benefited lands in cases where a ditch, having been declared invalid, as in Johnson vs. Morrison County, 119 N. W. R. 502, is re-established.

I think the land owner can be heard as to the proposed assessment of benefits, and I am inclined to think the court might permit him to raise the question whether the ditch had been constructed for a reasonable cost. In other words, the actual cost of the ditch might not necessarily be conclusive upon the land owner.

I am, in short, of the opinion that a benefited land owner on reassessment can be charged with a pro rata share of the reasonable cost of a ditch already constructed but which for some reason has been declared invalid, necessitating re-establishment.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 16, 1909.

167

DRAINAGE—Apportionment of cost between counties—Interest item.

Attorney General's Office.

A. P. Stolberg, Esq., County Attorney.

Dear Sir: You have presented to this office a statement of the total amount of expenses paid by Isanti county in proceedings for the construction of a judicial ditch etending from Isanti county into Chisago county.

You inquire how the said expenses shall be apportioned between Isanti and Chisago counties, and whether in view of the fact that Isanti county has heretofore paid said epenses, an interest item based on the proportion of said expenses which Chisago county is under obligation to pay, should not be allowed.

In answer, I call your attention to section 33 of chapter 230, G. L. 1905, which as far as here material, provides as follows:

"In a judicial ditch proceeding the judge of the district court shall by his order made either at the time of the respective hearings herein provided for, or at any other time upon five (5) days' notice in writing of the time and place of such hearing to the auditor of each county affected, apportion and determine the items of expense, or portions thereof to be paid by the respective counties. Upon similar notice to said county auditors said judge of the district court may at any time modify said order or orders, as justice may require, or make any additional order in the premises. The word 'expenses' as used in this section shall be construed to mean every item of cost of said ditch from its inception to its completion and all fees or expenses paid or incurred in pursuance thereof, including all damages awarded."

It would appear that the said expenses are to be apportioned subject to the order of the court in the premises, and in my opinion it is competent for the court to provide for the item of interest. In case the court has not so provided for the item of interest, in my opinion interest should not be figured.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 2, 1909.

168

DRAINAGE—Uniformity in bond issue—Authority may not be delegated.

Attorney General's Office.

George H. Otterness, Esq., County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that in my opinion the resolution of the county board in a proposed bond issued pursuant to section 3 of chapter 367, G. L. 1907, should definitely fix the amounts of the several bonds, the dates of maturity thereof and the rate of interest.

The bids asked for should then conform to the said resolution. This produces uniformity and fairness to all bidders.

You are also advised that it is not competent for the county board to delegate to a committee, composed of the chairman of the county board and the county auditor, the acceptance of such bids: Jewel Belting Co. vs. Bertha, 91 Minn. 9.

In view of the above, a new publication of the notice of receiving bids appears to be necessary.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 30, 1909.

169

DRAINAGE—Cost of bridges, powers of county board.

Attorney General's Office.

F. R. Allen, Esq.

Dear Sir: From your favor of recent date it appears that a county ditch has been laid in McLeod county, and by reason thereof the town of Hutchinson has been obliged to construct certain bridges over the county ditch in question. No damages were allowed the town of Hutchinson on account of the said bridges.

As attorney of the town of Hutchinson you inquire of this department whether it is now competent for McLeod county to make any allowance to the town of Hutchinson in the premises.

In answer, I call your attention to section 8, chapter 377, G. L. 1907, which provides generally that where items of the cost of a ditch have been omitted, power exists to have said items of expense included in the expenses of the ditch, and a reassessment had therefor against the benefited lands.

In my opinion it is accordingly competent for McLeod county, in its discretion, to mete out substantial justice in the premises, under and by virtue of section 8, supra.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 19, 1909.

170

DRAINAGE—Tile ditches, right to dismissal of proceedings.

Attorney General's Office.

Sam G. Anderson, County Attorney.

Dear Sir: You inquire orally whether a petitioner for a county or judicial drain may ask for the laying of the tile drain exclusively.

In answer I call your attention to section 4 of chapter 230, G. L. 1905, which as far as material, reads as follows:

"He (the engineer) shall also, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time so far as practicable, and the manner in which the work shall be done, and may for that purpose set a different time for completing the several contracts, and also for completing any station or stations included in each contract. He shall have power, **when he finds it necessary, to provide for running said ditch underground, through drain tiles, or other materials, as he deems best, by specifying the size and kind of tile or other material to be used in such underground work, and shall estimate the cost of the some as a part of the total cost of the work.**"

It appears from this, and you are so advised, that the theory of the drainage law is, in the first instance, an open ditch, with power, when circumstances require it, to lay a tile ditch.

It accordingly follows that a petitioner has not an exclusive right to the laying of a tile ditch.

In this connection I call your attention to section 2 of chapter 469, G. L. 1909 (page 568), which provides that under certain circumstances the principal and sureties on a drainage bond may, by paying the costs which have been incurred, have the proceedings for the establishment of a ditch dismissed. The right exists, however, in the petitioners, if they see fit, to furnish a new bond and proceed with the work.

It may be that under the plan of the petitioners for a tile ditch, proceedings may be instituted for the establishment of a ditch under the law, and if the specifications of the engineer do not require the laying of a tile drain, the proceedings may be dismissed by the payment of the costs which have been incurred.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 15, 1909.

171

ELEVATORS—Must adopt legal standards of weight.

Attorney General's Office.

A. C. Clausen, Esq., Secretary Railroad & Warehouse Commission.

Dear Sir: In reply to your letter of August 24th requesting an opinion upon the construction of section 1, chapter 252 of the General Laws of 1907, with special reference to an inquiry by Hon. Daniel Shell as to the right of elevators to take 33 pounds for a bushel of oats, I have to say that chapter 252 of the Laws of 1907 is in the nature of a criminal statute and makes it a misdemeanor for any one to use other than the standard weights and measures in the buying and selling of merchandise. The Minnesota standard of weights and measures are found in chapter 50, Revised Laws 1905. The bushel measure is given in section 2724 and the bushel weights are given in section 2728. There can be no question but that 32 pounds of oats constitute a bushel and that it is a misdemeanor for any person, firm or corporation to use any other number of pounds as a bushel than the number fixed in section 2728, which is as to oats 32 pounds as above stated.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 28, 1909.

172

ELEVATORS—May take actual dockage.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad & Warehouse Commission.

Dear Sir: Your letter of August 30th relative to the rights of elevator companies with reference to dockage on coarse grain has been referred to me for reply. You ask four questions:

1st. "Under chapter 252 of the General Laws of 1907, have elevator companies a right to take dockage on grain purchased by them?"

This question must be answered in the negative. In so answering I assume that the word "take" is used in distinction to the word "contract" and in its primary sense.

2. "Have they a right to take dockage on stored grain?"

This question must also be answered in the negative.

3. "Have such elevator companies the right to make a specific contract for dockage with parties from whom they purchase oats and barley?"

Elevator companies have a limited right to make contracts with reference to dockage. These contracts must be not arbitrary but based on the actual condition of the grain. The end to be attained is the purchase by the elevator company and the sale by the owner of the grain (or storage by the owner of the grain) of 32 pounds to the bushel for oats and 48 pounds to the bushel for barley.

The elevator business is affected with a public interest such that it may be regulated and must conform to the spirit of the law which requires it to "receive for storage and shipment so far as the capacity of his warehouse will permit, all grain in a suitable condition for storage tendered him in the usual course of business, without discrimination of any kind."

Contracts with regard to dockage must conform to the actual condition of the grain with reference to its being mixed with or containing any foreign substances so that there shall be in each bushel of grain bought or sold the standard number of pounds required by law, but a small deviation from the exact amount of foreign matter in the wheat may be determined upon by the parties so long as that agreement is based on a reasonable estimate of the amount which the grain should be docked for dirt, foul seed and the like.

4th. "Have they a right to make specific contract with parties from whom they purchase oats and barley to take 33 pounds to the bushel of oats or 49 pounds for barley?'

This question must be answered in the negative.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Sept. 1, 1909.

173

ELEVATORS—Rule as to docking grain.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad & Warehouse Commission.

Dear Sir: I answered certain questions submitted by you relative to dockage yesterday, but the answer was technical in its character. It has occurred to me that a statement of the law with regard to dockage in ordinary language would be more useful to persons interested directly in handling grain than the technical opinion that was rendered yesterday.

I would therefore say that dockage is a deduction from the weight or measuse of the gross amount of the weight of foreign substances which tend to reduce the value per bushel of the mass. This deduction cannot be made arbitrarily by anyone because such arbitrary deduction would result in discrimination, and all discrimination in the purchase or taking for storage of grain by public elevators is forbidden by our statutes. The deduction must be made by agreement, express or implied, with the seller as to the amount to be deducted. If grain is tendered to a public elevator, and with the tender the seller makes an offer to permit a deduction for foreign injurious substances such as dirt, weed seed, and the like therefrom, which deduction is clearly and obviously equal to or in excess of the amount of such foreign substances so that the elevator is not required to pay for more than the actual amount of the clean grain, then the elevator must take the grain, if it has room, and there is no other excuse for not taking it valid under our state laws.

If, on the other hand, the seller refuses to consent to the deduction from the gross amount of his grain of an amount clearly and obviously equal to or less than the amount of such foreign substances in the grain, then the elevator

may refuse to receive such grain. The agreement between the buyer and the seller in order to be sustained, as within public policy and free from discrimination, must be approximately within the limits above specified. The amount of dockage agreed upon must not be clearly and obviously in excess of the true amount.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 3, 1909.

174

ELECTIONS—Compensation cannot be had for personal delivery of returns when law provides for mailing.

Attorney General's Office.

Mr. C. D. Antritter, Village Clerk.

Dear Sir: In your favor you call attention to the fact that at the last primary and general election the judge of election, selected so to do, delivered the election returns to the county auditor in person instead of complying with the law and having the same mailed. I take it from this that your village is located at such a distance from the county seat that the mailing of said returns was required by law rather than the personal delivery thereof. It appears from your letter that this error in action arose from the fact that there was a misstatement of directions on the envelope sent out by the county auditor for use. I am, however, compelled to advise you that the person so making personal delivery of said returns is not entitled to remuneration for such services from the county.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 12, 1909.

175

ELECTIONS—The fact that unqualified persons vote at an election does not ipso facto invalidate the election.

Attorney General's Office.

Mr. John W. McCormick.

Dear Sir: The fact that one to three people voted illegally at an annual school meeting would not necessarily invalidate the election, and the officers so elected at that meeting would be entitled to serve as such. In a direct proceeding brought to test the title of such persons to hold office, it would have to appear that the illegal votes cast changed the result. Irrespective of illegal votes cast the persons elected as officers, who duly qualified and entered upon the discharge of their duties would be de facto officers whether de jure or not, and their actions would be binding upon the district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 9, 1909.

176

ELECTIONS—Residence of homesteader is where homestead is.

Attorney General's Office.

Mrs. Cora J. Gibbs.

Dear Madam: You state that you were elected district clerk but that last spring you filed on a claim in South Dakota and you inquire as to whether you are now a legal voter in your school district. Your question is answered in the negative. When you make application for a homestead filing you are required

to make an affidavit to the effect that your residence is in the state and county where the land is situate. The United States government gives you a certain length of time in which to get upon the land, but the change of residence contemplated by your affidavit would deprive you of the right to vote in Minnesota.

It has been heretofore held by this department that it is not competent for a school board to use public money for the purpose of digging a well and putting a pump therein without being authorized so to do by a vote of the district.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 4, 1909.

177

ELECTIONS—Voters—Residence for voting purposes not lost by absence while in service of the United States.

Attorney General's Office.

Mr. Levi Smith.

Dear Sir: You state that your son, Clark Smith, was born in Morristown, Minn., August 18, 1888, and lived there until he enlisted in the United States Navy January 14, 1908, was honorably discharged and returned to that place on February 22d, 1909. You inquire as to whether he is entitled to vote at the coming election.

Section 3 of article VII of the state constitution provides as follows:

"For the purpose of voting no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States * *."

If otherwise qualified within the provisions of section 235, R. L. 1905, your son will be entitled to vote.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 4, 1910.

178

ELECTIONS—Voter must be in precinct 30 days.

Attorney General's Office.

Mr. H. N. Severns.

Dear Sir: You inquire whether a party who goes into an election precinct on the morning of February 7th to reside has gained a legal residence for the purpose of voting on March 8th. Your inquiry in my judgment should be answered in the negative.

The law requires thirty days' residence in a precinct, and the conditions above referred to do not figure out that length of time.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 12, 1910.

179

ELECTIONS—Proceedings in villages.

Attorney General's Office.

Albert Lyman, Esq.

Dear Sir: The village of Excelsior was organized under a special act. On April 9, 1901, at a special election called after due notice in accordance with law, it was voted by the electors of said village to surrender the special charter then

in use and to reorganize under the General Laws of the State of Minnesota for the government of villages. By this act of reorganization the provisions of title 3 of chapter 10 of the Statutes of 1894 became applicable to that village. The village has not reorganized under the provisions of chapter 9, R. L. 1905, and hence continues to be governed by the provisions of law found in said chapter 10, Statutes of 1894. Section 1217, Statutes of 1894, provides as follows:

"All village elections shall be, except as hereinbefore provided, conducted and the result canvassed and certified as in the case of town meetings; and, except as modified in this chapter, every statute relating to holding town meetings, canvassing and certifying the result thereof, and relating or applicable to the duties of judges of election and clerks, the challenging of votes, and of voting thereat, and every statute prescribing and punishing offenses for illegal voting, bribery, fraud, corruption, official delinquency, or other offense, at or concerning elections, which is applicable to town meetings, is hereby extended and applied to village elections."

Section 1216, Statutes of 1894, as amended by chapter 60, Laws of 1901, provides inter alia, as follows:

"All elections shall be by ballot, and all votes for elective offices shall be upon one ballot and be deposited in one ballot box; a plurality of votes shall elect, and if two or more persons receive an equal number of votes for the same office, the election shall forthwith be determined by lot, in the presence of the judges of election in such manner as they direct."

The statutory provisions regulating the holding of town meetings are found in sections 632 to 650, R. L. 1905. Section 648 provides that every proposition to be voted upon by ballot at a town meeting other than the election of officers, shall be specified in the notice of such meeting. The ballots cast upon such proposition shall be deposited in a separate box, and a separate poll list kept of the electors voting thereon, and shall be counted and canvassed, and the result ascertained, declared and certified in like manner as in the case of ballots cast for officers.

Section 639 provides:

"Every person qualified to vote at a general election may vote at any town meeting in the town where he resides. If a voter is challenged, **the judges shall proceed thereon as in the case of challenges at a general election,** adapting the oath to the circumstances of the case."

The general election laws as to form of ballot do not apply to a village election in the village of Excelsior. Section 343, R. L. 1905, said section being a part of chapter 6, which chapter is the general election law, provides as follows:

"The foregoing provisions of this chapter shall not apply to elections of town officers, nor, excepting those relating to the arrangements for voting at the polls and the preservation of order thereat, to village elections."

C. LOUIS WEEKS,
Special Attorney.

Mar. 5, 1910.

180

ELECTIONS—In case of tie vote at annual town meeting, lots must be publicly cast at once.

Attorney General's Office.

Mr. F. J. McCauley.

Dear Sir: You state that at your annual town meeting there was a tie vote for supervisor; that one of the candidates in question, for conscientious reasons refused to decide the matter by any form of chance, and that without taking any action the canvassing board adjourned without coming to any decision.

The law provides:

"Where two or more persons have an equal and highest number of votes for any office, the judges shall **at once** publicly determine, by lot, which of such persons shall be declared elected."

The action above indicated not having been taken, it is now too late for anything to be done. It was not necessary that the candidates in question should either take any part in the decision by lot, the judges themselves should attend to that.

The situation in your town is the same as though there had been no attempt at an election of the supervisor in question.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1910.

181

ELECTIONS—Not invalidated because saloons were open part of the time.

Attorney General's Office.

Mr. John O'Meara.

Dear Sir: You inquire, in effect, as to the legality of a village election in which the saloons were allowed to keep open a part of the day on which such election was being held, and I have to advise you that any irregularity of this kind would not invalidate the election, and if a bond question was properly submitted at such an election, and the proposition carried, the keeping open of the saloon would not invalidate the bond issue.

You will of course understand that this is not to be taken as justifying or in any way countenancing anything other than the strictest observance of the law on election day as regards the keeping open of saloons. The law should be strictly followed, but I am advising you as a proposition of law that the election is not void for that reason.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1910.

182

ELECTIONS—Intoxicating liquors—Majority vote must be in favor of license in order for license to win—Attorney general cannot decide election contests.

Attorney General's Office.

Mr. E. R. Umpleby.

Dear Sir: You state that at your last village election there were 67 votes cast; that of this number, 34 were in favor of license and 30 against license and three blank.

Under the law a sale of liquor under a license cannot be had unless at the last election at which the license question was voted upon, a majority of the votes cast at such election was in favor of license. It appears from your statement that there was such a majority vote and therefore it will be competent for a license to be granted in your village, by your council, to a properly qualified person within the limitations of law.

The foregoing opinion is given, based upon the result of the vote as stated by you and as canvassed by the judge of election. This department is not permitted to advise as to whether or not the two persons that you refer to were properly qualified voters or not. We cannot determine an election contest. It appears that the voters in question presented themselves (evidently due inquiry was made) and their votes were accepted and have been counted. If there is a desire to have an election contest or a recount, then the parties so desiring must take such action as they may be advised in the premises by their private counsel.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1910.

183

ELECTIONS—Village election and town meeting not to be held in same room, but may be in same building.

Attorney General's Office.

Mr. J. M. Prazak, Town Clerk.

Dear Sir: You inquire as to whether a township and an incorporated village, which is partly in the township, can hold their town meeting and annual election in the same building, upstairs and down stairs, at the same time.

The law permits a town meeting to be held in a village that is wholly or partly within the township, but provides that it must not be held in the same hall or place with the village election held on the same day. The purpose of the law is to prevent the interference by those attending one election with the attendants at the other, and of course the elections should not both be held in the same room or hall. However, it would in my opinion be permissible to have the town meeting held upstairs and the village election downstairs, or vice versa, in the same building, providing there was means of access to the upstairs without interference with the hall below.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1910.

184

ELECTIONS—Member of village council should not be judge of election at which he is a candidate, but election is not thereby invalidated.

Attorney General's Office.

Mr. Ed. Blegan, Village Recorder.

Dear Sir: You state that one of the judges of election was a village councilman and candidate for office and you inquire whether that bars him from holding the office to which he was elected, and whether the person receiving the next highest number of votes to such person is properly entitled to the office.

You are advised that in my opinion, although it was irregular for a member of the village council to act as a judge of election, still if the election was otherwise fair, the voters having a chance to freely express their choice by ballot, such election would not be invalid for that reason.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1910.

185

ELECTIONS—Not invalidated by holding village election and town meeting in same room.

Attorney General's Office.

Sam G. Anderson, Jr., Esq., County Attorney.

Dear Sir. Your question is whether or not the fact that the town of Collins and the village of Stewart held their last annual elections in the same room renders the results of these elections void.

I have to say that I do not think that it does. The holding of these elections in the same room was highly improper, but the elections having been held and it not appearing affirmatively that any fraud was thereby accomplished, I do not see that the results of the elections are affected by the impropriety of the way in which the elections were held.

LYNDON A. SMITH,
Assistant Attorney General.

Mar. 19, 1909.

186.

ELECTIONS—Women may vote on school bond issue.

Attorney General's Office.

Mr. C. E. Hamilton.

Dear Sir: You state to me orally that an election is about to be held in the city of Northfield, this state, in the school district therein where the question to be submitted to the electors is whether or not bonds shall be issued by the district for the erection of a school building. You ask whether at such election women otherwise qualified as electors, may vote.

In reply thereto I beg to advise that in my opinion your inquiry is to be answered in the affirmative. Section 8 of article VII, Constitution of this state provides, so far as here material, that—

"Any woman of the age of twenty-one years and upward, and possessing the qualification requisite to a male voter, may vote at any election* upon any measure relating to schools.*"

The foregoing provision has been construed by my predecessors to include the right of women, otherwise qualified to vote at such elections, to vote upon the question of issuing bonds. In that opinion I concur.

GEORGE T. SIMPSON,
Attorney General.

Feb. 11, 1910.

187

ELECTIONS—Delivery of ballots and returns.

Attorney General's Office.

Mr. Anton Peterson, County Auditor.

Dear Sir: You call attention to sections 316 and 258, R. L. 1905, the first providing that judges of election must choose one of their number to personally bring election returns, unused ballots, etc., to the county auditor within 24 hours after the polls close if withing 50 miles of the county seat; and the latter providing that the auditor shall mail ballots, etc., to precincts more than 15 miles from the county seat. I now quote from your letter the following:

"Chapter 214, G. L. 1905, provides that ballots shall be mailed to clerks and returns mailed to the auditor in precincts in unorganized towns more than ten miles from the county seat."

You state that the construction that has been placed upon the law is that the sections of the Revised Laws above referred to relate to precincts in organized towns, and that chapter 214, supra, modifies the Revised Laws only so far as it pertains to precincts in unorganized towns.

I have to advise you that I am of the opinion that this construction is erroneous. Section 5504, R. L. 1905, provides that the Revised Laws "shall not be construed as abrogating any act passed at the session of 1905, all of which, so far as they differ from the Revised Laws, shall be construed as amendatory thereof or supplementary thereto."

It therefore follows that chapter 214, insofar as it differs from the Revised Laws, will take precedence over the same. The language used in section 1 of said chapter 214, insofar as necessary for consideration, is as follows:

"Wherever the primary and general election laws now provide that the village and town clerks and judges of election in unorganized towns, go to the county seat and receive the official ballots, hereafter the auditor of each county shall at least one week before the date of election, etc."

I am of the opinion that this language is applicable to both organized and unorganized towns. The law refers to village clerks in villages, town clerks in organized towns and judges of election in unorganized towns.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 10, 1910.

188

ELECTIONS—Certain irregularities do not effect result.

Attorney General's Office.

Mr. A. D. Sackett.

Dear Sir: You inquire as to whether an election will be invalidated for the reason that a village recorder who was a candidate for re-election, with opposition, acted as clerk of election.

I am of the opinion that your inquiry is to be answered in the negative. Any irregularity of this nature would not invalidate an election providing it was otherwise fair and the voters were given an opportunity to freely express their choice by ballot.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 11, 1910.

189

ELECTIONS—Candidate at primary election may withdraw his candidacy.

Attorney General's Office.

Rudolph A. Lee, Esq.

Dear Sir: You inquire whether in case a qualified elector files for nomination to a particular office at the ensuing primary election, such person may thereafter withdraw his candidacy, and if so, in what manner.

In answer you are advised that a candidate may withdraw his candidacy by filing with the officer authorized to receive his affidavit of candidacy an affidavit disaffirming such candidacy.

In this connection I call your attention to sections 217 and 218, R. L. 1905, providing for filing vacancies generally by the proper political committees covering vacancies after nomination and after the ballots are printed.

While no statute exists providing specifically for withdrawing a candidacy, the sections referred to contemplate vacancies; vacancies contemplate resignations and refusals to accept nominations, and this all in my opinion contemplates the right to withdraw a candidacy.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 6, 1910.

190

ELECTIONS—"Write," when used in regard to ballots, defined.

Attorney General's Office.

Mr. W. B. Woodward.

Dear Sir: You refer to a law (Sec. 1297, R. L. 1905), which states that voting shall be by ballot, and that those favoring the proposition shall **write upon their ballots,** etc.

You inquire whether or not printed ballots or ballots written by some one other than the person casting the vote, would be a sufficient compliance with the above requirement. Your inquiry is answered in the affirmative.

Paragraph 24 of section 5514, R. L. 1905, provides:

"The words 'written' and 'in writing' may include any mode of representing words and letters.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 8, 1910.

191

ELECTIONS—Women may vote at primary elections for school officers.

Attorney General's Office.

Mr. Geo. B. Paddock.

Dear Sir: In your favor of August 4th, you ask, in effect, whether a woman may vote at the primary election for school officers and members of library boards.

Replying thereto, I beg to advise that, in my opinion, your inquiry is answered in the affirmative. The matter is controlled by section 8 of article 7 of the Constitution of this state.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 9, 1910.

192

ELECTIONS—Requisites for maintenance of party organizations.

Attorney General's Office.

Mr. John W. Clover, County Attorney.

Dear Sir: In reply to your letter of August 22d, I have to say that it is my opinion that if the Democratic party has maintained a county organization during three of the five elections the last ten years, and has at the elections occurring in those years nominated and supported as a party, a single candidate, the Democratic party of the county still exists, and members of that party may file for nomination of county officers.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 24, 1910.

193

ELECTIONS—Independent candidate cannot file until after primary election.

Attorney General's Office.

Mr. H. O. Thompson.

Dear Sir: In reply to your letter of August 22d to the attorney general, I have to say that it will not be lawful for an independent candidate to file until after the primary election.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 24, 1910.

194

ELECTIONS—Auditor may but is not required to stay in office after office hours to receive filings.

Attorney General's Office.

Mr. Knud Wefald.

Dear Sir: In reply to your letter of August 15th to the attorney general, I have to say that the last day for filing is August 31st, and while the auditor is not obliged to stay in his office beyond ordinary office hours, yet if he should receive a filing at any time before midnight, it would be legal.

In a general way, I may say that a person withdrawing his filing under the primary law, can be nominated by petition as an independent candidate. See Quealy vs. Warweg, 106 Minn. 145.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 17, 1910.

195

ELECTIONS—Person who votes at primary cannot sign nominating petition.

Attorney General's Office.

Mr. Knute Knuteson.

Dear Sir: Your attention is called to sections 213-216, inclusive, R. L. of 1905, as amended by chapter 134, G. L. 1905.

Among other things, the law referred to provides that—

"No person shall sign a certificate of nomination by voters until after the date of the primary election. No person who has voted at a primary shall be eligible as a petitioner for any nomination to an office for which nominees were voted upon at such primary."

The above quoted provision of law is in answer to the inquiries that you submit.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 21, 1910.

196

ELECTIONS—Opening and closing of polls at primary and general elections in townships.

Attorney General's Office.

Mr. E. H. Lewis.

Dear Sir: You inquire as to the hours for opening and closing primary elections in townships, and I have to inform you that polls open at 9:00 o'clock a. m. and close at 9:00 o'clock p. m., on primary election day. This applies to all townships except such as contain within their limits incorporated villages which have not become separate election districts. The number of votes cast in the township does not matter. The hours for opening and closing the polls in such townships at the general election are from 9:00 o'clock a. m. until 5:00 o'clock p. m.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 23, 1910.

197

ELECTIONS—No blank spaces permissible on primary election ballots.

Attorney General's Office.

Mr. H. S. Austin.

Dear Sir: Under the primary election laws of this state there are no blank spaces left upon the ballots for names to be written in. A person is not entitled to a ballot, except of the political party whose candidates he will state under oath, if challenged, he generally supported at the last election, and intends to generally support at the coming election. A man cannot have the ballot of more than one party.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

198

ELECTIONS—At primary election judges must give voter ballot of party which by oath he swears he is qualified to vote.

Attorney General's Office.

Frank L. Salter, Esq.

Dear Sir: I beg to advise you that it is the opinion of this office that under the provisions of section 192, R. L. 1905, that where a voter presents himself to the judge of a primary election and asks for the ballot of a designated political party, and his right to vote such party ticket is challenged, that such voter is nevertheless entitled to such ballot, if he will make oath that he generally supported the candidates of the party whose ballot he has called for, at the last preceding general election, and intends to support the candidates of such party at the next ensuing general election. That upon the voter taking such oath, the judges of election have do discretion with reference to withholding such ballot from him.

The penalty for a false oath would be punishment by way of prosecution for perjury, and is a matter as to which the judges of election have no concern.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Sept. 19, 1910.

199

ELECTIONS—Law relative to place of holding elections construed.

Attorney General's Office.

W. A. Rossman, Esq.

Dear Sir: I have come to the following conclusions relative to your inquiries:

First—The proper place for holding a primary election in a town recently organized is the place where the last election was held in the unorganized territory. The term "general election" refers to the November election unless the context indicates a different meaning.

Second—The provisions of the statutes, as to giving notice, etc., of the holding of elections are mandatory, but a failure of the election officers to do their duty does not void the election, provided the people have had an opportunity to express themselves in a fair, legal way upon the issues presented at such election.

Third—A town board cannot arbitrarily set a place for holding election and neglect to give a proper notice without disobeying the law.

Fourth—A town board in a town where there are two precincts should act with the clerk in one district, and appoint judges and clerks of election in the other voting district. The rule as to the appointment of such officers would be as indicated in the answer to question two.

Fifth—Chapter 175, G. L. 1909, should be considered as controlling as against section 225, R. L. 1905, except as to the provision requiring sixty days' notice of the action of the town board which might be taken up to within thirty-six days of election. As against that absurd requirement, I think section 225 should govern.

Sixth—I do not think there is any law which prevents the division of a township into voting precincts when it has less than four hundred voters.

Seventh—The county auditor should send a duplicate set of election supplies to the clerk of each municipality having more than one voting precinct, and the clerk of such municipality should forward one set to the proper officials of the precinct at which the clerk does not act as clerk of elections.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Sept. 15, 1910.

200

ELECTIONS—Certificate of nomination of candidate (other than for school officers) must be signed by 10 per cent of male vote only.

Attorney General's Office.

S. G. Bertilrud, Esq., County Auditor.

Dear Sir: You call attention to the fact that the law requires that a certificate of nomination of a candidate for a county office shall be signed by ten per cent of the voters as shown by the entire vote cast at the preceding general election, and you inquire: "Does this mean ten per cent of the entire vote cast, male and female, where the certificate of nomination is for a county office, other than superintendent of schools?"

Your inquiry is answered in the negative. Reference is had simply to ten per cent of the entire male votes cast.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 16, 1910.

201

ELECTIONS—General election laws not applicable to school elections.

Attorney General's Office.

Luke K. Sexton, Esq., County Attorney.

Dear Sir: It appears that a special election was held in and for the Litchfield independent school district for the purpose of voting upon the issuance of the bonds of said district for school purposes. It appears that various persons electioneered on both sides of said proposition at and in proximity to the polls.

You inquire whether the general election laws, which prohibit such electioneering, obtain in the instant case.

I take it that the election in question was under and by virtue of section 784, R. L. 1905. I find no provision in the premises making the general election laws applicable, and your question is accordingly answered in the negative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 15, 1909.

202

ELECTIONS—When vacancy on official ballot is filled by committee no new fee is to be paid.

Attorney General's Office.

J. D. Engle, Esq.

Dear Sir: You state that a candidate for the legislature in one of the districts in Minneapolis filed for the office and was nominated and before the official ballot was printed died very suddenly and the committee substituted a man in his place, whose name was put on the ballot and voted for. You inquire whether another fee should be paid and I have to advise you that I am of the opinion that your inquiry should be answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 18, 1910.

203

ELECTIONS—Qualification of voters considered.

Attorney General's Office.

Mr. C. M. King.

Dear Sir: You make certain inquiries relative to election matters which are as follows:

You inquire first: "In a village or town can a legal voter therein register and vote on the day of general election, or is a former registration in such cases necessary?"

Replying I have to say that a person who is qualified to vote in a precinct situate in a village or town, may vote therein at the general election even if he is not previously registered.

You further inquire, "When men are employed in cutting timber and by reason of such employment become indwellers of a voting district, for a period of more than thirty days prior to any general election, does such indwelling fix for such men a legal residence for voting under R. L. 1905, section 235, etc.?"

Upon your statement of the situation your inquiry requires a negative answer. The mere living in a place for thirty days does not of itself entitle a man to vote therein The living in a place for any length of time if such stay is for temporary purposes only, does not establish a right to vote.

You further inquire, "Where section men, employed in the repair of any railroad, are living together in the same camp, and of course without intention of making this place their permanent residence, if they live there for more than thirty days prior to the general election, does such indwelling in a voting district gain for such indweller a residence that entitles him to vote therein?"

Your last inquiry requires a negative answer. One of the principal elements necessary to entitle a man to vote is that the place in question must be one in which his habitation is fixed, without any present intention of removing therefrom, and that a man cannot gain a residence in a place to which he has come for temporary purposes merely, without the intention of making such place his home.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 5, 1910.

204

ELECTRICIAN'S LICENSE—Renewal.

Attorney General's Office.

F. D. Varnam, Esq., Secretary State Board of Electricity.

Dear Sir: This office is in receipt of your favor of the 8th instant in which you ask for our opinion on the hereinafter stated questions. First you ask—

"In cases where electricians' licenses have expired and no applications for the renewal of such licenses have been made until some time after the expiration; can a renewal be granted without further examination?"

In answer to this query I would say that it is our opinion that it should be answered in the affirmative. In connection with this query you also ask, "is there any limitation to be placed on the time for such renewals?" In answer to this query I would say that we are of the opinion that it should be answered in the negative Second you ask—

"If a renewal of a license is granted some time after the expiration of the license, should the renewed license be dated from the expiration of the old license, or from the time the renewal is granted?"

In answer to this I would say, that while the statute uses the word "renewals," it contemplates the issuance of a new license "without further examination," and in speaking of a renewal I assume that you mean the issuance of a new license, which in my opinion would be the proper practice, and in such case the new license should be dated at the time it is issued. The new license would not have any retroactive effect and would not be a defense in a prosecution for practising without a license during the period intervening between the expiration of the original license and the issuance of a new license. It follows that the new license should be dated at the time issued.

Third, you state—

"During the year 1899 a certificate of registration was issued to E. T. Berggren, in the name of the Berggren Electric Company. This certificate expired by process of law March 1, 1907. About one year ago the Berggren Electric

Company went through bankruptcy and is now out of existence. E. T. Berggren now makes application to have this certificate renewed, also to have the name on the certificate changed to E. T. Berggren."

You ask can this request be granted. In answer to this question I would say that it is our opinion that it should be answered in the negative. I note that you state that the certificate "was issued to E. T. Berggren, in the name of the Berggren Electric Company." I assume that you mean that the license was issued to the Berggren Electric Company and that E. T. Berggren was the officer of the corporation who made the oath required by section 2361.

If my assumption is correct, E. T. Berggren has never had a license and of course is not entitled to a new license without examination. This construction is our opinion of the law. It is of course technical. I assume that the license issued to the Berggren Electric Company was a master electrician's license. In such case the Berggren Electric Company was the principal obligor in the bond required by section 2359. When a license is issued to E. T. Berggren as an individual, he, as an individual, will have to give the bond.

Yours truly,

C. LOUIS WEEKS,
Special Assistant.

April 12, 1909.

205

EDUCATION—COMPULSORY EDUCATION—Child may not be excused from school because parents are poor and need his work at home.

Attorney General's Office.

Mr. H. G. Day.

Dear Sir: You ask what are the statutory grounds of excuse from attendance at school.

Chapter 400, G. L. 1909, provides as follows:

"1. That such parent, guardian or other person having control is not able by reason of poverty to clothe such child properly.

"2. That such child's bodily or mental condition is such as to prevent his attendance at school or application to study for the period required.

"3. That such child has already completed the studies ordinarily required in the eighth grade.

"4. That there is no public school within reasonable distance of his residence."

The above quoted law is exclusive and the board is not authorized to excuse a child from attending school for the reason that his parents are poor and he is needed at home for work.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1910.

206

EDUCATION—COMPULSORY EDUCATION—Counties may pay for certain education blanks.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: You call attention to the compulsory education law of 1909 (chapter 400) and inquire whether the blanks necessary to carry out the provisions of this law, in accordance with forms prepared by you, can be procured by the various county superintendents at the expense of their counties and furnished to the various school districts needing the same.

Replying I have to inform you that in my opinion your question is to be

answered in the affirmative. It will not be necessary and probably not permissible for the county to in turn collect the cost of such blanks from the various school districts.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 20, 1909.

207

EDUCATION—COMPULSORY EDUCATION—Excuse for non-attendance because of distance from school.

Attorney General's Office.

Miss Agnes Malcolm.

Dear Madam: You inquire as to whether the provisions of the compulsory education law can be enforced against pupils who live two miles or more from school.

Chapter 400, G. L. 1909, provides that all children of or between the ages of eight and sixteen years shall attend a public or private school in each year during the time that the public schools of such district are in session. It is also provided that the school board may excuse children for one of the four reasons thereafter given. The fourth reason is "that there is no public school within reasonable distance of his residence."

The question as to what is a reasonable distance is one of fact and not of law. The condition of the roads, the age and physical condition of the child, are elements that would enter into the determination of the question. A distance that would be reasonable to require one child to travel would be unreasonable as applied to another child who was less favored as regards health, etc.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1910.

208

EDUCATION—COMPULSORY EDUCATION—Law applies to independent as well as common school districts.
mon school districts.

Attorney General's Office.

Mr. Louis Hallum, County Attorney.

Dear Sir: You inquire as to whether chapter 400, Laws of 1909, applies to independent school districts or only to common school districts, and I have to advise you that the same is general in its application and applies to all school districts insofar as the compulsory education feature is concerned.

The portion of the act having to do with the furnishing of information, etc. (sections 2, 3 and 4) has application to all school districts wherein a truant officer is not regularly employed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 30, 1909.

209

EDUCATION—CONSOLIDATION OF DISTRICTS—Requisites of petition for consolidating school districts.

Attorney General's Office.

Mr. E. A. Marsh.

Dear Sir: Sections 1289-1294 inclusive, R. L. 1905, provide the manner in which school districts may be consolidated. The petition provided for in section

1290 to be presented to the county superintendent must be signed and acknowledged by a majority of the resident freeholders of **each** district affected, qualified to vote at school meetings. This law provides for a ballot upon the question of consolidation at an election or special meeting to be held in such districts.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 9, 1909.

210

EDUCATION—COUNTY SUPERINTENDENT—Salary of superintendent, how determined.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: I hereby acknowledge receipt of your favor of June 2d, in which, at the request of Miss Caroline C. Auxer, county superintendent of Becker county, you inquire as to whether **districts** or **schools** are meant to be counted in determining the salary of county superintendents.

Answering this inquiry I have to inform you that in my opinion **districts** are to be counted and not schools.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 7, 1909.

211

EDUCATION—COUNTY SUPERINTENDENT—County superintendent may appoint assistant, but his selection must be approved by county board.

Attorney General's Office.

Mr. W A. Fleming, County Attorney.

Dear Sir: This office is in receipt of your favor of the 2d inst., in which you ask for the construction of section 1387, R. L. 1905.

I am of the opinion that the law in question empowers the county superintendent of schools to appoint an assistant, and that the approval of the county board only has to do with the selection so made. In other words, the county superintendent may appoint an assistant without first securing the consent of the county board so to do and then it is incumbent upon the county board to approve or disapprove of such appointment.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 7, 1909.

212

EDUCATION—COUNTY SUPERINTENDENT—Not entitled to extra pay for work in unorganized territory.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: You inquire as to whether a county superintendent who acts as clerk of the school board for unorganized territory in his county, may be paid for the services rendered by him and which are authorized by chapter 309, G. L. 1909, to be paid to the person employed by the county board of education "as a clerk to the superintendent of schools."

This inquiry is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 31, 1909.

213

EDUCATION—COUNTY SUPERINTENDENT—Is entitled to reimbursement for necessary expenditures for telephone charges.

Attorney General's Office.

Jacob Leurch, Esq.

Dear Sir: On January 13, 1909, I rendered an opinion to Hon. C. G. Schulz, superintendent of public instruction, relative to telephone charges for superintendents of schools, quoting chapter 390, G. L. 1907. I came to the conclusion, and so advised him, that under that chapter it was proper to have the county superintendent of schools reimbursed for moneys expended by him for reasonable telephone charges incurred in the discharge of his duties. It was my intention to hold that all telephone charges, whether incurred at the county superintendent's office, or elsewhere about the county, were proper charges against the county, providing the same were **reasonable in amount and were charges incurred in the discharge of his official duties.**

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 29, 1909.

214

EDUCATION—DISTRICT OFFICERS—School board cannot change action of district regarding funds raised to build school house.

Attorney General's Office.

Mr. L. C. Thompson.

Dear Sir: You state that your school district borrowed from the state of Minnesota the sum of $1,500 to be used for building a school house; that your district is not able to decide on the location of a site, and that there will undoubtedly be a division of the school district.

You ask whether the school board is authorized to return the money to the state and secure the cancellation of the bond in question. In my opinion it is not so authorized. The borrowing of the money and executing the bond therefor was an act of the electors of the district, and the power is not vested in the school board to override and annul the action of the school district in thus deciding. I think it would be competent for the school district at a properly called special meeting for that purpose, to instruct and empower the school board or the treasurer thereof, to use the $1,5000 in question to pay up the bond and secure its cancellation. Of course the bond by its terms has a number of years yet to run, but I am inclined to think that the state authorities will take the money and cancel the bond if it is so desired.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 2, 1909.

215

EDUCATION—Attorney may when necessary be employed to protect school district's interests.

Attorney General's Office.

Mr. John Peach.

Dear Sir: It is competent, when conditions demand it, for a school district board to employ an attorney to prosecute or defend cases in behalf of the district in which the district is interested. The amount of such compensation would vary in proportion to the importance of the litigation and the amount of work done.

I am not in a position to advise as to the necessity of the employment of the attorney in question, but assuming that it was necessary, then I have to

advise that it is proper for the voters to ratify at the regular school meeting the action of the school board in so employing such attorney and thereby making the charge for the services rendered a binding one upon the district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 13, 1909.

216

EDUCATION—DISTRICT OFFICERS—Bond of school district treasurer must be in twice the amount that will be in treasury during year.

Attorney General's Office.

Mr. Chas. H. Budd.

Dear Sir: You make inquiry relative to the amount of bond that should be given by a treasurer of your school district. Chapter 95, G. L. 1907, provides that the amount of the bond to be given shall be in a sum equal to twice the amount of money that will come into his hands during any one year of his term. This does not mean twice the amount of money that will probably be in his hands at any one time. See State ex rel. Casmey vs. Teal, 72 Minn. 37.

Chapter 311, G. L. 1907, requires that in the justification of surties to a bond, a surety must state that he is worth a certain definite amount above his debts and liabilities and exclusive of his property exempt from execution and that the aggregate of the amounts so sworn to by all the sureties shall be not less than double the amount of the penalty of such bond. It therefore follows that the amount of the bond to be given by a school district treasurer must be double the aggregate amount that will likely be in his possession during the entire year, and that the sum total of the amounts that the sureties state they are worth must be double he penalty of the bond.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 11, 1909.

217

EDUCATION—DISTRICT OFFICERS—Right of school board to employ attorney to defend teacher—quaere.

Attorney General's Office.

Mr. Theodore Christianson.

Dear Sir: You state that a civil action was brought against a teacher for inflicting punishment upon a pupil, and that the board of education decided to pay the teacher's attorney's fee in the action thus commenced, and which action was afterwards dropped. You inquire:.

"1. Does the board of education have authority to appropriate school money for this purpose?

"2. Can a board of education be compelled to live up to an agreement of this kind?

"3. Or is it void under the statute of frauds when not in writing?"

The question submitted is not entirely free from doubt. The control of the schools, the maintenance of discipline therein and the adoption of such reasonable rules and regulations as may be necessary in school government, is vested in the board of education. The money raised by the district for school purposes can properly be expended within the limitations of law, for purposes that will be advantageous to such schools.

It would not be safe to state as a general proposition, that the board would be justified in using school district funds in defending all suits that might be brought against teachers for inflicting punishment upon the pupils. Occasions, however, might possibly arise where action of the teacher was taken by direct

authority of the board, and was necessary in order to maintain proper discipline in the school, in which it would be proper for the board to pay a reasonable attorney's fee for defending the teacher who has been sued.

It will be noted that the circumstances in each case would largely control. I do not feel justified in holding, upon the meager statement of facts submitted in your letter, that it would be proper for the board to pay tne attorney's fees in this case.

I am familiar with the case of City of Moorhead against T. L. Murphy, 94 Minn. 123, in which it is held that a city council, in the absence of prohibitive charter provisions, might reimburse a police officer for expenses incurred by him in defending an action for false imprisonment, it appearing that the officer was acting in good faith in the exercise of his official duties. There is a distinction, however, between the situation in that case and the one that is suggested by you.

The chief of police in that case was a city officer. A school teacher is not a public officer but simply an employe.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1909.

218

EDUCATION—DISTRICTS OFFICERS—Outsiders cannot be appointed on a committee by school board.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: You ask whether it is proper for the electors at a special school meeting to appoint a building committee consisting of two members of the board and one outsider, to which committee was delegated the authority to dispose of the old school house and let a contract for a new school house. This question is answered in the negative.

Former Attorney General (now chief justice) Chas. M. Start, rendered an opinion from which the following is quoted:

"You ask: 'Are school districts authorized to elect two or more persons in addition to the regular official board of trustees of the school district, to act with and have equal voice and control with the trustees in building a new school house?' No. The statute makes no provision for any such quasi officers of the district. When a school district votes to build a school house, designates site and provides funds for the purpose, the trustees of the district are charged with the duty of executing the will of the district in the premises."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1909.

219

EDUCATION—DISTRICT OFFICERS—School district treasurer cannot take contract for transporting children to school.

Attorney General's Office.

Mr. James Dezell.

Dear Sir: You inquire as to whether a school district treasurer may enter into a contract with the school district for the transportation of children to and from school.

Your question is answered in the negative, and it is true even though the matter of the letting of the contracts was made at public auction to the lowest bidder Section 5032, R. L. 1905, reads as follows:

"5032. Officer Interested in Contract—Every public officer who shall be authorized to sell or lease any property, to make any contract in his official

capacity, or to take part in making any such sale, lease, or contract, and every employe of such officer, who shall voluntarily become interested individually in such sale, lease, or contract, directly or indirectly, shall be guilty of a gross misdemeanor."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 15, 1909.

220

EDUCATION—DISTRICT OFFICERS—School district officer cannot be paid but for one day for attending meeting of district officers.

Attorney General's Office.

Hon. C. R. Frazier, Assistant Superintendent Public Instruction.

Dear Sir: I am in receipt of your favor of recent date in which you inquire as to the number of days' pay that a school district officer is entitled to for attending a meeting of school district officers called by superintendent of schools.

The law provides for one day's attendance at such meeting and fixes a compensation of $3.00 per day and five cents a mile for travel. I am of the opinion that a school district officer will not be entitled to compensation to exceed the one day and cannot collect for the time required in traveling from his home to the place of meeting and return. The travel allowance of five cents a mile which is two and one-half times the actual railroad fare, presumably will cover any time in excess of one day that attendance upon the meeting will require.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 28, 1909.

221

EDUCATION—DISTRICT OFFICERS—Director of school district is not entitled to salary.

Attorney General's Office.

Hon. C. R. Frazier, Assistant Superintendent, Department of Public Instruction.

Dear Sir: There is no law authorizing the payment to a director of a school district, of any salary as such, and it is not competent for the electors at the annual meeting, or any other time, to vote and provide for paying a director a salary. The clerk is not warranted in drawing an order for the same, nor is the treasurer justified in paying such an order from the school district funds. Any money so paid to a director, by appropriate proceedings on behalf of the district, may be recovered.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 13, 1909.

222

EDUCATION—DISTRICT OFFICERS—School district treasurer must be resident of district.

Attorney General's Office.

Mr. H. F. Anderson.

Dear Sir: You state the condition of affairs existing in your school district and ask certain questions relative to the treasurership thereof.

It would seem that the duly elected treasurer moved out of the district and tendered his resignation; that it was voted by the board not to accept the same but to continue him in office for one year more, and you in effect inquire whether it is proper for a man to hold the office of school district treasurer and not be a resident of the school district.

The removal from the school district by the officer in question created a vacancy. Your inquiry is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1909.

223

EDUCATION—DISTRICT OFFICERS—Action of former school board may be reconsidered.

Attorney General's Office.

W. T. Ziebarth, Esq.

Dear Sir: You inquire whether a member of a school board who has voted on the question of electing a teacher can reconsider and change his vote at the next regular or special meeting.

The meeting being regularly called and the matter being properly before it, I can see no objection to a reconsideration of the action theretofore taken. This, however, is based upon the supposition that no written contract has been made and entered into between the district and a qualified teacher. In other words, if the district as such is not bound by the previous action and a valid contract entered into, then I can see no objection to a reconsideration.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1909.

EDUCATION—DISTRICT OFFICERS—Board may not pay architect for plans made for unauthorized school house.

Attorney General's Office.

John Street, Esq., President School Board.

Dear Sir: In reply to your letter of June 22d, I have to say that I do not find in the law any authority under which school boards can employ and pay an architect for work done before a school district has voted to erect a school house, plans for which such architect might have made. The architect's plans are considered a part of the work of building a school house.

School districts derive all their powers from the acts creating and regulating them, and in the absence of statutory authority to do any particular thing, the school board is not authorized to do it, however wise and sensible it may appear.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 25, 1909.

225

EDUCATION—DISTRICT OFFICERS—Clerk should, when practicable, take receipt for orders issued.

Attorney General's Office.

Mr. Adolph A. Groh.

Dear Sir: The law requires that school district orders "shall state the consideration, payee and fund, and the clerk shall take a receipt therefor." The stub should be filled out to correspond with the order, and on such stub there is a blank receipt prepared for signature. The instructions issued by the superintendent of public instruction and which are printed in the clerk's book,

direct the signing of the receipts on the stub. This is by far the most convenient way of keeping the record although a receipt taken in some other way and attached to the stub would undobtedly be sufficient.

Yours truly,
CLIFFORD L. HILTON,
Attorney General's Office.

July 16, 1909.

226

EDUCATION—DISTRICT OFFICERS—Officers of school district, clerk and treasurer, may be held by husband and wife—School district meeting is not necessarily invalid because called to order at different time than specified in notice.

Attorney General's Office.

Mr. George A. Boyd.

Dear Sir: There is no objection to a man and his wife holding respectively the offices of treasurer and clerk of the school district, they being otherwise qualified.

A school meeting should properly be called to order and held at the time specified in the notices and as required by law. However, the mere fact that it was not held at the particular hour stated, not being called to order until later, would not necessarily make the action of the meeting void. In the absence of fraud and a clear showing that a wrong was done and the will of the voters not carried into effect, the action at such meeting would be valid if not unlawful for some other reason.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 13, 1909.

227

EDUCATION—DISTRICT OFFICERS—Member of legislature may not hold school district office.

Attorney General's Office.

Mr. J. W. Craven, Clerk.

Dear Sir: This department is in receipt of a communication bearing date July 12th, in which, at your request, is submitted the question as to whether a member of the legislature can during the time for which he was elected as such legislator, hold the office of school director.

This question is answered in the negative. Section 9 of article 4 of the Constitution of Minnesota provides:

"No senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States or the state of Minnesota, except that of postmaster."

The office of school director is one "under the authority of the state of Minnesota.' If the gentleman in question was a director of the school district at the time of his election and qualification as a member of the legislature, then his acceptance of and qualification for the latter office vacated the office of school director. It would therefore be competent for the electors of the district, at the next annual school meeting, to elect a director to fill such vacancy.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 13, 1909.

229

EDUCATION—DISTRICT OFFICERS—School board cannot change time of holding schools as determined by annual meeting.

Attorney General's Office.

Hon. C. R. Frazier, Assistant Superintendent of Public Instruction.

Dear Sir: You inquire whether it is competent for a school board to disregard the action of the annual school meeting in determining the times when schools should be held within the district. At the annual school meeting it was determined that there should be six months' school, a three months' term beginning the first Monday in October, and another three months' term beginning the first Monday in February. That a majority of the school board decided to commence the second term of school on the second Monday in January instead of February. I do not think it was competent for the board so to do.

You inquire as to the personal liability of the two members of the board so voting, and ask whether they would be subject to a fine covering the extra cost of the January school expenses. Your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 19, 1909.

230

EDUCATION—DISTRICT OFFICERS—School board cannot contract with a firm of which school officer is a member.

Attorney General's Office.

Hon. C. R. Frazier, Assistant Superintendent of Public Instruction.

Dear Sir: You ask:

"Is it unlawful for the school board to purchase wood and lumber from a firm of which one or more members of the board are connected with? This material is not bought under contract and the question is raised, it not being bought under contract is it lawful to buy this material?"

The first question is answered in the affirmative, and the latter in the negative. Section 5932, R. L. 1905, reads as follows:

"Every public officer who shall be authorized to sell or lease any property, to make any contract in his official capacity, or to take part in making any such sale, lease or contract, and every employe of such officer, who shall voluntarily become interested individually in such sale, lease or contract, directly or indirectly, shall be guilty of a gross misdemeanor."

See also Currie vs School District, 35 Minn. 163.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 23, 1909.

231

EDUCATION—DISTRICT OFFICERS—Member of school board cannot enter into contract with district.

Attorney General's Office.

Mr. Herman Rippe.

Dear Sir: You call attention to certain acts of a member of the board of education of your school district, in which it appears that he became interested in a contract with the district, and you make inquiry relative to what the law is applicable to the subject.

Section 5032, R. L. 1905, expressly prohibits, under penalty, any public officer who shall be authorized to sell or lease any property, to make any contract in his official capacity, or to take part in making any such sale, lease

or contract, and every employe of such officer from voluntarily becoming interested individually in such sale, lease or contract, directly or indirectly.

In the case of Stone vs. Bevans, 88 Minn. 127, our supreme court construed this law and held squarely on this general proposition. The syllabus in this case reads as follows:

"A member of the common council of a village in this state cannot lawfully enter into a contract with the municipality for its own benefit, depending upon authority derived from a vote of such council."

"Where an illegal contract has been entered into between the common council of a village and one of its members, upon which such member has received money, as in this case, it may be recovered for the village in a suit by a taxpayer."

Above you have been given the statute applicable to the general subject of a public officer contracting with a municipality in which he is a member of the governing board, and also a decision from our court of last resort.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 19, 1909.

232

EDUCATION—DISTRICT OFFICERS—Power of principal and school board as to suspension of pupils.

Attorney General's Office.

Benjamin A. Polzin, Esq., Principal.

Dear Sir: In your communication you ask, "Has the principal of a state high school located in a common school district the power to suspend pupils at his discretion?" Granting that he has, may such power be taken from him by the district board and vested in another person?"

Replying thereto, I have to advise you that under the law, school boards have the right to adopt such reasonable rules and regulations as may be deemed necessary for the proper control and management of the schools. In the absence of such rules and regulations the principal of the high school in question has the right to make all necessary and proper rules and regulations for the good conduct and order of the school. It is his duty to see that they are obeyed, and his action in that regard within reasonable bounds is binding until the board otherwise directs.

All rules and regulations whether made by the board or made by the teacher, and afterward sanctioned, ratified and approved by the board, must be reasonable. In the absence of any rule of the school board prohibiting him from so doing, the principal has the inherent right, on account of his position, to suspend a pupil for violating any reasonable rule or regulation, and his action in thus suspending is binding until the board shall otherwise direct. The views above expressed follow with approval former rulings of this office.

As to your second inquiry, there may be some doubt as to the right, and anyway, to the expediency, of the board delegating the authority of suspension to some person other than the principal. Be that however as it may, the suspension of a pupil and the depriving him of the privileges of the school would seem to be a matter of sufficient importance to warrant the action of the board in session.

The primary authority for regulating a school and establishing rules and regulations therefor is vested in the school board, and within the limits of reasonableness their authority is supreme.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 14, 1909.

233

EDUCATION—DISTRICT OFFICERS—No part of duty of school board to provide roads to school house.

Attorney General's Office.

Mr. M. J. Barnbaum.

Dear Sir: You call attention to the fact that you have three children of school age and that there is no road from your residence to the school of your district, and state that the school board will in no way help you out in the matter.

Replying, I have to say that it is no part of the duties of a school board to take action or interest themselves particularly in the public highways. Such board is chargeable with no duty in regard to highways and has no authority in laying the same out. Public highways under the laws of this (if wholly within a township) can only be laid out by action of the town board of supervisors. If the highway desired extends into two or more townships, or is on a line between two townships, then authority is vested in the board of county commissioners to lay out such highway. If there is a public need of a highway in your section that will accommodate you, your proper procedure is to take the matter up by way of petition as provided for by law, either before the town board or the county commissioners.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 12, 1909.

234

EDUCATION—DISTRICT OFFICERS—Management of schools is vested in school board, teacher can only be hired by board.

Attorney General's Office.

Hon. C. G Schulz, Superintendent of Public Instruction.

Dear Sir: Your inquiry has to do principally with the general powers and duties of a school board in the management of schools, hiring teachers, etc. I will not in detail restate the facts as outlined, but will quote from the law applicable to the situation.

Section 1312, R. L. 1905, provides as follows:

"The care, management, and control of common and independent districts shall be vested in a board of trustees, to be known as the school board, whose term of office shall be three years and until their successors qualify."

Section 1320, R. L. 1905, so far as here applicable, reads as follows:

"The school board shall have the general charge of the business of the district, and of the school houses and the interests of the schools thereof, and shall: * * * *

"5. Employ and contract with necessary, qualified teachers, and discharge the same for cause. * * * *

"10. Superintend and manage the schools of the district, adopt, modify, or repeal rules for their organization, government and instruction, and for the keeping of registers, prescribe text-books and courses of study, and visit each school at least once in three months."

From all of the foregoing it will readily appear that the teachers for a school in a common school district who are to be paid from public school money, and which school district desires to receive state aid, can only be hired by the school board. No funds can be lawfully paid from the funds in the school treasury to a teacher who is not so hired and who does not have a written contract with the district. The provisions of law above quoted are clear and plain as to meaning and no further comment is necessary.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General

Jan. 15, 1909.

235

EDUCATION—DISTRICT OFFICERS—Limitations on powers of school board.

Attorney General's Office.

Mr. George E. Keenan.

Dear Sir: It is not proper for a member of a school board to be interested financially, directly or indirectly, in any contract entered into by the school district. A person cannot well act in a fiduciary capacity serving the public and at the same time be interested personally in the contract entered into. On the statement made by you I am clearly of the opinion that your school board have no right to lease rooms in a public school building to a private school corporation, at a nominal figure and have the expense of heating and janitor service paid by the district. It further appears from your statement that on account of such action it will be necessary for the school board to hire outside rooms for the accommodation of the school children.

Although the general charge and control of the schools and school property is placed in the hands of the school board, yet their management thereof must be such as will reasonably tend, within the limitations of law, to the advancement of the interests of the district.

The foregoing is a general statement of the views of this department thereon and is as definite as can be given without a fuller explanation of the situation that exists in your district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 11, 1909.

236

EDUCATION—DISTRICT OFFICERS—Clerk of school district cannot also be teacher in district.

Attorney General's Office.

Mr. W. J. McGinnis.

Dear Sir: You state that the school board of district No. 67, Pine county, entered into a contract with you to teach the school of that district for the ensuing year. That at the annual meeting held on July 17, 1909, against your protest, you were elected as clerk of the district, and you inquire: "Is it lawful or otherwise for me to act as clerk and teacher too?"

Your question is answered in the negative. On your failure to qualify, a vacancy will exist which can be filled by the remainder of the board. If not so filled within ten days, then upon ten days' posted notice a special meeting may be called for that purpose, signed by three qualified voters, freeholders or householders of the district and setting forth the object of the meeting.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 21, 1909.

237

EDUCATION—DISTRICT OFFICERS—Transportation of pupils by school board is permissive, not compulsory.

Attorney General's Office.

Mr. Chas. Holm.

Dear Sir: The law empowers a school board to provide for the free transportation to and from school at the expense of the district, of all pupils residing more than one-half mile from the school house for the whole or such part of the school year as they may deem expedient. The school board is thus empowered, but is not compelled to do so.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

238

EDUCATION—DISTRICT OFFICERS—Adjournment of less than quorum of board may be ignored by quorum immediately assembling.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: In your favor of recent date you state that in a special school district on Monday, April 11th, there was to be held a regular board meeting, but at that time there being less than a quorum present a vote was passed ever, another member of the board arrived, thus giving a sufficient number for adjourning the same to a later fixed date; that before leaving the building, how- a quorum, whereupon the board convened and transacted the business which was waiting its consideration. You ask whether the board had that power no action of the board being taken vacating the previous motion.

Replying thereto, I beg to advise that in my opinion the action of the board should be considered valid and binding.

Perhaps under a technical construction of parliamentary practice there should have been a vacation of the previous adjournment, but I am satisfied that unless something intervened between the adjournment and the time of the arrival of the member creating the quorum, which prejudiced some one, as for instance, if some person having business before the board had gone away, the courts would say that the reconvening of the board was a substantial reconsideration of the former motion. The business of school boards is not to be conducted from a technical standpoint, and the procedure followed here is, I believe, a matter of common practice throughout the state.

Yours truly,

GEORGE T. SIMPSON,

Attorney General.

April 18, 1910.

239

EDUCATION—DISTRICT OFFICERS—Board may build necessary and inexpensive shelter for horses.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: In reply to your letter of October 5th, inquiring whether or not a board may be compelled to build a barn for the accommodation of the horses of children living at a distance from school, I have to say that a school board cannot be compelled to build such a structure.

On the other hand, I think that it would be within the power of the board to build a small and inexpensive shelter for horses used for the purpose of bringing children to school from long distances. They are authorized to build outhouses and such a shelter comes within the accepted definition of that term. Of course an elaborate barn could not be built under the power referred to.

Yours truly,

LYNDON A. SMITH,

Assistant Attorney General.

Oct. 6, 1909.

240

EDUCATION—DISTRICT OFFICERS—School trustee holding over cannot vote for his successor.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: In reply to your letter of August 11th inquiring whether or not a member of a school board whose term expired August 1st, but for whom no successor was elected at the annual meeting in July, can sit as a member of the board and vote for his successor, I have to say that in my opinion the officer

in question holds over after August 1st, until his successor qualifies, but that he is not authorized to take any part in the filling of the vacancy which was created by a failure to elect his successor, although such vacancy does not prevent him from acting upon necessary school matters to the time of the appointment and qualification of his successor. The supreme court has recently decided that authority to make appointments exists only where the vacancy occurs at a time when the board as then constituted is still vested with full legal authority. I do not see how this may not apply to a single member of a board as well as to an entire board, where it is only the term of a single member which has expired. By analogy, then, the member whose term expired August 1st, although continuing "for convenience and to prevent an interregnum," and may act upon matters of necessity, may not vote for the appointment of his own successor.

See State v. McIntosh, 109 Minn. 18.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 15, 1910.

241

EDUCATION—DISTRICT OFFICERS—Failure of board to carry out instructions of school meeting does not rescind the same.

Attorney General's Office.

Nels B. Granat, Esq.

Dear Sir: Where a school district at a properly called meeting has voted by the requisite vote to change a school house site, even though such vote was taken more than four years ago, the same will still be in force and effect. The mere failure of the school board to carry out the instructions of the school district at such meeting will not operate as a rescindment of such action. Such action can only be done away with by a vote to that effect at a properly called meeting of the district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

242

EDUCATION—DISTRICT OFFICERS—Member of school board cannot write fire insurance on school property.

Attorney General's Office.

Mr. H. P. Dredge.

Dear Sir: You ask, in your favor of August 5th, in effect, whether members of the school board may write insurance upon the school buildings.

Replying thereto, I beg to advise that, in my opinion, your inquiry is to be answered in the negative. Such persons are prohibited, by law, from making any contract, either directly or indirectly, with the school district.

However, I am bound to say to you that if such contract be made, and the premium be paid and loss ensues, the company would be bound upon its contract, and could not take advantage of its own wrong or the wrong of its agents, to defeat recovery.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 9, 1910.

243

EDUCATION—DISTRICT OFFICERS—Vacancy in board, how filled and for what time.

Attorney General's Office.

Otto J. Stein, Esq., Clerk.

Dear Sir: Without restating your question, I have to advise you that in case of a tie vote for trustee at an annual school election, such tie vote results in no election and a vacancy exists, a second ballot can not be taken. The vacancy thus created can be filled by the board within ten days, such appointment being until the next annual school district meeting, at which time the voters can elect a man for the balance of the unexpired term. The appointment by the board and the election at the succeeding annual meeting will both, together, fill out the three-year term for which no one was elected at the annual meeting. In case the board fails to make an appointment then a special meeting of the district can be called and at such election the person so elected will hold for the unexpired term, to-wit, the balance of the three years in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

244

EDUCATION—DISTRICT OFFICERS—Appointee of school board to fill vacancy holds until next annual meeting only.

Attorney General's Office.

Mr. J. E. Palmer, County Attorney.

Dear Sir: I am in receipt of your favor of July 29th in which you enclose a copy of an opinion rendered by this office to P. A. Strom of Monterey, Minn., such opinion being No. 14 in the published opinions of this office for July, 1910. You suggest that under the 1909 amendment of section 1316, R. L. 1905, the appointment made by a school board on account of a vacancy will be for the unexpired term. I cannot concur with you in this position. To place upon the law in question the construction that you give it would make of no force and effect the words, "until such vacancy can be filled by election at the next annual meeting." A well established rule of statutory construction requires that a statute be so construed as to give force and effect to all provisions thereof, if possible. I am of the opinion that in the 1909 law, where the legislature uses the language, "all elections and appointments to fill vacancies shall be for the unexpired term," it was meant that the appointment made by the board and the election at the next annual school meeting should both together, operate to fill the vacancy for the unexpired term. By giving the section this construction we give full force and effect to the provision that the appointment would extend to the next annual meeting. It will be noted that the law does not say, "all appointments **or** elections to fill vacancies shall be for the unexpired term." The use of the word "and" instead of the word "or" indicates that the legislative intent was as I have indicated.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

245

EDUCATION—Appointee of school board to fill vacancy only holds until next annual meeting.

Attorney General's Office.

Mr. P. A. Strom.

Dear Sir: You state that at last year's annual school meeting a man was elected to office and resigned within a few weeks; that the vacancy thus created was filled by the board and you inquire as to whether or not the man appointed

by the board to fill such vacancy will hold for the three-year term, that is until the expiration of the time for which the man first mentioned was elected. Your inquiry is answered in the negative. The man so appointed holds until the following annual school meeting.

Your attention is called to sections 1316 and 1317, R. L. 1905, as amended, the former of which reads as follows:

"A vacancy in any school board or board of education, elected by the people, shall be filled by the board at any legal meeting thereof **until such vacancy can be filled by election at the next annual meeting.** * * * Such appointment shall be evidenced by a resolution entered in the minutes. All appointments and elections to fill vacancies shall be for the unexpired term."

Chap. 187, G. L. 1909.

Section 1317, supra, as amended, provides that if the board shall fail for ten days to fill a vacancy, a special meeting may be called for that purpose in the manner provided in that section. It is further provided as follows:

"Officers elected at such meeting shall hold for the unexpired term."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 25, 1910.

246

EDUCATION—Contracts—Contracts cannot be let to corporation of which member of school board is a stockholder.

Attorney General's Office.

Johnson & Larson Lumber Co.

Gentlemen: You inquire as to whether the board of education may award a contract to a corporation of which said corporation one of the members of the board is a stockholder.

"The rule prohibiting a public officer from being personally interested in a contract under his supervision or control has been etended so as to prevent him from letting such a contract to a corporation of which he is an officer or stockholder."

15 Am. & Eng. Ency. of Law, 2d Ed., 976, and cases cited.

Your inquiry is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

247

EDUCATION—DISTRICT OFFICERS—Action will lie for recovery of money illegally disbursed by school district officers.

Attorney General's Office.

B. R. Carter, Esq.

Dear Sir: In reply to your letter of August 12th to the attorney general, which has been referred to me for reply, I have to say that there is a remedy for all cases in which a school district is imposed upon by any of its officers selling to the district property belonging to themselves, or being interested in such contracts. The general principle governing such cases is stated in the case of Stone vs. Bevans, 88 Minn. 141, and is to the effect that a taxpayer may maintain an action on behalf of himself and all other taxpayers to compel public officers to repay into the public treasury money which has been illegally paid out. In other states it has been held that this principle applies also to third parties who have received money from the district upon contracts in which a member of the board or directors was directly or indirectly interested, and it may be so held in this state when the question arises in court.

If you think that the circumstances require an action to be brought to recover the sums paid out by the district in which the chairman of the school board was interested, then it is for you, if you are a taxpayer, either alone or in company with other taxpayers, to bring an action for the reimbursement of the district. It is not a matter in which any persons are interested excepting the taxpayers of your district, and they are the ones to bring the action and to back it up with the necessary funds to prosecute it.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 15, 1910.

248

EDUCATION—DISTRICT OFFICERS—Duty of school district treasurer when depositary is designated.

Attorney General's Office.

Mr. T. A. Peters, Clerk.

Dear Sir: Where the officers of a school district have selected and designated a depositary for school district moneys and such depositary has given the bond required by law, it then becomes the bounden duty of the treasurer to deposit school district moneys in such depository. Any interest secured from such deposit or other funds of the district, whether a depository has been selected or not, belong to the school district and not to the treasurer.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 26, 1910.

249

EDUCATION—DISTRICT OFFICERS—Nonresident of district cannot hold office of district treasurer—Compensation of treasurer.

Attorney General's Office.

Mr. C. E. Jones, Clerk.

Dear Sir: You inquire as to whether a man who is not a resident of your district may be appointed to fill a vacancy existing in the office of school district treasurer.

Your inquiry is answered in the negative.

Replying to your secondary inquiry, I have to advise you that a school district treasurer is entitled to receive compensation in such an amount as may be determined at the regular school meeting of the district not exceeeding two per cent of amounts disbursed by him during the year, and to be allowed only after his annual report shall have been approved by the board. Two things must concur in order for a school district treasurer to receive compensation; fiirst, approval of his annual report by the board, and, after that, a vote of the regular school meeting of the district fixing his compensation as above indicated.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 20. 1910.

250

EDUCATION—DISTRICT OFFICERS—Duty of school board to carry out lawful instructions of school meeting.

Attorney General's Office.

Victor S. Knutson, Esq., Superintendent of Schools.

Dear Sir: It is competent for a school district at a properly called meeting to provide for the digging of a well on the school premises, and to vote

the necessary money for the same. Upon such action being taken upon proper notice at an annual or special meeting it is the duty of the school board to carry out the instructions of the district in that regard. In other words, the school board represents the district and when funds are provided for the doing of a certain act and the district votes to have such act performed, it becomes the bounden duty of the board to see that the will of the electors is performed, and such board has no power or right to refuse so to do. Upon such refusal proceedings may be instituted in court to compel action.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 16, 1910.

251

EDUCATION—DISTRICT OFFICERS—School board cannot donate school district funds or make gratuities.

Attorney General's Office.

Mr. N. Zettenberg.

Dear Sir: You are advised that it is not within the power of a school board to donate school district funds to a teacher, or any other person, as a gratuity. Where the school board has hired a teacher, such teacher, if he carries out the terms of his contract, should be paid the compensation provided for in such contract, and no more. School district funds are public funds, and can only be disbursed by those having the same in charge for the purposes provided for by law. Such custodians have absolutely no right to make donations or pay gratuities therefrom.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 22, 1910.

252

EDUCATION—DISTRICT OFFICERS—Tie vote for school district treasurer creates vacancy to be filled by appointment or special school meeting.

Attorney General's Office.

Mr. Vincent Bowler, Clerk.

Dear Sir: You state that at the annual school meeting in your district the vote for treasurer resulted in a tie, and you inquire as to the necessary steps to be taken in the matter.

In case of a tie vote for any officer at an annual school meeting, there is no election so far as such office is concerned, and a vacancy is thereby created, to be filled in the manner provided by law. The remaining members of the board may fill the vacancy within ten days. If the board fails to take such action, then at a special school meeting called for that purpose, the vacancy may be filled by the voters of the district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1910.

253

EDUCATION—DISTRICT OFFICERS—Contracts should be made by school board at properly called meeting.

Attorney General's Office.

I. P. Halser, Esq., Clerk.

Dear Sir: It is not sufficient for a contract of a school district to be signed by two members of the school board at different times without a meeting of the

board. In order to make a valid contract with the school district it is necessary that there be a meeting of the school board properly called, and that the action be taken by the board. Affirmative action by two members of the board at such properly called meeting is sufficient.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 13, 1910.

254

EDUCATION—DISTRICT OFFICERS—Interests of district to be looked after by school board, not by any particular member thereof.

Attorney General's Office.

Mr. B. F. Lindsey.

Dear Sir: The duty of caring for the school property and looking out for the interests of the school district devolves upon the school board, and I am not aware of any law that makes it pre-eminently the duty of any particular one of the board to set that the school house is kept in repair and the necessaries supplied; that is a duty which devolves upon the whole board, and not on any individual member thereof.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 15, 1910.

255

EDUCATION—DISTRICT OFFICERS—School board cannot hire an attorney by the year.

Attorney General's Office.

Mr. Guy H. Moore.

Dear Sir: You are advised that in the opinion of this department it is not competent for your school board to hire an attorney by the year. An attorney may be hired for the performance of any particular service which is necessary and such hiring can properly be made by the adoption of a resolution to that effect.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 16, 1910.

256

EDUCATION—DISTRICT OFFICERS—Member of school board can draw per diem and expenses for attending meeting of school boards—Compensation of treasurer.

Attorney General's Office.

Mr. Lantry Ryan.

Dear Sir: Inquiry is made as to whether or not a member of a school board is entitled to his per diem and mileage for attending a meeting of school district officers called by the county superintendent.

This inquiry is answered in the affirmative. Paragraph 9 of section 1320, R. L. 1905, makes it the duty of the school board to "defray the necessary expenses of the board, including $3 per day for attending one meeting of the school boards of the county in each year when called by the county superintendent, and five cents per mile in going to and returning from such meeting."

The second inquiry is as to the compensation of the school district treasurer, and particularly as to whether a school district treasurer is entitled to compensation when the annual meeting refused to vote the same to him.

The law provides that the treasurer may receive compensation in such amount as may be determined at the regular school meeting of the district not exceeding two per cent of amounts disbursed by him during the year, and to be allowed only after his annual report shall have been approved by the board.

It therefore follows, that there are two conditions necessary to be complied with before a treasurer can receive compensation; first, the approval of his annual report by the board, and, second, an affirmative vote at the annual school meeting fixing compensation. If the annual school meeting refuses to allow any compensation, then the school district treasurer cannot be paid.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1910.

257

EDUCATION—INDEPENDENT DISTRICTS—School board may adopt and enforce reasonable rules for governing conduct of pupils.

Attorney General's Office.

H. C. Poehler, Esq.

Dear Sir: You inquire as to the legality of the acts of your school board in forbidding the attendance by pupils of your public schools at public dances.

The superintendence and management of schools under their charge is by law vested in the school board, and they have authority to adopt and enforce all reasonable rules for the government of such schools. If in the opinion and according to the best judgment of the board, especially when such opinion and judgment are based upon experience and actual results, the board has come to the conclusion that the attendance by the pupils of the school on public dances interferes with the regular school work of those participating in the same, and is injurious to the best interests of the school in general, the board can, by adopting such rule prohibit such attendance. Of course it should be stated in this connection that the rule adopted must be a reasonable one under all circumstances, and this office is not in a position to decide whether a rule of the character indicated would be reasonable or arbitrary, although we are inclined to the opinion that from the facts outlined in your letter, and also other information at hand, that the rule would be construed as reasonable. If the rule is enforced and a pupil suspended for disobeying it, such pupil could have the courts determine whether the rule was a reasonable one and such a one as could be enforced, or whether it was arbitrary, and one, therefore, null and void.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 29, 1909.

258

Attorney General's Office.

EDUCATION—INDEPENDENT DISTRICTS—Non-voting of certain members of school board permits election of superintendent by majority of quorum.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: Your favor of March 10th is hereby acknowledged, in which you submit the following statement of facts:

"At a meeting of a school board of an independent school district for the purpose of electing a superintendent the voting resulted as follows: Three votes

were cast in favor of a certain individual, one vote was cast against him, and two members of the board did not vote."

You inquire, "Does this constitute a legel election?"

Your inquiry is answered in the affirmative.

The foregoing opinion is in keeping with previous rulings of this office, and is supported by great weight of authority.

The general rule is well stated in Willcock on Municipal Corporations, section 546, as follows:

"After an election has been properly proposed, whoever has a majority of those who vote, the assembly being sufficient, is elected, although a majority of the entire assembly altogether abstain from voting; because their presence suffices to constitute the elective body, and if they neglect to vote it is their own fault, and shall not invalidate the act of the others, but be construed an assent to the determination of the majority of those who do vote."

In Rushville Gas. Co. vs. City of Rushville, 121 Ind. 206, 16. Am. State Rep. 388, the court uses this language:

"The mere presence of inactive members does not impair the right of a majority of a quorum to proceed with the business of the body. If members present desire to defeat a measure they must vote against it, for inaction will not accomplish their purpose. Their silence is acquiescence rather than opposition. Their refusal to vote is, in effect, a declaration that they consent that the majority of the quorum may act for the body of which they are members."

"The rule is, that if there is a quorum present, and a majority of the quorum vote in favor of a measure, it will prevail, although an equal number should refrain from voting. It is not the majority of the whole number of members present that is required; all that is requisite is a majority of the number of members required to constitute a quorum."

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 16, 1909.

259

EDUCATION—INDEPENDENT DISTRICTS—Majority of quorum of school board may elect a superintendent.

Attorney General's Office.

Hon. George E. Perley.

Dear Sir: I herewith enclose you copy of an opinion recently rendered by me to the superintendent of public instruction, which is self-explanatory. The opinion as you will note was based upon the statement of facts therein set forth and which do not materially differ from those contained in your letter.

In addition to the authorities cited in the communication I might call your attention to 23 Am. & Eng. Ency. of Law (second Ed.) 592, where a general proposition of law is stated as follows:

"When a part of the members present refuse to vote at all, a vote may be legally decided by a majority of those actually voting, though they do not constitute a majority of the whole number present. This rule rests upon the principle that members present and not voting will be deemed to assent to the action of those who did vote."

In a footnote to the authority last cited, citations are made to decisions in various states.

You further call attention to the fact that the election was had by a viva voce vote, no one calling for a ballot. My attention has not been called to any provision of law that requires a written ballot to be taken by a board of education on the question of electing a superintendent, and in the absence of such requirement, I am of the opinion that an "aye" and "nay" vote would be sufficient.

You state that as a matter of fact three men voted "aye," one voted "nay" and two did not vote.

Under my interpretation of the law, it being a conceded fact that there were three affirmative votes, the person receiving the same was properly elected.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 17, 1909.

260

EDUCATION—INDEPENDENT DISTRICTS—President of school board is a member thereof and entitled to vote.

Attorney General's Office.

Dr. Frank H. Knickerbocker.

Dear Sir: The same rule will apply to a president of a school board in an independent district as applied by me in holding that the temporary chairman was entitled to a vote. The president of the board of education is a member of the board. The fact that he is chosen to act in the official capacity of president does not deprive him of that right. Four members of a board will constitute a quorum, whether the president of the board be one of that number or not.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 11, 1909.

261

EDUCATION—INDEPENDENT DISTRICTS—Vote necessary to elect officers of independent school board.

Attorney General's Office.

Mr. George F. Cashman.

Dear Sir: Your board consists of six members; all being present and voting, a majority or four, would be necessary in order to elect any officer. The vote being a tie, three to three, there is no election, and can be none until some candidate receives for or more votes, providing, of course, that all members of the board are present. If but five members of the board should be present they would consist a quorum, and a candidate who receives three votes would be elected. The temporary chairman of the meeting is a member of the board and entitled to vote. If after voting the result is three to three, of course the temporary chairman could not vote again and cast a so-called "deciding vote."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 9, 1909.

262

EDUCATION—INDEPENDENT DISTRICTS—Officers of independent school district must be members of the board.

Attorney General's Office.

Louis M. Osborn, Esq.

Dear Sir: You call attention to sections 1315 and 1334, R. L. 1905, and ask whether or not in an independent school district, the clerk and treasurer thereof must be members of the school board. I have to advise you that in the opinion of this office your question should be answered in the affirmative.

Section 1315 provides that at a meeting of the school board an organization shall be perfected "by choosing a chairman, a clerk and treasurer." There is no question but what the chairman, clerk and treasurer must be members of the board of education, and that outside persons cannot be selected for those positions. In this connection I might also state that it is now and has been for years so far as I know, the universal practice through the state, to choose these officers from the members of the board.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 25, 1909.

263

EDUCATION—INDEPENDENT DISTRICTS—Organization of new independent district.

Attorney General's Office.

Mr. Otto Poirier.

Dear Sir: You refer to section 1298, R. L. 1905, and inquire as to whether it will be a compliance with this law for a meeting to be called to elect officers any time within twenty days from the time of the election carrying the proposition for the formation of a new district. Your question is answered in the affirmative. The twenty days limitation has to do with the time in which a meeting must be called. A posted notice of ten days must be given for the election of officers.

In regard to your next inquiry I have to say that I am of the opinion that the chairman, clerk and treasurer chosen at the first meeting after the organization of the independent school district, will hold office until the annual meeting of this year, and until their successors are chosen and qualified. In this view I concur in your opinion as well as the reasoning upon which the same is based.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1909.

264

EDUCATION—NEW DISTRICTS—County commissioners may apportion funds of school districts after formation of new districts.

Attorney General's Office.

Mr. Wm. Daniels.

Dear Sir: You state that in April, 1908, school district No. 5 of your county was formed out of the territory of school district No. 2; there was no indebtedness in school district No. 2 and that such district had certain funds on hand approximating $1,400.00; that the county board made no division or distribution of the funds, and you inquire if such division can be made at this time. Your question is answered in the affirmative.

The syllabus in the case of School District No. 131 vs. School District No. 5, reported in 120 N. W. Rep. 898, reads as follows:

"When a board of county commissioners creates a new school district out of territory taken from existing districts, as authorized by section 3674, General Statutes 1894, it may make the division of the moneys, funds and credits to the district affected by the change at a subsequent regular meeting of the board without a notice and hearing thereon."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 11, 1909.

265

EDUCATION—NEW DISTRICTS—County board cannot establish school district without proper petition.

Attorney General's Office.

Mr. H. F. Anderson, Superintendent of Schools.

Dear Sir: The county commissioners are without authority to establish a new school district unless there is presented to them a petition signed by a majority of the freeholders qualified to vote for school officers in the territory to be included in such district, and in which territory there must reside not less than twelve children of school age. In the instance that you cite, there being but nine children of school age within the territory the county commissioners are not vested with authority to establish a new district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 9, 1909.

266

EDUCATION—NEW DISTRICTS—Powers of county board construed.

Attorney General's Office.

Hon. Elias Rachie.

Dear Sir: Replying to your favor of recent date to the Attorney General Relative to school district No. 104 of your county, and in which you inquire as to whether, under the facts as outlined by you, it will be competent for the county commissioners to grant a rehearing under the provisions of section 1300, Revised Laws 1905, to the end that the formation of the district may be annulled, I have to advise you that in the opinion of this department your question must be answered in the negative.

It appears that the county commissioners a number of years ago, upon petition made an order forming the district in question; that this order was appealed from to the district court, and after the lapse of a long time the court by its order and judgment affirmed the action of the county commissioners. It would hardly seem that the judgment of the court finally rendered in this matter should be subject to review and perhaps be overruled by the action of the county board.

Some time since a matter pertaining to this district was before this office on a question submitted by the Superintendent of Public Instruction, and it was held that upon a petition for a rehearing the county board might consider its action in making a division of funds and credits. It appears that after the judgment of the court was entered, the county commissioners made a division of the funds and credits upon what afterward appeared to be a mistake as to the financial condition of the districts in question, the board taking into account the condition of the funds in the old districts a number of months prior to the date of the award, when in fact the funds on hand at that prior time had been expended for legitimate school purposes and a further indebtedness created. It appears that such a rehearing would be manifestly fair in order that justice might be done to the respective school districts, and the rehearing would be of an action taken by the board subsequent to the entiry of the judgment in question. The position taken at that time is not inconsistent with the one now taken.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 8, 1909.

267

EDUCATION—NEW DISTRICTS—Division of funds may be made by county board at meeting subsequent to formation of new district.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: The county commissioners at the time of making their order for the formation of a new district should arrange for a division of the funds and

credits between the school districts affected by such order upon an equitable basis. If the division is not made at that time, I am inclined to the opinion that such division may be made at a later meeting of the board, and as soon as may be, although the safer course is as first stated above. It is not necessary for the petition for the formation of a new school district to call for a division of the funds; such a division is provided for by law.

CLIFFORD L. HILTON,
Assistant Attorney General.

June 24, 1909.

268

EDUCATION—NEW DISTRICTS—Pending appeal from order, territory attempted to be attached is taxable in old district.

Attorney General's Office.

Mr. A. L. Janes, County Attorney.

Dear Sir: You state that your county board has made an order detaching territory from a school district as provided by chapter 13, G. L. 1909; that an appeal has been taken from the order to the district court and that the matter is there pending. You inquire:

"Shall the territory detached be taxed in the district to which it was ordered annexed by the county commissioners, or will its status remain the same as though no order has been made until the appeal has been determined by the district court?"

I have the honor to advise you that in my opinion the latter conclusion is the proper one. The appeal suspends the operation of the order, and until it is determined the status of the territory in question remains the same as though no order had been entered.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 8, 1909.

269

EDUCATION—NEW DISTRICTS—Formation of new district does not abrogate valid contracts of old district.

Attorney General's Office.

Mr. Nels Hallstrom, Village Recorder.

Dear Sir: In your communication of February 20th you call attention to a school district matter, and state that about a year ago your school district was divided and two new districts formed; that prior to the division the old district made contracts with the teachers, janitors, etc.

Upon the formation of a new district it is the duty of county commissioners to equitably apportion the credits and funds of the district effected by the change, and in making such apportionment the county board should take into consideration the debts, if any, of the districts in question. The change in boundaries of school districts cannot effect valid existing contracts in force at the time of such change.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1909.

270

EDUCATION—NEW DISTRICTS—Manner of filling vacancies in new school district.

Attorney General's Office.

Mr. O. S. Reigstad.

Dear Sir: You state that the county commissioners upon a petition duly made, organized a new school district, and fixed the time for the voters in that district to meet and organize. That such meeting was held, three officers, a

chairman, treasurer, and clerk elected. That only one of the officers, to-wit, the clerk, qualified; the others having refused. You inquire as to the proper procedure to take, and I have to advise you that if you have properly qualified as clerk it will be competent for the requisite number of voters, freeholders or householders to call a special school meeting for filling the vacancies.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 12, 1909.

271

EDUCATION—NEW DISTRICTS—Upon formation of new school district, pupils resident therein may be required to pay tuition in old district.

Attorney General's Office.

John W. Clover, Esq., County Attorney.

Dear Sir: After a new school district is organized, pupils within the territory comprising such new district are supposed to attend school in that district. If they attend school in the old district it will be competent for the old school board to require payment of tuition. There is no provision of law to the effect that upon such division the scholars whose residence is within the new district may attend school in the old district to the end of the current year.

Under the provisions of chapter 138, G. L. 1909, I am of the opinion that it will be necessary to publish the notice of hearing in a newspaper, providing one is published in the village; the posting of notices in such case is not sufficient.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1910.

272

EDUCATION—SCHOOL DISTRICT MEETINGS—Failure to give proper notice of annual school meeting does not make invalid election of officers.

Attorney General's Office.

Mr. W. E. Messenger.

Dear Sir: Section 1305, R. L. 1905, provides for the annual meeting of the school district upon ten days' posted notice given by the clerk, specifying the matters to come before such meeting. The section in question further provides, however, that the failure of the clerk to give such notice or to specify the business to be transacted thereat, shall not affect the validity of any business except in the raising of money to build or purchase a school house, the authorizing of issue of bonds, the fixing of a school house site, the organization as an independent district, or the change from an independent to a common district.

It would therefore follow that a person chosen as an officer at an annual meeting called upon but five days' notice, would be entitled to hold the office for the full term for which he was elected, providing the other proceedings were regular.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 2, 1909.

273

EDUCATION—SCHOOL DISTRICT MEETINGS—School district officers must be elected by ballot.

Attorney General's Office.

Mr. N. J. Reed.

Dear Sir: The law requires that the polls at an annual school meeting shall be kept open for one hour and that officers shall be elected by ballot.

An election by acclamation is not in compliance with this law. It may be stated, however, that the right of any person so chosen, who afterwards qualifies, cannot be attacked in a collateral proceeding and that such officer would be a de facto officer, if not de jure, and his actions as such would be binding upon the district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 9, 1909.

274

EDUCATION—SCHOOL DISTRICT MEETINGS—Ownership of property in school district does not carry with it right to vote therein.

Attorney General's Office.

Mr. Martin H. Peck.

Dear Sir: The mere fact that a man owns a farm in your school district does not entitle him to vote therein at the annual school meeting. If he is a resident of an adjoining district, and is otherwise qualified, that is the place for him to vote.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 9, 1909.

275

EDUCATION—SCHOOL DISTRICT MEETINGS—School district meetings may be adjourned.

Attorney General's Office.

Mr. H. P. Bengtson, County Attorney.

Dear Sir: You inquire at to whether a special school meeting, duly called for the purpose of deciding upon a school house site, can be adjourned and the vote taken upon the question at an adjourned meeting.

Replying, I have to inform you that it is the opinion of this office that your question should be answered in the affirmative. It would seem that there may be transacted at a properly adjourned meeting anything that could have been transacted at the original meeting. In so holding I am following former rulings of this office.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 25, 1909.

276

EDUCATION—SCHOOL DISTRICT MEETINGS—Action at a school district meeting may be rescinded at subsequent meeting.

Attorney General's Office.

Mr. B. F. Heins.

It is competent for a school district, at a properly called special meeting, to rescind an action taken at an annual meeting, or at a special meeting theretofore held. Any contract made, however, by the school board acting on the

authority conferred by the action of a former meeting, and taken prior to the rescission of such action would be binding upon the district.

A majority vote is sufficient at an annual or special meeting to carry any proposition submitted other than that of the change of a school house site away from the center.

A foreign born woman who is married to a naturalized citizen of the United States is entitled to vote upon school propositions.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 11, 1909.

277

EDUCATION—SCHOOL DISTRICT MEETINGS—No property qualification necessary for voting on bonding a school district.

Attorney General's Office.

Mr. N. E. Peterson, County Attorney.

Dear Sir: There is no property qualification required in order to entitle a person, otherwise qualified, to vote at an annual school meeting upon the question of raising money for improvements in the district. The same general qualifications maintain as for general elections, and qualified women may also vote upon all school questions. Section I, Article VII State Constitution.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 3, 1909.

278

EDUCATION—SCHOOL DISTRICT MEETINGS—Vote necessary to rescind action of former meeting.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: I am of the opinion that it is competent for the school district in question, at a properly called special meeting, to rescind the action of a former meeting, providing for the building of a school house on the then present school site and the vote in favor of such rescinding being 165 for to 149 against would be sufficient to accomplish that purpose. The rescindig of the action theretofore taken to build upon the then present school site, would not in itself establish a school site elsewhere, but would seem to leave the question of site undetermined.

The information contained in your communication is not sufficient to advise further, but it would seem, if my views as to the situation are correct, that another meeting should be held at which the question can be fairly submitted to the electors as to the location of a school house site and the erection of a building thereon.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 18, 1909.

279

EDUCATION—SCHOOL DISTRICT MEETINGS—Conduct of annual meeting.

Attorney General's Office.

Mr. M. N. Schoonover.

Dear Sir: The law requires that the election of school district officers must be by ballot and that the polls shall remain open for one hour. You state in your letter that contrary to the wishes of the school board, the electors present at the meeting (which meeting lasted only from 8:15 to 8.58) insisted upon elect-

ing the officers by acclamation and that this course was pursued, the clerk being instructed to cast the vote declaring them elected. You further state that the time of the meeting consumed in this attempted election did not exceed five minutes.

I am clearly of the opinion that the action of this school meeting was so far from being in compliance with the law that it can in no way be considered as a legal election. In this connection it may be noted that it was the understanding generally throughout the district that the polls would be open for one hour as provided by law, and that a large number of voters came to the meeting after this attempted election was over and were not given the privilege of exercising the right of voting.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1909.

280

EDUCATION—SCHOOL DISTRICT MEETINGS—In case of tie vote at annual election another ballot cannot be taken

Attorney General's Office.

Mr. Swan Boreen.

Dear Sir: The law requires that members of the school board shall be elected by ballot. In case of a tie vote there is no election and a vacancy exists which can be filled as provided by law. See sections 1316-1317, R. L. 1905. In the instance that you state, where there were two offices to fill, four candidates being nominated therefor, and as a result of the ballot one man received a majority of the votes cast, such person was duly elected. Two others of the candidates tied for second place and it was not competent to then take another ballot. It may be stated, however, that a person who is declared elected to a school office, duly qualifies and enters upon the discharge of his duties will be considered as a de facto officer and his actions will be binding upon the district through his incumbency thereof.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 9, 1909.

281

EDUCATION—SCHOOL DISTRICT MEETINGS—Notice for special meeting construed insufficient.

Attorney General's Office.

J. E. Peterson, Esq., District Clerk.

Dear Sir: You submit to this office for an opinion a notice calling a special school meeting held in your district on March 10, 1909, in which the purpose of the meeting is stated as follows: "For discussing and passing on the question whether the trustees shall be authorized to finish tne upper story of the school house, etc.," and you inquire whether, under this notice, it was competent for the meeting to vote to levy a tax to provide money for furnishing the upper story of your school house.

Your question is answered in the negative. The notice was not sufficiently explicit to warrant the special meeting in taking that course.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 17, 1909.

282

EDUCATION—SCHOOL DISTRICT MEETINGS—Special school meeting may increase number of months' school to be held.

Attorney General's Office.

Mueller School Clerk.

Dear Sir: You state that at a special school meeting it was voted to have eight (8) months' school, but that now there is another special meeting called to decide upon having one month more school, being a total of nine months.

It is competent for the electors of a school district so to do.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 13, 1909.

283

EDUCATION—SCHOOL DISTRICT MEETINGS—Plurality vote sufficient to elect officers.

Attorney General's Office.

Mr. Chas. Lehman, Jr.

Dear Sir: Section 1308, R. L. 1905, empowers the annual meeting of a school district "to elect by ballot, officers of the district." The law does not now, as it formerly did, require that an officer be elected by a majority of all votes cast, and a plurality vote is sufficient. Under the statement made by you showing that for the office of district clerk "A" received four votes, "B" three votes and "C" two votes, I have to advise that "A" was duly elected, providing that all necessary legal requirements were complied with.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 17, 1909.

284

EDUCATION—SCHOOL DISTRICT MEETINGS—Notice of annual meeting must contain provision for raising money for building purposes or such action cannot be taken.

Attorney General's Office.

George E. Sloan, Esq., Secretary Commercial Club,

Dear Sir: You enclose a copy of the notice of your annual school meeting and state that it such meeting it was voted to raise the sum of $800 for "building fund." It appears that the notice of the annual school meeting contained nothing relative to the raising of money for building purposes. I am of the opinion that the action of the annual meeting in thus providing for the raising of the sum of money in question for building purposes was illegal and unauthorized.

Section 1305, R. L. 1905, in providing for the annual meeting of common school districts, contains a provision to the effect that the failure of the clerk to specify the business to be transacted at such meeting shall not invalidate such action, "except the raising of money to build or purchase a school house, the authorizing the issuance of bonds * * *."

It is manifest from your letter that the $800 for the building fund was for the purpose of building a large addition to the present school house, and I am of the opinion that the notice for the meeting should have contained a provision fully apprising the electors of the fact that such matter would come before the meeting for consideration.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1909.

285

EDUCATION—SCHOOL DISTRICT MEETINGS—Not necessary to put in call for annual meeting, question of transporting children.

Attorney General's Office.

H. W. Richardson, Esq.

Dear Sir: I am of the opinion that it is not necessary that the question of providing transportation for children to and from school be inserted in the call for the annual school meeting, but that the district can take such action at such annual meeting without it being stated in the call that such question will be considered.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

286

EDUCATION—SCHOOL DISTRICT MEETINGS—Special district meetings—requisites of.

Attorney General's Office.

O. C. Myron, Esq.

Dear Sir: From an examination of the facts as disclosed in your letter, I have to advise you that where at a special school meeting the question submitted results in a tie vote, the proposition fails to carry. The fact that the action of such meeting resulted as aforesaid does not prevent the voters of the district from having a second special meeting to act upon the same question.

In order to have a special meeting to act upon the question of change of a school house site, there must be a meeting called as provided by law, in the notice of which the question is stated clearly and definitely as to the object of the meeting. Where the law provides that a petition or request shall be signed by five freeholders and voters of the district, it is necessary that such signers be both freeholders and voters. Women have the right to participate in school elections and sign petitions, but such women must be freeholders and voters in order to be qualified petitioners. In this state women may hold property the same as men, and if in fact the woman in a district is a freeholder and a voter, she is a proper petitioner.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 19, 1910.

287

EDUCATION—SCHOOL DISTRICT MEETINGS—Quorum necessary at annual and special school meeting.

Attorney General's Office.

Mr. Oscar Carlson, Superintendent of Schools.

Dear Sir: In reply to your letter of August 10th, I have to say that in the absence of statutory provision as to the number which shall constitute a quorum at an annual or special school meeting, those legal voters who are present may proceed, after due organization, with the business of the meeting, and their action will be binding upon those failing to attend, however few may be present and voting.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 12, 1910.

288

EDUCATION—SCHOOL DISTRICT MEETINGS—Action of special meeting not necessarily illegal for irregularity in form of notice.

Attorney General's Office.

Mr. Chas. Mathison.

Dear Sir: In reply to your letter of August 1st inquiring whether or not a moderator of a school meeting can decide that a vote was illegal because the time specified in the notice of such meeting named the hours from five to nine o'clock for the opening and closing of the polls, I have to say that, in my opinion, the meeting was not rendered illegal because of the form of the notice of the special school meeting, and, consequently, the moderator was wrong in declaring the vote for the new school house illegal. Courts are very liberal in carrying out the wishes of voters, when they are expressed freely, and under circumstances which do not indicate that any of the voters were prevented from expressing their views upon the question under consideration.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 9, 1910.

289

EDUCATION—BONDS—SCHOOL DISTRICT MEETINGS—Special school meeting to bond district cannot be held on Memorial day.

Attorney General's Office.

Mr. William Murtha.

Dear Sir: Your favor of June 2d to the state auditor has been referred to this department for attention.

You inquire as to whether or not a special school meeting held to bond a school district to build a new school house can lawfully be held upon Memorial day, May 30th.

I am of the opinion that your inquiry is to be answered in the negative. Section 5514, paragraph 6, R. L. 1905, gives a list of holidays, and provides that "no public business shall be transacted on those days except in cases of necessity."

I am of the opinon that the holding of a special school meeting for the purpose above indicated is a transaction of public business, I am confident that the state board of investment would not accept bonds voted on that day, and would not loan state money theron.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 8, 1910.

290

EDUCATION—SCHOOL DISTRICT MEETINGS—No limitation as to number of special district meetings that may be calltd.

Attorney General's Office.

Mr. G. R. Miller.

Dear Sir: There is no limitation placed by law upon the number of special school meetings that may be called in a district for any particular purpose. If a special school meeting is called and a vote is taken upon the proposition submitted thereat, which results in the proposition failing to carry, it will be

competent for another school meeting to be called within the time thereafter for giving the requisite notice by following the necessary requirements of law applicable to special school meetings.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1910.

291

EDUCATION—SCHOOL DISTRICT MEETINGS—Not necessary for voter to be freeholder in order to vote on school district bonding question.

Attorney General's Office.

W. H. Westcott, Esq.

Dear Sir: You state that in your school district a special meeting is to be called to raise money to erect a new school house, and you inquire as to whether persons who are not freeholders may vote on the proposition of bonding the district.

Your inquiry is answered in the affirmative. Any persons who are legally qualified voters in the district may vote upon the bonding proposition irrespective of whether they are freeholders or not. In all school matters, including the issuance of bonds, women are allowed to vote providing they possess the qualifications of voters as to residence, age, etc.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 13, 1910.

292

EDUCATION—SCHOOL DISTRICT MEETINGS—In case of tie vote at annual meeting, length of school may be determined at special meeting.

Attorney General's Office.

Mr. Otto Fering, Clerk.

Dear Sir: You state that at your annual school meeting the vote on the number of months of school resulted in a tie and that it was not finally decided by the meeting as to the number of months of school that should be held in your district during the ensuing year. It therefore follows that the matter has not been determined at the annual school meeting. A special meeting as provided by law may be called to consider the matter and the action of that meeting will be determinative.

This opinion is based upon the supposition that your district is a common school district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 25, 1910.

293

EDUCATION—SCHOOL DISTRICT MEETINGS—Length of school may be shortened at special meeting of district.

Attorney General's Office.

Gustav Berg, Esq.

Dear Sir: In your favor of April 14th you state that the annual school meeting fixed the time of holding school in your district, that subsequent thereto a special school meeting shortened the same, and you ask whether a special school

meeting has that power.

In reply thereto I beg to advise that assuming such special meeting is properly called, your inquiry is to be answered in the affirmative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

April 18, 1910.

294

EDUCATION—SCHOOL HOUSES AND SITES—Land for site may be obtained by condemnation—Site when practicable shall contain two acres.

Attorney General's Office.

Mr. V. E. Eicson, District Clerk.

Dear Sir: If a school district, at a properly called meeting, votes to change the present school house site and locate the school building upon a new site at a definite place and the district canot make satisfactory terms with the land owner, then the right of condemnation exists and the school district can have the necessary land condemned. The condemnation proceedings will of course have to be had in court and the easiest course for you to pursue would be to secure some private attorney in whom you have confidence and allow him to take charge of the proceedings for you. This office cannot do this, nor is it made by law the duty of the county attorney to do that work. Section 1320, R. L. 1905, among other things provides, that a school house site outside of a city or village, when practicable, shall contain two acres.

Any legal voter, man or woman, who has resided in the district for six months prior to the vote, may vote upon the question of changing a school house site from the site upon which a school house stands or is begun.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 17, 1910.

295

EDUCATION—SCHOOL HOUSES AND SITES—Construing the law relative to change of school house sites.

Attorney General's Office.

Hon. C. R. Frazier, Assistant Superintendent of Public Instruction.

Dear Sir: Your communication sets forth the situation of affairs in school district No. 229 of Polk county, being a district six miles long and three and one-half miles wide, and containing two school houses, one situated two miles from the east line and the other one mile from the west line.

The questions submitted are as follows:

1. Is the center of the district the same as the center of the territory from which each school draws its attendance?

This question is answered in the negative. When the term "center of the district" is used it means the geographical center of the entire district.

2. Will a majority vote move the school house, or must it be a two-thirds majority?

Section 1308, R. L. 1905, provides that—

"A site on which a school house stands or is begun shall not be changed, except by a vote therefor, designating the new site, of a majority of the legal voters of the district who have resided therein not less than six months prior to the vote, and of two-thirds of the voters voting upon the question."

This requires a concurrent vote of a majority of all the legal voters in the district (who have been residents as above provided), and also that those so voting must be two-thirds of all electors present at the meeting.

3. Does the two-third majority referred to mean two-thirds of the voters inside of the school territory of attendance, or must it be two-thirds majority of all voters in district No. 229?

The answer to the second question contains an answer to this—the voters referred to mean the voters of the entire district.

4. After a special meeting has been held and the vote was against moving the school house, can another meeting be called to act upon the same question?

The answer to this question is in the affirmative. Another meeting can be called by complying with the provisions of law relating to special meetings.

5. Can the meeting be declared unlawful because the treasurer was one of the persons who signed the petition calling such meeting?

This question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 9, 1909.

296

EDUCATION—SCHOOL HOUSES AND SITES—Center of district means geaggraphical center.

Attorney General's Office.

Mr. Victor Larson.

Dear Sir: The center of a school district as referred to in section 1308, R. L. 1905, defining the powers of an annual meeting, means the geographical center. It will be competent for a duly called school meeting, before which the question of changing the school site is properly up for action, to change the same from a point near the center to one more distant, by a vote so designating a new site, of a majority of the legal voters of the district who have resided therein not less than six months prior to the vote and of two-thirds of the voters voting upon the question.

The fact that the new site will not be as convenient to a majority of the scholars in the district will not prevent the meeting from so changing the site.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 9, 1909.

297

EDUCATION—SCHOOL HOUSES AND SITES—Changing site of school house.

Attorney General's Office.

Mrs. Hans Larson.

Dear Madam: Any ballot cast at a school meeting where the question of locating a site is voted upon and which clearly expresses the intention of the voter casting it, may be considered as legal. The determination of the location of a school house rests primarily with the electors, their action in that regard, when properly expressed, whether for the best interests of the district or not, will be binding upon the district. A person need not be a freeholder in order to be entitled to vote at school meetings.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 12, 1909.

298

EDUCATION—SCHOOL HOUSES AND SITES—New school house may be built on old site without vote of district again designating such site.

Attorney General's Office.

Mr. Ethan Clark, District Clerk.

Dear Sir: You inquire as to whether or not a school district can build a new school house on the site where the old one stands (or within a few rods of the old site), the old site, so-called, being more than a half mile from the center of the district.

Your inquiry is answered in the affirmative insofar as locating the school house upon the old site is concerned. If it is desired to locate the school house on a new site, even though the same be within a few rods of the old one, it will be necessary for such change of site to be determined upon a proper school meeting called for that purpose.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1910.

299

EDUCATION—SCHOOL HOUSES AND SITES—Lawful change of site of school house not affected by change of district boundaries afterwards made.

Attorney General's Office.

Mr. Eric L. Thornton, County Attorney.

Dear Sir: You state that a properly called school meeting in district No. 7, on March 9th, it was decided by a majority vote to move the school house from the then site to a location which was nearer the center of the district; that on March 10th the county commissioners allowed a petition for the organization of a new district, taking some territory from district No. 7, and that by said change of boundaries the newly designated site is not as near the center of the district as thus changed as would be the former site. You inquire whether or not, in view of the changed conditions a majority vote at the time such election was held was sufficient to change the site.

In my opinion your inquiry is to be answered in the affirmative. At the time of the submission of the question to the voters all that was required was a majority vote to change the site and any change of boundaries thereafter made could not affect the validity of that meeting and require a two-thirds vote. I see no objection to another meeting being called to again change the site, and the number of votes necessary to make a new change of site would be dependent upon whether the new proposed site is nearer the center of the district than the one from which it is to be changed, taking into consideration the change of boundaries occasioned by the action of the county commissioners.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 23, 1910.

300

EDUCATION—SCHOOL HOUSES AND SITES—Majority vote is sufficient to acquire site for an additional school house.

Attorney General's Office.

Mr. B. E. Nelson, Clerk.

Dear Sir: You state substantially as follows:

"At a special school meeting of a common school district called for the purpose of voting on a designated school house site, erecting a new school house on same, and raising money to cover cost of site and building, a majority vote of all voters residing in the district was cast in favor of the proposition, but not a two-thirds vote of all those present and voting. That the district already has a good modern school house, located within a half mile of the center of the

district, large enough to accommodate all children of school age residing in the district; that your district is three miles square."

The question submitted is this:

"Whether a majority vote at such meeting (being also a majority of all legal voters in the district entitled to vote at such meeting) is sufficient to carry the proposition, or whether a two-thirds vote of all such legal voters so present is required."

A number of facts contained in your statement are not material in arriving at an answer to this question.

Section 1308, R. L. 1905, so far as applicable to the question asked, is as follows:

"The annual meeting shall have power * * * *

"4. To designate a site for a school house, and provide for building or otherwise placing the school house thereon, when proper notice has been given; but a site on which a school house stands or is begun shall not be **changed,** except by vote therefor, designating the new site, of a majority of the elgal voters of the district who have resided therein not less than six months prior to the vote, and of two-thirds of the voters voting upon the question, except that, in districts having but one school house, if such school house be more than a half mile from the center of the district, such site may be changed to a more central location by a majority vote of these present and voting on the question of the change."

Section 1306, R. L. 1905, provides for special school meetings and in answering your inquiry I act upon the presumptfon that the meeting was properly called and all necessary legal steps taken to give the voters present a right to vote upon and decide said propositions.

I am of the opinion, and so advise you, that a two-thirds vote of all such voters present and voting was not necessary to carry the propositions, a change a site not being contemplated, but the acquiring of an additional one; that an affirmative vote at such meeting of a majority of all such legal voters entitled to vote at such meeting, residing in the district and so present and voting, is sufficient.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 18, 1909.

301

EDUCATION—SCHOOL HOUSES AND SITES—School district cannot give away old school house though not needed.

Attorney General's Office.

Mr. W. F. Drake.

Dear Sir: You state that your school district has built a new school house, and are the owners of an old school building for which they have no particular use, and which cannot be rented, nor do you that that it can be sold for anything approximating its real value. You inquire, in effect, if it is competent for the school district to turn this property over to a religious denomination under certain conditions, the title of said property to be vested in such organization after ten years, providing they fulfill the conditions agreed upon.

I am of the opinion that your question must be answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 23, 1909.

302

EDUCATION—SCHOOL HOUSES AND SITES—Vote necessary to sell old school house.

Attorney General's Office.

Mr. Albert Anderson.

Dear Sir: You state that in your school district a new school house site was located as near the center of the district as possible by unanimous vote; that it was also voted to build a new school house and issue bonds in the sum of $700.00 to the state with which to build the same and that the school board has commenced the preliminary work. You further state that the district has two old school houses located on the east and west side of the district respectively, and you inquire as to the vote that will be necessary in order to sell the same, the new school house in question being the only one needed for the district.

Under the statement of facts presented by you, I am of the opinion that a majority vote will be sufficient to authorize the sale of such old school houses. It is proposed to have action taken thereon at the annual meeting, and the notice for such meeting should state that the authorization of the sale of the two old school houses will be considered thereat.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1909.

303

EDUCATION—SCHOOL HOUSES AND SITES—Vote necessary to select site in new district—State loans.

Attorney General's Office.

Mr. Gabriel Stene.

Dear Sir: You submit to this office for an opinion thereon the inquiries contained in a communication addressed to you by Mr. S. A. Syverson, bearing date November 27, 1909, as explained by you. Replying thereto, I have to advise you that—

"A majority vote of the electors at a properly called school meeting of a newly created school district is sufficient to select a site for a school house, irrespective of the distance of the location of such site from the center of the district."

A school district meeting called for seven o'clock may continue the work for the length of time necessary to complete the business before it, even though such time extends beyond eight o'clock.

A person who owns real estate in the district, but is not a resident or a voter therein, cannot sign the petition the law requires in chapter 122, G. L. 1907; that petition (if one is had) should be signed by ten or more freeholders of the district resident therein. A woman of the age of twenty-one years and upward, and possessing the qualifications requisite to a male voter, may vote at any election held for the purpose of choosing any officer of a district, or upon any measure relating to schools, and is eligible to hold any office pertaining to the management of schools.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Dec. 2, 1909.

304

EDUCATION—SCHOOL HOUSES AND SITES—Plans for new school buildings must have approval of state board of health.

Attorney General's Office.

Mr. Joel Ellstad.

Dear Sir: You state that the school building in your district was destroyed by fire and that you are about to build a new one, and you inquire whether it

is necessary for a new school building to comply with the regulations of the state board of health.

Your inquiry is answered in the affirmative. The law provides that the plans and specifications for such new school house in respect to sanitary conditions shall be submitted and filed with the Minnesota state board of health, and that no such building shall be constructed until the sanitary arrangements of the same have been approved by the said board.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 18, 1910.

305

EDUCATION—SCHOOL HOUSES AND SITES—Power of board to build school house destroyed by fire.

Attorney General's Office.

Mr. M. D. Cameron.

Dear Sir: You ask whether, in a common school district where there is but one school house, and the same has been destroyed by fire, but which was covered by insurance, such insurance money, when paid, may be used by the school board of the district without the vote of the district for the purpose of building a school house.

Replying thereto, I beg to advise that, assuming that it is built upon the same site, your inquiry is to be answered in the affirmative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 5, 1910.

306

EDUCATION—SCHOOL HOUSES AND SITES—Majority vote is not sufficient to change a school house site in districts having two or more school houses.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: In your favor of May 21st you inquire as follows:

"Under the provisions of paragraph 4 of section 1308, R. L. 1905, may a school district maintaining two or more school buildings change the site of any building by a majority vote of those present and voting?"

I have the honor to advise you that in my opinion your inquiry is to be answered in the negative. In a district containing two or more school houses the site of any such school house may not be changed except by a vote therefor designating a new site, of a majority of the legal voters of the district who have resided therein not less than six months prior to the voting, and of two-thirds of the voters voting upon the question. The provision of law found in paragraph 4, section 1308, supra, that a majority vote of those present and voting is sufficient to make a change of a school house site, has only to do with districts containing but one school house, and then only when that one school house is more than one-half mile from the center of the district and the new site is in a more central location.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 1, 1910.

307

EDUCATION—SCHOOL HOUSES AND SITES—Money secured by school district from sale of bonds to build new school house cannot be used to repair one without vote of district.

Attorney General's Office.

Luke K. Sexton, Esq., County Attorney.

Dear Sir: In your favor of June 13th you state that district No. 74, Meeker county, has voted to bond the district in the sum of $1,500 "for the purpose of building a new school house," that the bonds were sold to the state of Minnesota, and that they are now proposing to use the money to repair an old school house.

You ask whether in my opinion the same may be lawfully used for the latter purpose without a further vote of the district authorizing the same. This inquiry is to be answered in the negative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

June 15, 1910.

308

EDUCATION—SCHOOL HOUSES AND SITES—Residents of newly annexed territory cannot vote on moving school house site until acquiring six months' residence in district.

Attorney General's Office.

Hon. C G. Schulz, Superintendent of Public Instruction.

Dear Sir: I have before me a communication addressed to you by J. T. Clawson, county superintendent of schools of Lincoln county, Minn.

It appears that certain territory was annexed to a school district and within thirty days of such annexation a special school meeting was had for the purpose of moving the school house in a southerly direction and to a point nearer the center of the district; that at such meeting the proposition carried by four votes majority. and that some of the persons voting at such meeting were residents upon the newly annexed territory. I assume that the persons last above referred to as residents of the newly annexed territory and so voting exceeded four in number.

The question presented is as to whether or not such persons, not having been residents of the district for six months, were entitled to vote upon the proposition of moving the school house. I have the honor to advise you that in my opinion they were not proper voters at such meeting. A resident of six months was necessary before they could vote on the question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 7, 1910.

309

EDUCATION—SCHOOL HOUSES AND SITES—Vote necessary to move school site under conditions stated.

Attorney General's Office.

A. J. Danielson, Clerk.

Dear Sir: You state that at the annual school meeting held in 1909, district No. 21, voted money to build a new school house; that on the 26th of March, 1910, a special meeting was held and contracts were let for sand for concrete foundations, cement, lime, brick and lumber, and to tear down the old school house and use the lumber in building a new school house; that the school house is one-half mile west and 56 rods north of the center of the district; that on May 31, 1910, a special meeting was held to move the school house to the center of district, and that the vote on such attempted change was 15 for and

34 against; that on June 1, 2, 3 and 4 the old school house was taken down, sand hauled and foundation staked out; that on June 29, 1910, a special meeting was held to vote on a new school house site one-half mile north and one-quarter mile west of the center of the district, and that the vote at this meeting stood 43 for and 22 against. You now inquire whether in our opinion that vote, a majority, was sufficient to change the school house site. Your district contains nine sections and is square, three sections each way.

In my opinion a majority vote was not sufficient. The law authorizes a district, at a properly called meeting, to designate a new site for a school site, but provides that "a site on which a school house stands **or is begun** shall not be changed except by a vote therefor, designating the new site, of a majority of the legal voters of the district who have resided therein not less than six months prior to the vote and of two-thirds of the voters voting upon the question."

It is also provided that in districts containing but one school house, and when that school house is 'more than a half a mile from the center of the district, the site may be changed to a more central location by a majority vote of those present and voting on the question of change."

According to your statement the new location is further from the center of the district than is the old one. I am also of the opinion that in contemplation of law, a school house has been begun upon the old site by the tearing down of the old one, staking out the foundation and the assembling of certain material for the construction of the new school house.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 2, 1910.

310

EDUCATION—TEACHERS—School board must provide for janitor service, teacher is not required to do it.

Attorney General's Office.

Mr. Anton Thompson, County Attorney.

Dear Sir: You ask, "Is a school board under the present school law compelled to furnish a janitor for a teacher in a rural common school district, the contract between the teacher and the district being silent on that point?"

Replying, I have to say that under the statement of facts submitted by you, it is not the duty of the teacher to do the janitor work.

The relations of the teacher and the school district are contractual in their nature, and the terms of the contract govern as to the rights and duties of the respective parties thereto. Building fires and similar work do not come within the duties, express or implied, of a person hired to teach a public school.

As certain work which can properly come under the designation of "janitor work" is necessary in order to have a school building in proper condition for school purposes, it is the duty of the school board to arrange for the same.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 14, 1909.

311

EDUCATION—TEACHERS—Rules governing conduct of teachers.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: I am in receipt of your favor of October 25th in which you quote from a letter of J. T. Fuller, superintendent at Morris, Minn., and in which is submitted the following inquiry:

"A school board becoming convinced that the indulgence in certain pastimes outside of school hours by teachers is detrimental to the work of the school, makes a rule forbidding teachers to indulge in these pastimes on evenings preceding school days. Does the board act within its legal authority? Does violation of this rule, if deliberate, furnish sufficient cause for the dismissal of the teacher, according to clause 5, section 1320, chapter 14, R. L. 1905?"

A school board is vested generally with the power of superintending and managing the schools of the district, including the adopting, modifying or repealing of rules for their government and instruction. Among the other powers of the board, in paragraph 5 of section 1320, R. L. 1905, we find the following:

"5. Employ and contract with necessary qualified teachers and discharge the same for cause."

If in the exercise of sound judgment and discretion, the school board should determine that the indulging in certain pastimes outside of school hours by teachers, is detrimental to the work of the school, it will be competent for the board to make a rule forbidding such indulgence on evenings preceding school days. If, under all the facts and circumstances such rule and regulation is a reasonable one and the action of a teacher in violating such rule is detrimental to the best interests of the school, then such failure to comply with the rule and regulation would be cause for removal of such teacher.

The question in each particular case rests primarily upon the reasonableness of the rule and this question would be one that would ultimately be passed upon by the court. No fixed instructions could be given by this office relative to the matter, as each case would of necessity be decided upon the facts and circumstances surrounding the same.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 4, 1909.

312

EDUCATION—TEACHERS—Clerk of district cannot hire teacher.

Attorney General's Office.

Miss Violet Mack.

Dear Madam: It appears that you had a contract with a certain school district to teach for a term closing December 18th; that after the completion of this term at the request of the clerk of this district you continued to teach for two weeks longer without having any written contract with the district therefor. That within the two weeks specified two holidays, Christmas and New Year's, occurred, and you inquire whether you are entitled to recover from the district for the two days in question. Your question is answered in the negative. Under the statement of facts given by you you were not a legally hired teacher for the two weeks in question. If these two holidays had occurred during the term for which you were hired and not in a vacation period, then you would have have been entitled to compensation for such days.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 12, 1909.

313

EDUCATION—TEACHERS—School board may employ teacher for ensuing year before annual meeting—Limit of such employment.

Attorney General's Office.

Mr. Chresten Olson, Treasurer.

Dear Sir: You inquire as to whether school boards have authority to engage teachers for the following school year, before the annual meeting. This inquiry is answered in the affirmative.

You further inquire, if the board contracts for a longer term than five months as required by law, is the contract legal?

In answer to this inquiry I have to inform you that a contract made by a common school board with a qualified teacher for the ensuing school year, such contract being made before the annual meeting, will be legal for five months' school, and as much longer, not exceeding nine months in all, as may be determined at the annual meeting. In other words, if a school board should hire a teacher for nine months, and the annual meeting should determine upon having but eight months' school, then the contract with the teacher would be good for eight months and no more.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 5, 1910.

314

EDUCATION—TEACHERS—Relative of member of school board may be hired as teacher by unanimous vote of board.

Attorney General's Office.

Mr. E. H. Mills.

Dear Sir: You inquire as to whether it is competent for a school board to hire a teacher that is a relative of one of the board.

Your inquiry is answered in the affirmative. The law provides that:

"No teacher related by blood or marriage to a trustee shall be employed except by unanimous vote of the full board."

It therefore follows that the board may by unanimous vote employ a teacher who is a relative of a member of such board.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 25, 1910.

315

EDUCATION—TEACHERS—Contract with teacher binding.

Attorney General's Office.

Mr. C. A. Anderson.

Dear Sir: It appears that school district No. 81, at the annual meeting, decided to have six months school; that a three months' term was held last fall and the board have hired a teacher for the three months' spring term beginning May 3d, but that some of the residents of the district desire that the spring term be not held.

It was competent for the annual school meeting to decide upon the holding of school for six months. That action remains binding upon the district and school board until reversed at a properly called special meeting. A reversal of the action at the annual meeting not having been taken, and the school board having contracted with the teacher for the three months' spring term, if the formalities of law regarding that contract have been complied with, it is binding upon the district, even though a special meeting should otherwise determine. If the teacher was ready, willing and able to teach the term, she could recover her pay even though the school district should decide not to have school. State apportionment money will not be paid to a district that does not hold five months' school.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 30, 1909.

316

EDUCATION—TEACHERS—Teacher not obliged to make up for lost time under circumstances stated.

Attorney General's Office.

Mr. James A. Meagher, Superintendent of Schools.

Dear Sir: You inquire if a teacher dismisses school because she has only three or four pupils, can she be compelled to make up for those days. You also state that on account of the many severe storms this winter, the question is continually being asked you.

A correct answer to your inquiry will depend largely upon the circumstances in each case. I believe that if a teacher, in the exercise of good judgment and discretion, dismisses school on a certain day for the reason that but three or four pupils are present, and the weather and conditions are such as to make it impracticable to conduct the school on the day in question, the board cannot properly deduct that day, and refuse to pay her therefor, or compel her to make it up by teaching another day in its place. Good reason and sound judgment must be brought to bear on the decision as to whether the conditions are such as to warrant a dismissal of the school. If the conditions do so warrant then it is manifestly not the teacher's fault that the school is not taught, and it would be unfair to make her suffer therefor.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 8, 1909.

317

EDUCATION—TEACHERS—Teacher's wages may be garnisheed.

Attorney General's Office.

Miss Anna Muchirtch.

Dear Madam: You inquire whether a teacher's salary is subject to garnishment in this state.

Section 4237, R. L. 1905, expressly provides as follows:

"The salary or wages of any officer or, or person employed by, a county, town, city, village, or school district, or by any department thereof, shall be liable to garnishment, attachment, and execution, except as exempted by law."

Your question is, therefore, answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 25, 1909.

318

EDUCATION—TEACHERS—Teacher's wages payable at end of each month.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: In reply to your inquiry of October 5th as to whether or not a school board may legally retain the monthly wages of teachers two weeks after the end of the month, I have to say that the proper interpretation of the law on this subject seems to me to compel an opinion to the effect that such retention of the wages would not be legal. I think the statute contemplates the payment of the wages of teachers at the end of each month of their services.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Oct. 6, 1909.

319

EDUCATION—TEACHERS—Teacher who is ready, willing and able to teach while schools are closed on account of epidemic is entitled to pay.

Attorney General's Office.

Mr. R. J. Gray.

Dear Sir: Replying to your favor I have to advise you that when a school is closed by order of the school board on account of an epidemic of a communicable disease, the teacher is entitled to wages for such time providing he is ready, willing and able to teach during that time, the failure to teach not being on account of any fault of such teacher. If during the time the schools are so closed the teacher was himself sick or quarantined, and thus not able to teach, he, of course, could not recover his wages for that period.

Legal holidays in this state include New Year's Day, January 1; Lincoln's Birthday, February 12; Washington's Birthday, February 22; Memorial Day, May 30; Independence Day, July 4; Labor Day, first Monday in September; Election Day, the first Tuesday after the first Monday in November of the even numbered years; and Christmas Day, December 25. Legal holidays are also school holidays.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 22, 1909.

320

EDUCATION—TEACHERS—School teacher not entitled to pay while in quarantine herself.

Attorney General's Office.

M. A. Brattland, Esq., County Attorney.

Dear Sir: Upon the statement of facts submitted by you I have to advise that this office is of the opinion that the teacher in question is not entitled to pay for the time that the school was closed on account of the epidemic of scarlet fever—she herself being quarantined during all of the time and thus incapacitated to teach.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 6, 1909.

321

EDUCATION—TEACHERS—Teacher cannot be paid for holiday following closing of term.

Attorney General's Office.

Mr. J. A. Belsheim.

Dear Sir: Replying to your inquiry I would say that I am inclined to the opinion that as school was closed on Thursday, December 24th, vacation beginning on a legal holiday, December 25th, and it coming in the vacation period and during the interim between the day of closing the school and the beginning of the new term in January, you are not entitled to deduct Christmas day from the time for which you were employed to teach. The term of school closing on December 24th, and school not being resumed again for two weeks thereafter, both Christmas and New Year's day come within the vacation period, and I do not think that Christmas day, simply because it followed the day of closing the school, is entitled to any different consideration than is accorded to New Year's day, coming a week afterward.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 25, 1909.

322

EDUCATION—TEACHERS—"Related by blood or marriage" defined.

Attorney General's Office.

Mr. John W. Murdoch.

Dear Sir: You state that in a school district comprising the city of Wabasha, at a recent meeting a teacher was elected to a position in one of the grades but not by unanimous vote, there being one member of the board of education who voted in the negative. You also state that one member of the board has a sister who is married to a brother of this teacher, and you inquire whether this "relationship by marriage" requires the unanimous vote of all members of the board?"

Your question is answered in the negative. The law requires that when a proposed teacher is "related by blood or marriage to a trustee," there must be such unanimous vote of the full board. In my opinion the phrase "related by marriage" must be construed to mean such a relationship as arises directly out of the marriage of the trustee in question, and is not to be extended so as to apply to collateral marriages such as existed in the present instance.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 16, 1909.

323

EDUCATION—TEACHERS—Married women may teach school.

Attorney General's Office.

Mr. W. J. Simmons.

Dear Sir: There is no law in this state prohibiting a married woman from teaching in the public schools.

Section 1344, R. L. 1905, insofar as applicable, reads as follows:

"No teacher related by blood or marriage to a trustee shall be employed **except by unanimous vote of the full board.**"

In order to have a unanimous vote of the full board each and every member of the same must vote in favor of employing the teacher in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 7, 1909.

324

EDUCATION—TEACHERS—School boards may permit teachers to attend state teachers' convention.

Attorney General's Office.

Mr. C. R. Frazier, Assistant Superintendent Public Instruction.

Dear Sir: In your favor of May 7th, you inquire as to whether school boards and boards of education in independent and special school districts of the state of Minnesota have a right to grant their teachers permission to close their schools without loss of pay, for the purpose of attending a state teachers' convention.

In my opinion your question should be answered in the affirmative. Section 1320, R. L. 1905, confers the power upon school boards to look after the interests of the schools, to superintend and manage the same.

There is no law compelling the boards to grant the privilege referred to, and a teacher may not demand the same as a matter of right. It would seem, however, that if in the discretion of the board it will, be to the advantage and benefit of the schools of the district to have the teachers, or some of them, attend the conventions referred to, on account of the information, training and

experience they will obtain there, it would be within the power of the board to grant that privilege.

I am led to this conclusion for the reasons above stated, and also because I am informed that attendance at the convention referred to will not require the suspension of schools for a time exceeding two days in any one year.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 8, 1909.

325

EDUCATION—UNORGANIZED TERRITORY—Treasurer for unorganized territory shall keep separate account of funds thereof.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: An examination of the law does not disclose that in any express language are directions given as to the keeping of records by the treasurer of the school board for unorganized territory. It will, however, be noted that section 8 of chapter 76, G. L. 1907, reads as follows:

"When not otherwise provided in this act, the powers and duties of said board of education of unorganized territory shall be the same as those of school boards and annual meetings of common school districts."

In the absence of the above quoted section I would be inclined to hold (and in view of that section I am clearly of the opinion) that the treasurer should keep a separate account with suan school district as also should the clerk. Such course would seem suggested by the requirements of the situation.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 23, 1909.

326

EDUCATION—UNORGANIZED TERRITORY—Provision of law as to county boards of education are mandatory.

Attorney General's Office.

Mr. O. C. Hanson.

Dear Sir: You call attention to chapter 76, G. L. 1907, relating to the creating of county boards of education for unorganized territory within this state and defining their scope and powers.

This law as yet has not been repealed, amended, or in any way affected. All through the act the provisions seem to be mandatory. Section 7 referred to in as concise language as is possible declares that it "shall be the duty of said board to furnish school facilities to every child of school age residing in any part of said unorganized territory," and then provides the manner in which it shall be done. I am not aware of any law or opinion given that would in any way relieve the board from complying with the conditions of this act.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 23, 1909.

327

EDUCATION—UNORGANIZED TERRITORY—Duties and liabilities of county treasurer, ex-officio treasurer of school districts in unorganized territory.

Attorney General's Office.

C. M. Johnston, Esq.

Dear Sir: You inquire whether or not the money received in the way of taxes by reason of a levy upon unorganized territory comprising school district is to be retained by the county treasurer as a part of the funds of the county, or whether it is to be deposited by the treasurer as a separate fund.

This office has held that where certain officers are selected by the legislature as members of an independent body and they hold their positions in that independent office by reason of their holding some other office, that the position held by them is an office held ex-officio and an independent and separate position. This has been held particularly with regard to the county board of audit. It seems to me that following the same line of reasoning, one would logically come to the conclusion that the county board of education for unorganized territory is an independent body and that the members of such board, although from of them are ex-officio members, are holding an office separate and distinct from the office to which each was severally elected. If this be the case the county treasurer holds a separate and distinct office as the treasurer of the said board of education. I am inclined to this view of the matter. At the same time I think that the bond of the treasurer covers the moneys received by him as such treasurer of the bounty board of education for unorganized territory and I do not think that it is necessary for him to take a new oath of office although I would advise that it be done.

The direct answer to your inquiry would be that the treasurer has the authority to deposit the moneys of the county board of education in a bank as a separate fund, and further, that the bondsmen of the treasurer would be liable for any portion of that money in case of its loss.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 6, 1910.

328

EDUCATION—County may pay for certain school record books and blanks.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: I have before me a communication addressed to your office by the county auditor of Otter Tail county, of date April 16th, in which inquiry is made as to the power of a county board to pay for certain record books, cards, etc., for use of the county superintendent of schools.

Replying thereto, I have to advise you that of date November 17th the undersigned rendered an opinion to Hon. C. G. Schulz, superintendent of public instruction, of which the following is a copy:

"You inquire as to the right of the county commissioners to audit bills for payment of the following:

"1. A classification record showing the division of pupils, by classes, indicating the work done by each pupil during the school year, and their promotion by classes or subjects.

"2. Individual report cards for each pupil.

"You refer to sections 1379, 1382 and 1383, R. L. 1905, and state that in order that there may be a proper classification of pupils, proper record in their work, and intelligent reports made by the county superintendents to your office, it is necessary that these records and blanks be furnished.

"There would seem to be no state funds available for the furnishing of such records and blanks by the state. I am informed by you that the annual cost per district for such supplies woud likely average not to exceed from two to three dollars. You state that in the general supervision and management of the schools of the state it is most important that the detailed information indicated should be received by you and that there is no other practical way of obtaining it than by the use of such record books and report cards.

"I have the honor to advise you that in my opinion, although it is not compulsory, the county board of any county would, when they deem the public interests so require, be justified in paying such reasonable amount as might be necessary, from the county funds, in the purchase of such classification records and individual report cards."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 21, 1910.

329

EDUCATION—Associated rural schools.

Attorney General's Office.

Mr. C. S. Yeager, Superintendent of Schools.

Dear Sir: Section 9 of chapter 247, G. L. 1909, provides:

"The school board of each rural school district associated with a central school under the provisions of this act shall designate one of its members by vote to act with the school board of the central school in carrying out the provisions of this act as to the teaching of agriculture, domestic economy, and manual training in such schools, and in all other matters pertaining to such instruction, both in the central school and in the associated rural schools, such member shall have equal power with the member of the school board of the central school."

The only construction that this language is susceptible of is that one member of the school board of each associated district designated for that purpose, is to act with the school board of the central school in carrying out the provisions of the act, and that such member has equal power with a member of the school board of the central school. In other words, the governing body of an associated district is composed of the central school board and a single member of each board of the associated districts.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 16, 1910.

330

EDUCATION—Eight months school for all scholars, necessary in order to draw special state aid.

Attorney General's Office.

Mr. John W. Clover, County Attorney.

Dear Sir: You state that at the annual school meeting recently held in one of the districts of your county it was voted to have nine months school for the ensuing year, and that on account of the large enrollment which is more than the building will accommodate, it was voted to have four months school for the primary children and five months school for the older ones. You inquire as to whether such an arrangement will make the district entitled to special state aid.

I have to inform you that after taking the matter up with the superintendent of public instruction your inquiry must be answered in the negative. The theory of the granting of special state aid is that certain conditions in the way of equipment, etc., shall exist in the district, and that in addition thereto there shall be eight months school held. This means that there shall be eight months school available to all scholars in the district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 25, 1910.

331

EDUCATION—School board cannot furnish transportation to pupils attending parochial schools.

Attorney General's Office.

C. W. Meyer, Esq.

Dear Sir: There has been transmitted to this department by the superintendent of public instruction, your communication of November 15th. Your inquiry generally has to do with the power of a school board to furnish transportation to children who are pupils of a parochial school.

Reply I have to say that I am of the opinion that it is not within the powers granted to a school board to thus do. The permission given to school

boards to provide free transportation for children has only to do with transportation to the public schools.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 16, 1910.

332

EDUCATION—Majority vote sufficient to issue bonds to state.

Attorney General's Office.

Mr. Martin Dahlenn.

Dear Sir: You inquire as to the vote necessary at a school meeting called for the purpose of issuing bonds to the state of Minnesota, and I have to inform you tht under the provisions of chapter 122, G. L. 1097, a majority vote is sufficient. The course of procedure necessary is fully outlined in the chapter referred to and you should familiarize yourself with it.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 4, 1909.

333

EDUCATION—Public Examiner not required to examine books of school districts in cities.

Attorney General's Office.

Mr. Martin Purcell.

Dear Sir: You desire an examination of the independent school district of East Grand Forks. This department has rendered an opinion that under the provisions of chapter 324, G. L. 1907, the public examiner is not required or authorized to inspect the books of an independent school district in a city. The law in question simply applies "to the books of acount and other recrods required to be kept by law. by township, village and school district officers, in **townships and villages** throughout the state." The law is not broad enough to include your school district.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 13, 1909.

334

EDUCATION—List of text-books must be filed or district not authorized to purchase same.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent Public Instruction.

Dear Sir: I have before me your favor of May 24th calling for a construction of paragraph 8, section 1320 and section 1427, R. L. 1905.

I have to inform you that in my opinion it is not competent for a school board to either adopt, contract for or purchase text-books for the schools of their district unless the provisions of section 1427 have been complied with and the list of books and prices thereof filed in your office. The necessity for such filing applies with equal force to the adoption by the board of the text-books in question as it does to the contracting for and purchase thereof.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 2, 1909.

335

EDUCATION—Children of Indians who are citizens may attend public schools.

Attorney General's Office.

Hon. C. G. Schulz, Superintendent of Public Instruction.

Dear Sir: You refer to this office a letter received by you from W. D. Bartlett, Vineland, in which he inquires as to whether the children of Indian parents are entitled to attend the public schools of the district in which they live, further stating that the parents live in wigwams or huts, do nothing to improve the country and pay no taxes.

I have to advise you that in my opinion the fact that parents pay no taxes in no way affects the right of their children to attend school, nor is such right affected by the manner of living of such parents.

I am further of the opinion that it is not incumbent upon local school districts to educate children of Indian parents who are wards of the government and who have not severed their tribal relations. However, an Indian who has become a citizen of the state and is a voter occupies a different position and children of such will likely be entitled to attend school.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 8, 1909.

336

EDUCATION—Child may begin school as soon as he reaches school age.

Mr. A. Anderson.

Dear Sir: You inquire as to whether a school board is compelled to allow a child to attend school upon its becoming six years of age, or whether a rule adopted by the board to the effect that no beginners will be allowed to attend excepting during September of any one year, would be void.

I have to inform you that it has been the ruling of this department and is now that a child upon reaching the age of six years, otherwise qualified, is entitled to begin to attend school at the time it reaches the age in question, no matter what time of the year it may be. A rule such as above referred to is not a competent exercise of authority by the board of education.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

April 7, 1909.

337

EDUCATION—Tuition can be required of non-residents.

Attorney General's Office.

Mr. J. F. Gibb, President.

Dear Sir: You ask whether a man has a right to send his children to your graded schools without paying tuition, having sold his property in the district and moved out of the district, although he only gave a contract for deed with a good payment down.

It appears from your letter that the party in question holds the record title to a residence and lot within your village limits of the approximate value of $5,300 and that the grantee to whom the contract for a deed was given occupies the premises and pays the taxes thereon—the contract for a deed containing the usual covenants.

Section 1340, R. L. 1905, provides that in the high schools of this state scholars shall be admitted free of tuition charge. Chapter 445, G. L. 1907, confers upon the school board the power to provide for the admission to the schools

of the district of non-resident pupils and those above school age and fix the rate of tuition for such pupils.

This office held in May, 1907, under the provisions of the chapter last quoted, that a person owning more than eighty acres of land in the district of which he is a non-resident is entitled to send his children to school in such district without paying tuition, but if he owns less than eighty acres he should be admitted to all benefits of such district upon conforming to such reasonable tuition charges as the board has established for non-residents, and is entitled to have the school taxes he pays to support such district applied upon tuition. In neither case is he entitled to vote at the meetings of the district.

The provisions of the law that I have quoted and the construction placed thereon by this office would clearly indicate that the person in question is not entitled to send his children to your graded schools (not high school) free of tuition charges irrespective of whether he would be construed as the "owner" of land within your district or not. He pays no-taxes in your district upon the property in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 12, 1909.

338

EDUCATION—School district may pay for fumigating a school house.

Attorney General's Office.

Mr. B. Peterson.

Dear Sir: It will be competent for the school district to pay a doctor for fumigating a school house after a contagion of scarlet fever, but a charge for care, treatment and examination of private individuals who were pupils of the school is not a proper charge.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 9, 1909.

339

EDUCATION—Requisites necessary in order that school district order may draw interest.

Attorney General's Office.

Mr. G. M. Graham.

Dear Sir: You refer to a certain school order issued by the clerk of district No. 39 on April 30th, 1906, for $35.00, and which was never presented to the treasurer for payment and payment refused and endorsed thereon for lack of funds. You state that every effort was made to locate the order and now after a lapse of nearly three years the order is presented with a demand for eight per cent interest thereon.

I have to inform you that the law which was in force prior to March 1st, 1906, and since April 24th, 1907, requires that in order to draw interest a school order must be presented to the treasurer for payment and payment refused for lack of funds. In the absence of such presentation, interest would not accrue. The Revised Laws 1905, which became effective March 1st, 1906, made no provision whatever for the payment of interest on school district orders (presented or not presented for payment). On April 24th, 1907, an act was passed which provided for the payment of interest on orders at the rate of six per cent when the same were presented as above indicated. It would, therefore, follow that

as the order in question was issued April 30th, 1906, being at a time when interest was not payable on such orders, the treasurer would not be justified in paying interest thereon.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1909.

340

EDUCATION—Owner of remainder interest in land may sign petition.

Attorney General's Office.

Mr. J. J. Holden, Jr., Town Clerk.

Dear Sir: You state that a single man of legal age resides with his widowed mother on a farm, together with other children who are minors and that the single man referred to is one of the heirs of his deceased father's estate, such estate not being probated. I take it from your statement that the estate consists of a homestead in which the mother has a life estate with a remainder to the children, of which the single man is one and an heir. You inquire whether the man in question can be considered a resident freeholder under our laws so as to be qualified to sign a school district petition.

I am of the opinion that your inquiry should be answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 6, 1910.

341

EDUCATION—"Resident freeholder" defined.

Attorney General's Office.

N. E. Schwartz, Esq., Superintendent of Schools.

Dear Sir: You inquire is to the interpretation to be placed upon the words "resident freeholder" in the laws of this state relating to those who are entitled to vote in a school district on the question of consolidation.

The designation "resident freeholders" means a resident land owner. A head of a family is not necessarily a resident freeholder. A woman who is a resident freeholder is entitled to vote upon the question. A person who owns an estate in fee, of inheritance or for life is a freeholder.

A petition to the county superintendent under the provisions of sections 1289-1294 must be signed by a majority of the resident freeholders of each district affected, qualified to vote at school meetings.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 1, 1910.

342

EDUCATION—Women may vote on all school questions.

Attorney General's Office.

Mr. R. H. Adams.

Dear Sir: You state—

"Rock county will, on February 4th, vote upon the question of granting authority to the county board of commissioners to appropriate money for the organization and maintenance of a county school of agriculture under the provisions of chapter 314 of the General Laws of 1905, and the question has been raised if women can legally vote at this election."

I have to inform you that it is the opinion of this office that your question should be answered in the affirmative. Women are entitled to vote at the election in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 2, 1909.

343

EDUCATION—School districts sending children to adjoining district—not entitled to special state aid.

Attorney General's Office.

Mr. William Zander, Clerk.

Dear Sir: In reply to your letter of August 16th inquiring whether or not school districts which transport their pupils to an adjoining district, under section 1322, R. L. 1905, are entitled to special state aid. I have to say that in my opinion they are not entitled to special aid such as is provided for schools of a designated character and equipment, but are entitled to participate in the ordinary school funds derived from county and state sources. The last clause of section 1322 does say that such districts shall be entitled to public money as if school were continued therein, but I do not think that the special aid can be given except where the districts actually maintain a school conforming to the statutory requirements which are made prerequisite to the obtaining of the special state aid.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 17, 1910.

344

EXTRADITION—Information must be drawn with same particularity as an indictment.

Attorney General's Office.

Board of Control, Capitol.

Dear Sirs: In your favor of recent date you call attention to the case of a person who was heretofore arrested in one of the counties of this state charged with grand larceny. Subsequent to his arrest the county attorney filed an information, and to this information the person in question pleaded guilty. He was thereafter sentenced to the reformatory, paroled, broke his parole, escaped and is now in a foreign state. You transmit copies of the information and parole, and you ask for the approval by me of your application to the governor of this state for an application to the governor of such foreign state for the extradition of such person.

Replying thereto I regret to say that I cannot approve the application. An inspection of the information discloses the fact that the same is entirely deficient in all the requirements necessary for a crimnal pleading. In other words, had the defendant gone to trial on an indictment charging the alleged offense in the same manner in which this information attempts to charge the same, a motion in arrest of judgment, had the defendant been convicted, would necessarily have been granted.

Such being the situation, I beg to call your attention to the statute of the United States, same being section 5278 United States Compiled Statutes 1901, which so far as here material, provides as follows:

"Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of the indictment found, or an affidavit made before a magistrate * * * charging the person demanded with having committed treason, felony or other crime. * * * it

shall be the duty of the executive authority of the state or territory to which such person has fled * * * to cause the fugitive to be delivered * *."

It is clear from the foregoing statute that extradition may only be had upon the production of a valid complaint or indictment. In addition, under chapter 231, Laws 1905, an information must conform to the law with the same particularity that is demanded of an indictment.

Section 2 of the act last above mentioned, provides so far as here material:

"The offense charged in any such information shall be stated in plain and concise language * * * and all provisions of law applying to prosecutions upon indictments * * * shall * * * apply to informations and all prosecutions and proceedings thereon.

It follows that were an attempt made to extradite this person upon this information, and objection should be raised thereto, the state would be forced to concede that the same was defective and that therefore extradition did not lie, and being compelled to so advise the governor, I beg to advise that the application be withdrawn.

I return herewith all papers.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Feb. 28, 1910.

345

EXTRADITION—Will be granted for a crime that is a felony in a sister state though a misdemeanor here.

Attorney General's Office.

Mr. James P. English, County Attorney.

Dear Sir: Deserting and failing to support a wife, under the laws of this state is a misdemeanor, not a felony. The custom, however, as to extradition is that where a crime is made a felony in a sister state, even though it be but a misdemeanor in this state, the governor of this state will honor, in a proper case a requisition from such other state.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 11, 1909.

346

EXTRADITION—Will not issue for bastardy.

Mr. W. H. Drake.

Dear Sir: A bastardy proceeding is a quasi criminal matter. It is true that the action is brought in the name of the state of Minnesota, and the verdict of a jury is guilty or not guilty, but the rule as to the necessity of the jury being convinced of the guilt of the defendant beyond a reasonable doubt does not maintain and a preponderance of the evidence is sufficient. The form and procedure of trial is the same as in a civil action.

Without going into the question as to whether the law and rules for extradition should be different than they are, it is sufficient to say that a man will not be returned to this state upon a requisition for that offense.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 31, 1909.

347

FARM NAMES—Certificate of need not be acknowledged.

Attorney General's Office.

J. W. Rowland, Esq., Register of Deeds.

Dear Sir: In further reply to your letter of September 25th, inquiring as to the necessity of the acknowledgment and execution before two witnesses of the

certificates of registration of farm names, I have to say that I do not think the law requires them to be acknowledged. It seems to me that this is a defect in the law, but I find no statute which would make it improper or illegal for you to record a certificate of this kind which had neither witnesses or acknowledgment.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Oct. 1, 1909.

348

FARM NAMES—Abstracting title containing.

Attorney General's Office.

J. W. Rowland, Esq., Register of Deeds.

Dear Sir: In reply to your letter of September 25th, inquiring whether the farm names registered in your office should appear on abstracts, I have to say that it is my opinion that they need not so appear; they have nothing to do with the title to the land.

I can see that it is possible that the land may hereafter be described by its farm name, and should there appear in the chain of title any reference to the farm name, then the farm name as registered should certainly be made a part of such abstract.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 27, 1909.

349

FEES—Jurors—Witnesses—Clerk of court.

Attorney General's Office.

George G. Krost, Clerk of Court.

Dear Sir: In your favor of February 8th you submit the following queries:

"1. The judge excuses the petit jury from Friday afternoon until Monday afternoon, or he excuses them for a week, the question is how much per diem are they entitled to.

"2. A police officer—city mayor—alderman—street commissioner called on for witnesses at grand jury—or a criminal action, for the state—are they entitled to pay? The police officers, mayor and street commissioners are paid monthly and the alderman paid per night.

"3. Entering P. P. tax judgment am I entitled to add $1.50 clerk fees, if so, should the county pay me?

"4. My salary from the county is $1,100 in lieu of all work for the county, per year, am I obliged to pay my postage or should the county pay my postage?

"5. I was appointed clerk of court May 17, 1909. Under this appointment does my office expire January 1, 1911, or January 1, 1913?"

In answer to your first query, my opinion is that where there is a recess from Saturday until Monday, it is not lawful to include a per diem for Saturday and Sunday; Sunday is included only when the session of court is continuous, including Saturday and Monday. Where a specific recess for a week is allowed no per diem can be collected for said days.

In answer to your second query I call your attention to section 1, chapter 141, G. L. 1905, which reads as follows:

"No officer or employe of any city, village or county in this state shall hereafter receive or be paid any sum as witness fees in any case in which the state of Minnesota, the county, the city or the village, of which he is an officer or employe is a party, if the case be tried in the city or village of which he is a resident."

Your second inquiry is answered in the negative, provided the case is tried in the city or village of which the party is a resident. In this connection, in my opinion a session of the grand jury is a trial within the meaning of the statute.

Your third inquiry is answered in the negative. The salary provided for by chapter 335, G. L. 1909, covers all services rendered to and paid for by the county, except in real estate proceedings. The services of the clerk in personal property tax proceedings are rendered for the county and before the salary law was enacted the clerk was not dependent upon the collection of the judgment for his fees, but the county paid them. In view of the fact that there is specific reference allowing the clerk fees in real estate tax proceedings and an omission in the laws covering his services in personal property tax proceedings, I am satisfied the intention of the legislature was that such services were covered by the salary. In my opinion, however, it is the duty of the clerk to tax his costs and insert them in the judgment and when the same are paid they belong to the county. Section 897, R. L. 1905.

In answer to your fourth query you are advised that your bill for necessary postage incurred in public business is a proper charge against the county. This is in accordance with the decisions of several of the district courts of the state.

In answer to your fifth query, you are advised that your term of office expires in January, 1911. See section 114, R. L. 1905. "Next general election" in the statute means the next biennial election.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 17, 1910.

350

FEES—Of talesman—Not allowed to a person called but not accepted as a juror.

Attorney General's Office.

Mr. J. J. Woolley, County Attorney.

Dear Sir: You ask for a construction of chapter 129, G. L. 1909, insofar as the same applies to the fees of talesmen, and inquire as to whether a person called as a talesman is entitled to fees as such, providing he is not accepted as a juror. In my opinion your inquiry is to be answered in the negative. The language of the law is:

"Talesmen **actually serving upon** any petit jury, shall receive the sum of $2.00 per day."

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 8, 1910.

351

FIRE DEPARTMENT RELIEF ASSOCIATION—Use of funds.

Attorney General's Office.

D. L. Kane, Esq.

Dear Sir: You ask for the opinion of this office as to whether it would be in line with good public policy to permit a firemen's relief association to erect an auditorium with moneys received by it from taxation of fire insurance premiums.

In answer to this question I would say that such use of the funds of an association would be unlawful.

The statute provides that such funds may be used—

"1. For the relief of sick, injured, or disabled members of such fire department, their widows and orphans.

"2. For the equipment and maintenance of such department."

The funds can be used for no purpose other than those above specified. Such funds are held in trust by the local association for such purposes and any threatened perversion of the funds could be enjoined and the officers participating in any such perversion would be personally liable for the funds diverted from such purposes.

Yours truly,
C. LOUIS WEEKS,
Special Assistant.

Jan. 14, 1909.

352

FIRE DEPARTMENT RELIEF ASSOCIATION—Management and expenditure of funds.

Attorney General's Office.

W. G. Fredericks, Esq.

Dear Sir: You ask:

1. "Where there is a duly organized fire department, can the relief money be used for buying hose and apparatus when the majority of the association votes to use the moneys, or can it be used without a vote on same?"

You do not state whether you refer to the funds received from the state for the two per cent tax paid by insurance companies upon premiums received by them for insurance in your village, nor do you state that you have a duly organized fire department relief association organized with the consent of the governing body of your village, but assuming that you do refer to such funds and that you have such duly incorporated association, and that you are asking such question with reference to the powers of such duly incorporated relief association, I beg to advise you that it is the opinion of this office that such relief association can, in its discretion, use such part of such funds as it deems advisable for the purchase of hose and apparatus for the fire department of the village.

Section 1653, R. L. 1905, provides that the funds so received shall be disposed only for the following purposes:

"1. For the relief of sick, injured or disabled members of such fire department, their widows and orphans.

"2. For the equipment and maintenance of such department."

The purchase of hose and apparatus (meaning thereby fire fighting apparatus), is authorized by subdivision 2 above quoted. It comes under the head of equipment for the department. You further ask:

2. "Can the village council call on us or order us to buy equipment, or give them money of the relief association fund for the above mentioned equipments?"

Again assuming that you refer to the funds above specified, and you mean by the word "us" a duly incorporated fire department relief association, I beg to advise you that the city council have no jurisdiction over such funds and that their expenditure is wholly within the discretion of the directors or trustees of the incorporated fire department relief association, if there be one.

The funds of the association can only be expended when authorized by a vote of the trustees or directors of the fire department relief association.

It would be proper for the relief association to vote money for the equipment of the fire department, but they are not obliged to do so.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

May 18, 1909.

353

FIRE DEPARTMENT RELIEF ASSOCIATION—Funds of.

Attorney General's Office.

D. L. Kame, Esq., Secretary Minnesota State Fire Department Association.

Dear Sir: You ask for our opinion on the hereinafter stated question.

You state:

"A village council grants permission to the members of the fire department to organize a relief association, the organization is perfected, the articles are filed with the secretary of state and the register of deeds for that county. All the forms of law are complied with. The money heretofore received from the two per cent tax has been kept in a special fund by the village treasurer."

You ask—

"Has the village treasurer the right under the law to turn over the money heretofore received by him to the treasurer of the relief association?"

In answer to this query I would say that we are of the opinion that the village treasurer may lawfully turn over such funds to the treasurer of the relief association, provided, such treasurer has given the bond required by section 1564, R. L. 1905.

The foregoing applies only to the two per cent paid by insurance companies pursuant to the provisions of section 1625, R. L. 1905. Money received from taxes imposed under the authority of chapter 197, Laws 1909, can be turned over to the treasurer of the relief association only when bond has been given as required by said chapter 197.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Aug. 24, 1909.

354

FIRE DEPARTMENTS—What are voluntary.

Attorney General's Office.

F. H. Straub, Esq.

Dear Sir: The question is whether or not your fire department would be considered a paid department within the meaning of section 111 of your city charter. The answer to your question is not clear.

The terms "volunteer" and "paid" do not form necessarily distinct classes of persons to which those adjectives may be applied. For instance, in war times there were volunteer and regular soldiers, but the volunteers were paid and gave their time exclusively to the service of their country. In the statutes of this state there are various terms applied to fire companies, and the term which probably more nearly applies to the fire department of your city is the term "partly paid." The general idea of a paid fire department is that it shall be made up of officers and members whose duty is exclusively to be in readiness for and attend upon all fires which may exist in the city which employs them. It is my opinion that a court would give this meaning to the term "paid fire department." The feature which characterizes your department is the voluntary character of the services rendered by the members. They are engaged in other pursuits and join the fire department as a matter of local patriotism and public necessity. They obtain their living at ordinary occupations and do not consider the pay they receive in the light of compensation for services. As a rule it does not pay them for the losses to their clothing alone, to say nothing of other incidental expenses caused by exposure and from being called into dangerous places without time to dress according to the requirements of the work. A court would take these things into consideration in construing section 111 of your charter, and I think would not hold your department to be a paid fire department.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Feb. 17, 1909.

355

FIRES—Certain expenses for suppression of to be paid by state.

Attorney General's Office.

Mr. R. J. Bell.

Dear Sir: In reply to your letter of August 5th in quiring who is the proper party plaintiff to recover $80.00 cost to the town of Spruce, incurred in stopping

a fire, I have to say that I assume that the supervisors of the town incurred the expense The statute says that the expense incurred for fire warden service and in suppressing fires, shall be paid out of the state treasury on duly verified vouchers approved by the proper town board and the commissioner.

I seen no reason why you should not make your application to the state by duly verified voucher submitted to the state forestry commissioner, General C. C. Andrews.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 9, 1910.

356

FOREIGN CORPORATIONS—Foreign charitable corporations need not file articles in this state.

Attorney General's Office.

M. E. Louisell, Esq.

Dear Sir: Your favor of the 22d instant was duly received at this office. Therein you ask for our opinion as to whether or not it is necessary for a foreign charitable corporation, such as an orphans' home association organized and doing business under the laws of Wisconsin, to file its articles of incorporation here before it may do business in this state.

In answer to this inquiry I beg to advise you that, assuming that such corporation is not one organized for pecuniary profit, that then and in such case it is not necessary for it to file its articles of incorporation here before doing business in this state.

Section 2888 and subsequent sections of the Revised Laws 1905, prescribe the conditions to be complied with by every foreign corporation **for pecuniary profit** precedent to the right to do business in this state. The statutory provisions are only applicable to corporations organized for pecuniary profit, and when not organized for pecuniary profit would, I apprehend, be authorized to do business in this state as a matter of comity between the states so long as the business done by it in this state was business which it was authorized to do by its articles of incorporation, provided further that such business was not contrary to the laws or policy of this state.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

June 24, 1910.

357

GAMBLING—Certain described slot machine probably not a gambling device.

Attorney General's Office.

Mr. F. G. Sasse, County Attorney.

Dear Sir: You call attention to sections 4964 and 4965, R. L. 1905, and inquire whether or not a slot machine such as you describe is a gambling device and comes within the prohibition of the law. The machine in question is one in which, when a penny is deposited a stick of gum is delivered at all events; if the wheel stops at a certain number, then in addition to the stick of gum, from five to fifteen cents worth of additional goods may be selected by the person playing the game.

The popular understanding of a slot machine, when considered as a gambling device, is one wherein more of an element of chance exists than in the instant case, and one in which a person playing it stands a chance of not winning anything. A hasty examination of authorities, however, indicates that the courts are not agreed upon the proposition. In Lang vs. Merwin, 99 Me. 486, the following is held:

"1. To constitute gambling in the statutory sense of the term, it is not necessary that both parties stand to lose as well as to win by the chance. It is enough that one party stands to win only or to lose only.

"2. A slot machine so operated that the operator putting into it a nickel (coin) receives in any event a cigar of the value of his coin, and also stands to win by chance additional cigars without further payment, is a gambling device.

"3. A cigar store where such a machine, set up for the use of customers and is used by them, becomes thereby a statutory nuisance and may be enjoined as such."

The above decision was rendered in considering a statute which provided:

"Every lottery, policy, policy lottery, policy shop, **scheme or device of chance of whatever name or description** * * * * * * is prohibited."

In Cullinan vs. Hosmer, 91 N. Y. Suppl. 607, we find the following holding:

"The maintaining of a slot machine in a drug store, by the operation of which a person who dropped five cents into the machine became entitled to at least one cigar, and possibly to three, the cigars delivered being the same as those retailed for five cents each, did not constitute gambling within the liquor tax law, prohibiting gambling on the premises occupied by a pharmacist authorized to sell liquor."

In the limited time at my disposal, the above two decisions are the only ones that I have found exactly bearing on the question, and the conclusions reached by the courts are not in harmony. It is likely, however, that in the Maine case the decision reached was on account of the peculiar wording of the statute.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

July 3, 1909.

358

GAME AND FISH—Person canot use more than one line although he catches but 25 fish in one day.

Attorney General's Office.

J. H. Warner, Esq.

Dear Sir: You refer to the game and fish laws of this state, and particularly to section 2187, 2249, R. L. 1905, chapter 344, G. L. 1905, chapter 469, G. L. 1907, and chapter 190, G. L. 1909. The latter chapter provides in part as follows:

"No person shall catch, take or kill more than twenty-five (25) except sunfish, perch, pickerel or bullheads, in any one day, nor in any other manner than by angling for them, with a hook and line held in the hand, or attached to a rod so held, nor with more than one line or with more than one hook attached thereto; and no person shall have in his possession any fish caught, taken or killed in any of the waters of this state except as provided in this chapter."

You inquire at to whether or not it is permissible under the law for a person to take as many as 25 fish by angling for them, regardless of the number of hooks and lines he uses if he does not exceed twenty-five in one day.

I have the honor to advise you that in my opinion your inquiry is to be answered in the negative. It is an offense to use more than one hook and line, even though the limit of twenty-five is not reached in the day's fishing.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

359

GAME AND FISH—Chapter 282, G. L. 1909, construed.

Attorney General's Office.

Mr. Wm. M. Ericson, County Attorney.

Dear Sir: Your favor of September 12th quotes from a letter bearing date August 10, 1909, to Dr. B. A. Herrick of your city.

It will be noted that in the communication to Dr. Herrick I expressed myself as being of the opinion that it would be a defense for him, in a prosecution for having possession of game in the closed season, to show that the game in question was taken by him under a non-resident licence, from the state of Wisconsin during the open season in that state, such game being lawfully killed therein.

I am of the opinion that it would be competent for the legislature to prohibit, under penalty, the having in possession of game in this state during the closed season, even though such game was lawfully killed in another state during the open season in such other state. See Silz vs. Hesterberg, 211 U. S. 31.

However, the last expression of the legislature upon this question is found in chapter 282, G. L. 1909, in which the open season for the taking of game is provided for and the following provision is added to the law as it theretofore existed.

Provided, that whenever any of the game mentioned in this section shall have been lawfully shot or taken by any resident of this state in any state wherein the season for so lawfully taking the same shall be earlier or later than herein stated, such resident may ship to himself only, in this state, and have in possession therein during the season allowed by the law of such state for the taking thereof any such game so lawfully taken in such state, and for five days thereafter."

It seems to me that the 1909 law is determinative of the inquiry that you submit and I therefore adhere to the opinon heretofore rendered to Dr. Herrick.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 19, 1910.

360

GAME AND FISH—Illegal fishing defined—Power of justice to suspend sentence.

Attorney General's Office.

Norman E. Peterson, Esq., County Attorney.

Dear Sir: In your favor of June 10th you submit the following queries:

"1. Under section 2249-50, Sup. 1909, is it an offense to fish for sunfish, perch, pickerel or bullheads with more than one pole or more than one line; does the offense consist in the act of using more than one line or pole under the statute or in the actual taking of the protected fish?

"2. Has a justice the right to impose a fine and then remit or suspend payment thereof?"

In answer to your first query you are advised that fishing with more than one line or hook and the actual taking of the protected fish constitute the offense. The language of the statute is "catch, take or kill," and you are advised that perch and bullheads are protected fish within the meaning of the said statutes.

Your second inquiry is answered in the negative. In this connection I call your attention to chapter 391, G. L. 1909, providing for the suspension of sentence in certain cases. Said chapter, however, refers only to courts of record. A justice court is not a court of record.

Clague vs. Hodgson, 16 Minn. 291 (Gil. 329).

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 16, 1910.

361

GAME AND FISH—Indian allotees are subject to game laws.

Attorney General's Office.

Hon. H. A. Rider, Executive Agent Game and Fish Commission.

Dear Sir: In reply to your letter of July 25th, I have to say that this office has held that the game laws of this state apply to all other persons than to

Indians living on government reservations and preserving their tribal relations, and that such game laws be applied to all allottees of land.

See opinion of attorney general to your predecessor, dated September 14th, 1909.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 9, 1910.

362

GAME AND FISH—License is necessary to use fish house on unmeandered as well as meandered waters.

Attorney General's Office.

Mr. G. H. Harrison.

Dear Sir: You inquire in effect whether a person who owns and pays taxes on a small body of water that is not meandered and the boundaries of which are included in the lands which he owns, must take out a fish house license the same as any other individual desiring to use such fish house.

Your inquiry is answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 31, 1909.

363

GAME AND FISH—Minors not required to take out license.

Attorney General's Office.

Mr. Louis Hallum, County Attorney.

Dear Sir: You ask for a construction of section 34, chapter 469, G. L. 1907. Under its terms a license for hunting is only required of persons resident in this state, over 21 years of age. Although a license cannot be issued to a resident minor, still it does not necessarily folow that such minor is prohibited from hunting (except as provided in section 5025, R. L. 1905), and I am of the opinion that a minor, except is above indicated, may hunt during the open season, subject to all the provisions of law other than as to obtaining a license.

A license is not required of a resident of this state in order that he may hunt in his own county during the times and in the manner prescribed by law. A person not a resident cannot hunt in this state without procuring a non-resident's license.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 2, 1909.

364

HEALTH—County health officer is entitled to payment of expenses for attending meeting called by state board of health.

Attorney General's Office.

W. V. Kane, Esq., County Attorney.

Dear Sir: In your communication you call attention to section 2134, R. L. 1905, so far as said act applies particularly to county health officers, and ask whether the county commissioners should allow a bill for the necessary expenses of such health officer in attending the annual state meeting of such officers when called by the executive officer of the state board of health, and in reply thereto I have to advise you that it is the opinion of this office that your question should be answered in the affirmative.

The state board of health having prescribed as one of the duties of his office that the county health officer should attend a meeting at the capitol of the state for the purpose of consultation with reference to public health matters, it necessarily follows that it is the duty of such health officer to attend, and thereupon his necessary expenses in such attendance, incurred by reason thereof, constitute a proper charge against the county in which he is an officer.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 12, 1909.

365

HEALTH—Executive officer of local board may be non-resident.

Attorney General's Office.

Mr. John E. Green.

Dear Sir: You make inquiry relative to local boards of health and local health officers.

Replying, I have to inform you, that in May 28, 1906, this department held that it was not necessary for a village council to confine itself to its own territory and the persons living therein in order to have a physician as executive officer of the board of health, but that in its discretion it might go outside of the city or village limits, as the case may be, and elect some person woh is not a resident therein.

I am inclined to the opinion, that in the absence of any law or ordinance expressly governing the matter, that the members of the board of health should be appointed for one year rather than three years.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

April 27, 1909.

366

HEALTH—Counties must pay one-half of reasonable expenses incurred in controlling communicable diseases.

Attorney General's Office.

Mr. C. W. Wiley, Village Recorder.

Dear Sir: You refer to my former letter in which I advised you as to the liability of the county payment of one-half of certain expenses involved in the control of communicable diseases. You state now that it is claimed by the county authorities that it is not obligatory upon them to make payment but they **may do so.**

Section 2138, R. L. 1905, after providing for the payment by a town, village or city of expenses in certain cases, reads as follows:

"Upon the allowance of any such claim the amount thereof shall be paid and a certified statement shall be transmitted to the county auditor, embracing a copy of the claim as allowed, the date of such allowance, and showing for what purpose and to whom the allowance was made. The auditor shall lay such statement before the county board at its meeting next following the receipt thereof. One-half the amount so allowed and paid **shall** be a claim against the county, and, if deemed just and reasonable by the board, the same **shall** be allowed and paid."

There can be no question about the meaning of this statute. The county must pay one-half of a just and reasonable amount. Their discretion in the matter is limited to passing upon the justness and reasonableness of the amount of the claim and in the exercise of that discretion they must be fair and not arbitrary. Upon the presentation of such a bill and the disallowance in whole

or in part of one-half of the amount of the same, the town, village or city, as the case may be, if aggrieved, may appeal from the action of the county board to the district court.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 19, 1909.

367

HEALTH—Children with communicable diseases can be excluded from school.

Attorney General's Office.

Mr. A. J. Lindberg.

Dear Sir: School children with communicable diseases may properly be excluded from attending school until such time as danger of contagion is past.

Parents can be compelled to send their children to school, within the age limit provided by law, after they have recovered from a contagious disease, even though prevented by the school board from attending school during the time that such children were afflicted therewith.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 29, 1909.

368

HEALTH—Powers of boards.

Attorney General's Office.

Dr. Benjamin W. Kelly.

Dear Sir: In reply to your letter of December 16th I have to say that the county health officers have to be appointed annually; that the county commissioner must make provision for medical attendance upon the sick poor for such reasonable time in advance as they may deem proper. The contract need not be for a year only, but must be for a reasonable time; that a village board of health cannot compel property holders to connect with a sewer, nor abolish surface closets except when they become dangerous to public health, and that a village may provide for putting in sewer connections upon the request of persons living along the line of the sewer and collecting of costs thereof by assessment against the property, the assessments to be distributed over several years.

I am inclined to the opinion that local boards of health are exercising more frequently the powers of the state board of health as the agents of such state board than any independent powers which the local boards possess. I assume that you have copies of the regulations adopted by the Minnesota state board of health and now in force.

What I have said with reference to the care of the sick poor refers to their care by the board entrusted with tha duty whether supervisors village council or county board.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 31, 1909.

369

HIGHWAYS—New town board cannot rescind action of former board establishing a highway.

Attorney General's Office.

Mr. Alf. J. Olson.

Dear Sir: You state that on March 2d, pursuant to petition filed and proceedings had, the town boards of your own and an adjoining town established a public highway on a town line; that on March 13th the new town board of

your town reconsidered said petition, basing their action on the alleged fact that the petition for said highway was not legal in that it did not have the requisite number of resident legal voters, as the law requires.

In my opinion it was not competent for the new town board to so reconsider and take the action they did in attempting to nullify the order theretofore issued by the joint action of the two town boards. The question as to the legality of the establishment of the highway in question can be reached by an apeal taken to the district court, and there is time for any person aggrieved to take such appeal by complying with the statutory requirements.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1909.

370

HIGHWAYS—Town clerk need not serve or post order for highway hearings.

Attorney General's Office.

Mr. Oscar N. Halvorson.

Dear Sir: Section 1172, R. L. 1905, insofar as applicable to the question you propound, provides as follows:

"The petitioners shall cause personal service of such order to be made upon each occupant of such land at least ten days before such meeting, and also cause ten days' posted notice thereof to be given."

It is not the duty of a town clerk to serve or post such notices.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 29, 1909.

371

HIGHWAYS—Provisions of chapter 423, G. L. 1907, are mandatory.

Attorney General's Office.

Mr. O. J. Finstad, County Attorney.

Dear Sir: You inquire as to the proper construction to be placed on section 4, chapter 423, G. L. 1907, and replying I have to advise you that it is the holding of this office that the provisions of the section in question are mandatory and the county board must, when the conditions precedent have been complied with, provide for the payment of one-half of the cost of such bridges.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 24, 1909.

372

HIGHWAYS—Right of town to use timber, gravel, etc., within road limits.

Attorney General's Office.

Mr. Lenard J. Logelin.

Dear Sir: You ask:

"After a road has been laid out and recorded for over six months, has the person along whose land the road lays any right to the timber within the four rod limit, or does the timber on the road belong to the town to be used for road purposes?"

The question submitted by you is one somewhat difficult to answer for the reason that the facts and circumstances surrounding each particular case will of necessity govern.

Our supreme court in the case of Town of Glencoe vs. Reed, 93 Minn. 518, established the law ofr this state inso far as the respective rights of the public and the land owners are concerned in relation to public highways. In the syllabus of this case we find the following:

"The fee owner of abutting property removed gravel from a gravel bed within the limits of a country highway, which did not cause any injury to the roadway, and the gravel was not required for the purposes of grading or improving the same. HELD, he was lawfully in the exercise of his rights as an abutting owner, within the rule that the only limitation upon the right of the owner of the fee to control and use the soil and other natural deposits within the limits of a highway is that such use shall be consistent with the full enjoyment of the public easement."

The court further says in the opinion:

"It is the rule in general, and in this state, that the dedication of land for a public highway confers a mere easement for public use as a highway, and the land owner retains a right to use the land for any lawful purpose compatible with the full enjoyment of the public easement."

The court further quotes, evidently with approval, from Elliott on Roads and Streets, the following:

"We believe that the right of the public is an easement, and that the owner of the fee remains the owner of the soil, springs, mines, quarries, timber, and the like, except insofar as the public officers may have a right to use suitable materials for improving or repairing the road."

Further, and in the same decision, the court says:

"It is quite evident from the trend of American decisions that the only limitations upon the rights of the owner of the fee to control and use the soil and other natural deposits within the limits of the highway is that such use shall be consistent with the full enjoyment of the public easement."

In the last part of your question you ask:

"Does the timber on the road belong to the town to be used for road purposes?"

From the foregoing stated authority it would seem that unless the timber on the highway and within the four rod limit is necessary to be used in the construction or repair of the road in question, then the township has no right to it. I do not think they could take the timber in question and sell it or use it upon some other highway in the same township.

Yours truly,

CLIFFORD L. HILTON,

Assistant Attorney General.

Feb. 1, 1909.

373

HIGHWAYS—Care of devolves on township.

Attorney General's Office.

Mr. Leonard Groth, Chairman.

Dear Sir: You call attention to the fact that the county commissioners of your county laid out a county road, but at the time of such laying out did not have the road surveyed. That the supervisors, as required by law, were notified to open up the road and let the contract to a party to do so, and then found it necessary to have a part of the road surveyed and notified the county auditor to that effect. The county commissioners were not in session at the time and would not be for a period of two months and that at the request of the supervisors the county auditor had the county surveyor make a survey of this road, acting on the suposition that the county commissioners would pay the bill. That the bill of the county surveyor was rejected by the county commissioners on the advice of the county attorney, and you ask whether, in the opinion of this office, the county is liable for such bill, or whether the township should pay it.

Replying to the query I have to inform you that the county attorney's opinion is concurred in and the county cannot be forced to pay the bill in question.

The authority of the county commissioners to act in road matters is statutory. Section 1167, R. L. 1905, provides for the action of the commissioners in viewing a proposed road and making report, and in this section it is stated that in such examination they may employ a surveyor. It appears in this case, however, that the commissioners did not so employ a surveyor, presumably not deeming it necessary.

The general care and control of roads within a township is vested in the township through which the roads run. After a road is laid out by the county commissioners the supervisors of the respective towns are to open up such roads and care for the same thereafter. It appears from your letter that the hiring of the county surveyor was done by the county auditor at the request of the township supervisors. The county auditor had no authority to act for or in any way bind the county in that regard.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 19, 1909.

374

HIGHWAYS—Opening of—Right of town to use timber growing in.

Attorney General's Office.

Mr. R. W. Terry, County Attorney.

Dear Sir: You make inquiry relative to chapter 432, G. L. 1909.

It is somewhat difficult to arrive at a satisfactory conclusion in this matter. The rule adopted in the construction of two laws on the same subject and which are not diametrically opposed to each other, and in which one is not an express repeal of the former, is to so construe the laws, if possible, as to give effect to both. Pursuing this course I am inclined to the opinion that chapter 432, supra, has reference only to highways that have been heretofore established and opened. A new highway laid out can be opened through a timber tract of land without giving the ninety days' notice provided for in this chapter, subject of course to the law relating to the opening of enclosures.

As to the rights of town boards and road overseers in the clearing of highways, you will find it of interest to read Town of Glencoe vs. Reed, 93 Minn. 518. The court in this case quotes with approval from Elliott on Roads and Streets, in which text is found "We believe that the right of the public is an easement, and that the owner of the fee remains the owner of the soil, springs, mines, quarries, **timber,** and the like, except insofar as the public officers may have a right to use suitable materials for improving or repairing the road."

I am of the opinion that trees growing within the limits of a newly laid out highway may be used by the authorities to such an extent as may be necessary in the construction of the particular highway upon which they were standing.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 10, 1909.

375

HIGHWAYS—Powers and duties of town boards.

Attorney General's Office.

Mr. C. E. Everett.

Dear Sir: You inquire as to whether there is any law compelling the town board to lay a road when a party owns forty acres or more, from which he has no outlet .

Section 1171, R. L. 1905, relating to the establishment of town roads, so far as applicable, reads as follows:

"But town boards are required to establish a road at least two rods wide connecting with a public road any tract of land of ten acres or more owned by a person who has no access thereto except over land of others, upon the petition of such owner alone; the damages, if any, to be paid by him before such road is opened."

Ample relief can be secured by you under the law above quoted, but if you elect to proceed in the usual manner for establishing highways, that is, by a regular petition, and with the purpose of having the road in question established as a town road at the town expense, then the matter of establishment lies within the sound judgment and discretion of the town board. If such town board refuses to grant a petition you have a recourse by appeal.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 20, 1909.

376

HIGHWAYS—Duties of townships as to tunnels under highways.

Attorney General's Office.

Mr. Sam G. Anderson, Jr.

Dear Sir: In your favor of August 5th you ask whether, under section 1207, R. L. 1905 after a bridge has been maintained over a tunnel under a public highway for more than a year, is the town thereafter compelled to stand the expense of maintaining the same.

This inquiry of yours is answered in the affirmative.

You also ask what the duties of the county attorney are on appeal from the action of the county board in reference to a petition for change of boundaries of a school district. Replying thereto, I beg to advise that the county attorney, as such, has no duties to perform in relation thereto. His duty ends when he advises the county board.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 9, 1910.

377

HIGHWAYS—Railway crossings—Rights of township and obligations of railroads.

Attorney General's Office.

M. G. Melsness, Esq.

Dear Sir: You inquire as to the relative rights of towns and railroad companies in connection with highway crossings. I assume that the town is about to lay out a crossing over the railroad track. If this is the case the town must treat the railroad company the same as other owners of land and pay to it an amount sufficient to cover the expense of planking and grading and to provide a fund for maintaining such planking and grading, and the railroad company must then maintain the crossing in all respects.

If an overhead crossing is necessary, the railroad company is obliged to construct the same without reimbursement; but if it is a grade crossing the town must pay, as I have said, for the planking and grading and the maintenance of that planking and grading in the future.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 15, 1910.

378

HIGHWAYS—Acquirement of, across railroad rights of may must be compensated for.

Attorney General's Office.

O. E. Evenoll, Esq.

Dear Sir: In reply to your letter of April 28th, I have to say that town authorities must secure a right of way for a road across the railroad the same as it secures a right of way for such road across an ordinary farm. The town, under the devisions of our supreme court, must pay to the railroad company the cost of the planking and grading of the road and an amount sufficient to maintain perpetually such planking and grading, then the railroad company must keep up the crossing, including planking, grading, cattle guards, signs, wing fences and in all other respects.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 10, 1910.

379

HIGHWAYS—Road along a public ditch must be established as are other public highways.

Attorney General's Office.

Iver Norum, Esq.

Dear Sir: You first inquire whether a road along a ditch must be laid out by the public authorities. In answer to this question I have to say that it must be so laid out according to the rules governing the laying out of highways by town or county officers.

Your second inquiry is whether a man can fence a ditch running through his land. He can.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 12, 1910.

380

HIGHWAYS—Liability of county for one-half cost of bridges.

Attorney General's Office.

John Holden, Jr., Esq., Town Clerk.

Dear Sir: In reply to your letter of April 11th with regard to the liabilty of the county for one-half of the actual cost of a bridge which cost more than the estimated expense, after the county has agreed to pay one-half of the estimated expense, I have to say that unless another petition is presented to the board and the board thereupon agrees to pay one-half of the increased cost of the bridge, there is no liability on the part of the county to pay any more than one-half of the estimated cost.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 14, 1910.

381

HIGHWAYS—Per diem for labor upon may not be incurred beyond statutory limit.

Attorney General's Office.

Jens C. Peterson, Esq.

Dear Sir: In your favor of April 14th you state that at your town meeting the electors present voted to raise the wages to $2.00 a day for men and $2.00 a day for team. You ask whether the same may be lawfully done in view of

the provisions of the statute that such rate shall be $1.50 per day for team and wogon and $1.50 a day for labor in commutation for road labor.

I am of the opinion that the statute is conclusive and that therefore your inquiry is to be answered in the negative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

April 20, 1910.

382

HOLIDAYS—Where holiday comes on Sunday, following day is not.

Attorney General's Office.

Mr. C. L. Newberry, Superintendent.

Dear Sir: Replying to your favor, I have to inform you that Monady, May 31st, cannot be considered as a legal holiday, Memorial Day coming on Sunday, May 30th, except for purposes of commercial paper.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

383

HORSE THIEF BOUNTY—Is payable even though defendant is convicted of petit larceny.

Yours truly,

Hon. S. G. Iverson, State Auditor.

Dear Sir: You have referred to me the inquiry of the county auditor of Ramsey County as to whether or not a person may obtain a horse thief bounty on a conviction by a court of only petit larceny jurisdiction, viz.: the St. Paul municipal court, of a person for such an offense.

I have to say that the statute does not put any limitations upon the court in which the conviction of a horse thief may have occurred, and does not condition the award of the bounty upon the value of the horse stolen. I think that under the law as it is, a person who has secured the conviction of a horse thief in a municipal court is entitled to the horse thief bounty provided by statute.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 7, 1910.

384

HUSBAND AND WIFE—May not convey land directly, the one to the other.

Attorney General's Office.

Hon. C. L. Sawyer, House of Representatives.

Dear Sir: Your letter of February 18th to the Attorney General has been referred to me for consideration, and I have to say that I agree with Mr. Deutsch in the opinion that chapter 123 of the Laws for 1907, does not authorize a husband to convey land directly to his wife, or a wife to convey land directly to her husband, and I find no law authorizing such direct conveyance.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 1, 1909.

385

INCOMPATIBLE OFFICES—Postmaster or mail carrier may hold town office.

Attorney General's Office.

Mr. Fritz Holdner, Chairman.

Dear Sir: You inquire as to whether a United States mail carrier can hold the office of town supervisor and whether a postmaster can also hold another office.

There is now law in this state to the contrary and both your questions are answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1910.

386

INCOMPATIBLE OFFICERS—President of village council and health officer, are.

Attorney General's Office.

Dr. J. B. Clement.

Dear Sir: You state that you were elected president of your village council and that you are the only physician in town. You inquire as to whether or not you may hold office as such president and accept at the hands of the council the appointment as health officer with the usual salary.

I am obliged to inform you that your question must be answered in the negative, the two offices in question are incomptabile and cannot be held by you at the same time.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 14, 1910.

387

INCOMPATIBLE OFFICERS—Village clerk and village assessor, are.

Attorney General's Office.

Mr. Frank Poferl.

Dear Sir: I am of the opinion that the same person cannot at the same time hold the office of village assessor and village clerk. The offices are incompatible. Before qualifying for an office, the occupant of an office incompatible therewith should resign and such resignation should be accepted. A vacancy in the office of village assessor, presuming that your village is operating under general laws, is to be filled by appointment for the remainder of the year by the village council.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 9, 1910.

388

INCOMPATIBLE OFFICERS—Village clerk and village attorney are.

Attorney General's Office.

A. J. Praxel, Esq.

Dear Sir: You inquire as to whether a clerk of a village can be appointed as village attorney by the village council. I am inclined to the opinion that your inquiry should be answered in the negative.

If your village is operating under the general law the clerk is a member of the village council, and it would therefore be improper for that reason, if for no other, for him to receive an appointment to a position from the appointing body of which he is a member.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 16, 1910.

389

INCOMPATIBLE OFFICES—County auditor or his deputy and deputy clerk of court are.

Attorney General's Office.

Hon. A. Schaefer, Public Examiner.

Dear Sir: Quoting from a letter received by you from the county auditor of Benton county you ask:

"Can a county auditor or a deputy county auditor also be a deputy clerk of court?"

In my opinion your inquiry is to be answered in the negative. The offices in question are incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 2, 1910.

390

INCOMPATIBLE OFFICES—County Commissioner and Justice of the Peace are.

Attorney General's Office.

Mr. T. E. Thompson.

Dear Sir: You inquire as to whether a man may hold the two offices of county commissioner and justice of the peace at the same time.

Your inquiry is answered in the negative, the offices are incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 25, 1910.

391

INCOMPATIBLE OFFICES—County Attorney and City Attorney are.

Attorney General's Office.

J. P. McMahon, Esq.

Dear Sir: You state that you are city attorney of Faribault and your term of office is for one year under the charter of your city. You also state that you are a candidate for county attorney and if you are elected you desire to know if for any reason you should resign your position as city attorney.

I am of the opinion that the two offices are incompatible and that upon being elected and qualified as county attorney you should resign your office as city attorney.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 5, 1910.

392

INCOMPATIBLE OFFICES—County auditor and village president are.

Attorney General's Office.

E. H. Klock, Esq.

Dear Sir: You state that you are president of your village council and have been elected as county auditor. You inquire as to whether upon the qualifying for the latter named office it will be necessary for you to resign as president of the village council.

It seems to me that the two offices in question are incompatible and therefore, in my opinion, you may not hold both at the same time.

Section 847, R. L. 1905, under which I presume your village is acting, makes the president, assessor and clerk of each village a board of review, reviewing the assessment of property in such village for taxation purposes. The county board of equalization, under section 859, R. L. 1905, provides that the county commissioners, or a majority of them, with the county auditor, shall form a board for the equalization of the assessment of the property of a county. It would thus seem that as a member of the county board of equalization, the county auditor would be placed in a position of equalizing assessments that he had theretofore passed upon as a member of the village board of review.

For this reason, if for no other, I am forced to the conclusion above indicated.

Yours truly,
CLIFFORD L. HILTON,
Attorney General's Office.

Nov. 19, 1910.

393

INCOMPATIBLE OFFICES—Village recorder and justice of the peace are.

Attorney General's Office.

Mr. A. F. Windlandt, Village Recorder.

Dear Sir: You inquire as to whether one person may hold the office of village recorder and justice of the peace.

Your inquiry is answered in the negative, the offices are incomptabile and cannot be held by the same person at the same time.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1910.

394

INCOMPATIBLE OFFICES—County commissioner and town clerk are.

Attorney General's Office.

Mr. Wm. Gausmann.

Dear Sir: You inquire as to whether a county commissioner can at the same time hold the office of town clerk.

Your inquiry is answered in the negative; the two offices are incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 16, 1910.

395

INCOMPATIBLE OFFICES—Member of village council, village justice and member of board of health are; member of school board and village health officer are not.

Attorney General's Office.

Mr. L. A. Whittier, Recorder.

Dear Sir: Replying to your inquiries I have to advise you that in my opinion a member of the village council cannot hold the office of justice of the

peace or a member of the board of health; the offices are incompatible.

I am further of the opinion that a member of the school board may also be a village health officer, and that such offices are not incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 23, 1910.

396

INCOMPATIBLE OFFICES—Town clerk and assessor are not.

Attorney General's Office.

Mr. Michael Smith, Supervisor.

Dear Sir: You inquire as to whether an assessor who has been elected as town clerk can hold both offices at the same time.

In my opinion your inquiry is to be answered in the affirmative. The offices are not incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1910.

397

INCOMPATIBLE OFFICES—State senator and city mayor are.

Attorney General's Office.

Mr. P. H. Zender, Acting Mayor.

Dear Sir: You inquire as to whether a state senator can hold the office of mayor in a city having a home rule charter, which charter provides that the mayor shall take care that the laws of the state and the ordinances and regulations of the city are duly observed and enforced within the limits of the city.

I a mof the opinion that your inquiry is to be answered in the negative. Section 9, article IV, state constitution. The office of mayor of a city in this state is an office under the authority of the State of Minnesota.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 12, 1910.

398

INCOMPATIBLE OFFICES—Village trustee and village assessor are.

Attorney General's Office.

Mr. Nicholas Gores.

Dear Sir: I have to advise you that I am of the opinion that one man may not hold the position of village trustee and village assessor at the same time.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 17, 1910.

399

INCOMPATIBLE OFFICES—Court commissioner and county commissioner are.

Attorney General's Office.

Carl E. Taylor, Esq., Court Commissioner.

Dear Sir: In reply to your letter of September 30th, inquiring whether the officer of county commissioner is incompatible with the office of court commissioner, I have to say that it is.

There are two reasons for this: First, that the office of court commissioner is a purely judicial office and the office of county commissioner is not, and such offices must be held by different individuals. Second, the county board may be called upon to pass upon the bills of the court commissioner.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Oct. 2, 1909.

400

INCOMPATIBLE OFFICES—Village president and justice of the peace are.

Attorney General's Office.

Mr. A. F. Hainlin.

Dear Sir: You inquire—

"Can I act as president of the village council and village justice of the peace at the same time?"

The offices in question are incompatible and your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 5, 1909.

401

INCOMPATIBLE OFFICES—County commissioner and school district officer are not.

Attorney General's Office.

Mr. C. A. Wolf.

Dear Sir: I do not know of any reason why a member of the board of county commissioners could not at the same time be either a treasurer of a school district or a member of the school board. There would seem to be no incompatibility between the office of county commissioner and either one of the other two named.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 2, 1909.

402

INCOMPATIBLE OFFICES—Sheriff or deputy sheriff and village trustee or town supervisor are.

Attorney General's Office.

R. J. Hawley, Esq., Sheriff.

Dear Sir: You ask whether a sheriff or deputy sheriff is eligible to hold office of a member of the village council or a member of the town board of supervisors.

Section 558, Revised Laws 1905, so far as applicable to these questions, provides—

"Nor shall any sheriff or deputy sheriff be eligible to any other lucrative civil office, except village or city marshal."

It would seem that this statute is clear and mandatory, and therefore your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 15, 1909.

403

INCOMPATIBLE OFFICES—Member of council and marshal are.

Attorney General's Office.

Mr. Hubert Secord.

Dear Sir: A member of a village council may not at the same time hold the office of village marshal. The two offices are incompatible. A member of the council is elected as such at the annual village election while, under the general law, a marshal is elected by the council. It may be that your village is operating under some special law which makes a different provision. If a man at an election is elected to two offices which are incompatible, it is competent for him to qualify for either one of the offices in question, but not for both. If, by the law under which your village is operating, it was proper to elect members of the council and marshal at the annual village election and the man in question was elected councilman and also received the highest number of votes for marshal, beating you by three votes for the latter named office, the fact that he qualified for councilman and not for marshal would not make you entitled to the office of marshal. A vacancy would occur which should be filled by the proper appointing power. The foregoing opinion is based upon the facts of the situation as I am able to gather them from your letter.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 8, 1909.

404

INCOMPATIBLE OFFICES—Court commissioner and justice of peace are.

Attorney General's Office.

Mr. Kieran F. Whelan.

Dear Sir: You inquire whether a justice of the peace of the city of Glencoe can at the same time hold the office of court commissioner of McLeod county, in which the city of Glencoe is situated.

Your question is answered in the negative. The two offices are incompatible and may not be held by the same person at the same time.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 12, 1909.

405

INCOMPATIBLE OFFICES—County commissioner and alderman are.

Attorney General's Office.

Mr. Archie Campbell.

Dear Sir: I am of the opinion that the offices of county commissioner and alderman of a city are incompatible and cannot be held by the same person. Unless there is something in the city charter preventing, (the school district in your city being an independent one), I am of the opinion that a member of the city council may also be a member of the board of education. A child of a member of the school board cannot be hired by such board as a teacher in the schools of the district unless such hiring be made by the unanimous vote of all members of the board.

Women entitled to vote in a district upon school matters may vote upon the question of the issuance of bonds.

A school board has no authority to sell or dispose of real estate belonging to a district without a vote of the electors so authorizing.

Unless there is something in the city charter expressly so requiring, it is not absolutely necessary that all business of the city council be held in the city hall.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 17, 1909.

406

INCOMPATIBLE OFFICES—City alderman and member of school board are not.

Attorney General's Office.

Mr. A. G. Anderson.

Dear Sir: You submit the following inquiries:

May a member of the board of education of the independent school district of Fergus Falls at the same time hold the office of a member of the city council?

In the absence of my attention being called to any provision of your city charter providing otherwise, I am of the opinion that your question should be answered in the affirmative. The offices would not seem to be incompatible, and that being true one person may at the same time hold the offices of alderman and member of your board of education.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 16, 1909.

407

INCOMPATIBLE OFFICES—County commissioner and mine inspector are.

Attorney General's Office.

Mr. G. F. Edquist.

Dear Sir: You inquire as to whether a county commissioner may also hold the office of mine inspector.

Your inquiry is answered in the negative. Chapter 166, General Laws 1905, provides for the appointment of a mine inspector by the board of county commissioners together with the fixing of his compensation, traveling expenses, etc. A member of the county board cannot be appointed by such board to the office in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug 21, 1909.

408

INCOMPATIBLE OFFICES—Constable and county commissioner are.

Attorney General's Office.

Mr. J. G. Murphy.

Dear Sir: You inquire as to whether a constable can at the same time hold the office of county commissioner.

Your question is answered in the negative. The offices are incompatible. Among other objections to the holding of such offices by the same person might be mentioned the fact that for certain services rendered by a constable in the service of criminal warrants, a bill can properly be rendered against the county, and this bill would have to be passed upon, allowed or rejected by the county board.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1909.

409

INCOMPATIBLE OFFICES—Alderman and city justice are.

Attorney General's Office.

B. A. Waffle, Esq.

Dear Sir: You inquire as to whether a man at the same time may hold the office of alderman of a city and justice of peace in said city. The two offices are incompatible, and cannot be held by the same man.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 1, 1909.

410

INCOMPATIBLE OFFICES—Vacating one does not reinstate former one vacated by acceptance of an incompatible office.

Attorney General's Office.

Mr. C. C. Weins.

Dear Sir: You submit two questions, as follows:

1. Has a county commissioner who has qualified to the office of town supervisor vacated the office of county commissioner?

2. Has a county commissioner who, after qualifying to the office of township supervisor, then resigning again the latter office, a legal right to the office of county commissioner?

Your first question is answered in the affirmative, and your last question in the negative.

"It is an unquestioned rule that an officer vacates his office by the acceptance of another place in the public service, the functions and duties of which are incompatible with those incident to the office first held; and this even though the second office is of an inferior grade. * * * The resignation of the second office will not effect a restoration to the first office." 23 Am. & Eng. Enc. (2d Edition) 427, and cases cited.

It has been the holding of this office in the past that the office of county commissioner and township supervisor are incompatible, and one man may not hold both offices at the same time.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 26, 1909.

411

INCOMPATIBLE OFFICES—Acceptance of one, vacates former one held.

Attorney General's Office.

Mr. W. S. Allard.

Dear Sir: I am in receipt of your favor of recent date relative to the holding of the office of county commissioner and township supervisor by the same person.

It appears from your letter that a certain man was elected county commissioner two years ago and duly qualified; that last March he was elected as township supervisor and qualified for that office and entered upon the discharge of his duties.

It has been the holding of this office that a man may not at the same time act as county commissioner and township supervisor, the two offices being incompatible.

It has been held by the courts that the acceptance by an office holder of an incompatible office, vacates the former office.

Under the ruling and decisions above referred to, the acceptance by this man of the office of township supervisor, would vacate the office of county commissioner.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 27, 1909.

412

INCOMPATIBLE OFFICES—Member of state board of health and local health officer are.

Attorney General's Office.

Hon. O. C. Pierson, Assistant Secretary State Board of Health.

Dear Sir: You submit letters from Dr. F. F. Clifford and A. D. Barr, both of West Concord, Minnesota, in which the question is raised as to the right of a member of the State Board of Health to be appointed as local health officer.

I have to advise you that in my opinion such appointment may not be made. The two offices would seem to be incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 10, 1909.

413

INCOMPATIBLE OFFICES—Member of council and street commissioner are.

Attorney General's Office.

Mr. Albert H. Enerson.

Dear Sir: You inquire whether a village council can legally appoint a member of such council to the office of street commissioner.

Your question is answered in the negative. The two offices are incompatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 10, 1909.

414

INCOMPATIBLE OFFICES—County commissioner and member of town board are.

Attorney General's Office.

Forbes & Peregrine, Esqs.

Dear Sirs: In your communication you submit the following inquiry:

"May a county commissioner hold the office of a member of a town board while acting as such commissioner?"

Your inquiry is answered in the negative. The offices are incompatible. Under the provisions of sections 2137 and 2138, Revised Laws 1905, the county board may be required to pass upon claims presented by the town for expenses incurred by the town board acting as a local board of health in preventing and suppressing epidemic diseases and for this reason, if for no other, the offices of county commissioner and town supervisor are not compatible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 21, 1910.

415

INCOMPATIBLE OFFICES—Village justice and member of council are.

Attorney General's Office.

Mr. E. J. Bahe.

Dear Sir: You are advised that the same person cannot hold at one time the office of village justice and member of a village council. The offices are incompatible. This is true if for no other reason than the one that you give, to-wit, the fact that the village council is required to approve or reject the official bond of a justice. Then too, it is customary for villages to pay the fees of a village justice incurred in criminal prosecutions brought before him for violation of a village ordinance, when the fine and costs are not paid by the defendant.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 8, 1909.

416

INCOMPATIBLE OFFICES—County commissioner and town treasurer are, but former and school district treasurer are not.

Attorney General's Office.

Mr. Eli Peterson.

Dear Sir: You inquire if a person serving as county commissioner can hold the office of town treasurer and school treasurer.

Your first question is answered in the negative and your latter in the affirmative. A county commissioner may not be a township treasurer but may be a school district treasurer.

The question as to the right of a man to hold more than one office is to be determined on whether the two offices are incompatible. If the duties of the two offices conflict, then one man may not hold both. Instances might arise where the county board would be called upon to take action relative to a town treasurer's bond, and the possibility of such a situation renders the offices incompatible. Under chapter 80, General Laws 1905, a township treasurer is required to give a bond to the county board, to be approved by the county auditor, conditioned upon his proper handling and disbursing of county road and bridge money. In case of the treasurer failing so to do, the duty would rest upon the county board to enforce the forfeiture provided in the bond. My attention has not been called to any matter wherein the duties of a school treasurer and a county commissioner would conflict, and in the absence of any such I am of the opinion that a county commissioner may act as school treasurer.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 13, 1909.

417

INDIAN PENSIONS—Disability to entitle to must have occurred prior to Sept. 15, 1862.

Attorney General's Office.

Hon. Fred B. Wood, Adjutant General.

Dear Sir: You submit to this office pension application No. 361, August Gluth, and inquire as to whether it would follow as a presumption of law that the disability claimed occurred prior to Sept. 15, 1862, the service of said Gluth etending from August, 1862, to December of that year.

You are advised that no such presumption obtains. There should be affirm-

ative proof to your satisfaction that the disability received occurred prior to Sept. 16, 1862. Upon the furnishing of such proof the objection raised by you in your inquiry to this office, will be removed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 13, 1909.

418

INDIANS—Privileges of.

Attorney General's Office.

E. A. Weston.

Dear Sir: Replying to your favor of September 27th addressed to the Attorney General, I have to advise you that every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, may exercise the privileges of a citizen and is eligible as such to hold office.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Oct. 1, 1909.

419

INDICTMENTS—Simple assault indictable.

Attorney General's Office.

Mr. Norman E. Peterson, County Attorney.

Dear Sir: This office is in receipt of your favor of recent date enclosing a copy of an indictment for the crime of assault in the third degree found by the grand jury of Freeborn on February 2, 1909.

You inquire generally whether assault in the third degree is an indictable offense. In answer, I call your attention to section 157 of chapter 65, G. S. 1866, which reads as follows:

"No assault, battery or affray is indictable; but all such offences shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five dollars, nor more than one hundred dollars."

This section appears in the General Statutes of 1878 as section 166 of chapter 65, and in the General Statutes of 1894 as section 5120.

This provision of law is omitted in the Revised Laws of 1905.

Section 5547, R. L. 1905, provides that all laws not expressly repealed by this chapter shall remain in force, and nothing in the revised laws shall be construed as abrogating or otherwise affecting the same.

Section 5518, R. L. 1905, provides for the express repeal of all of the general statutes of 1866, except the first seventy-four sections of chapter eight, and chapter 122 thereof.

In my opinion, therefore, section 157 of chapter 65, G. S. 1866, is expressly repealed by the revised code.

It follows in my opinion that assault in the third degree is an indictable offense and your query is answered in the affirmative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 26, 1909.

420

INDICTMENTS—Requisites of in larceny.

Attorney General's Office.

Mr. Norman E. Peterson, County Attorney.

Dear Sir: This office is in receipt of your favor of recent date enclosing a copy of an indictment for the crime of grand larceny in the first degree found by the grand jury of Freeborn county on February 1, 1909. The charge in part of said indictment reads as follows:

"The said Alfred Anderson, on the 2d day day of December, 1908, at the town of Albert Lea, Freeborn county, state of Minnesota, did, then and there, unlawfully and feloniously, take, steal and carry away in the night time, from the barn of Maynard Nelson, said barn being, then and there, a wooden building, one dark bay horse, named Bess; said horse being, then and there, the property of him, the said Maynard Nelson, and, then and there, of the value of $125.00."

It appears that the statutory words found in section 5078, R. L. 1905, "With intent to deprive or defraud the true owner of his property, or the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person," are omitted in the particular indictment.

You inquire generally whether this omission is fatal to the indictment. I call your attention to the following excerpt:

"From the record before us it is not perfectly apparent that the objection now urged that the sufficiency of the indictment, because it failed to allege that the personal property described therein was taken by defendant with the intent mentioned in that part of section 415 of the code which defines the crime of larceny, was raised or even referred to in the court below; but, be that as it may, we are of the opinion that when in an indictment for the crime of larceny it is explicitly charged, as it was in the pleading now under consideration, that defendant feloniously took, stole and carried the property away from the owner, the intent to deprive the true owner of it is sufficiently and adequately alleged. The remaining assignments of errors have no merit." State vs. Hackett, 47 Minn. 427-8.

It accordingly follows that the indictment is sufficient.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

April 26, 1909.

421

INHERITANCE TAX—Expenses of administration.

Attorney General's Office.

Hon. J. B. Middlecoff, Judge of Probate.

Dear Sir: I have for acknowledgment your favor of the 22d inst. In answer thereto I would say that it is the opinion of this office that in determining the amount of an estate on which an inheritance tax is to be paid, there should be deducted from the appraised valuation of the property owned by the decedent at the time of his death the amount bona fide paid by the personal representative of the decedent for the expenses of administration.

"The expenses of the administration of the estate of a deceased person are proper to be deducted in ascertaining the value of an estate for the purpose of taxation under the inheritance tax law."

State against Probate Court of Hennepin County, 101 Minn. 487.

We are also of the opinion that the bona fide expenses incurred for funeral expenses are to be deducted from the appraised value of the estate. It is clear that such last named item is either a debt of the decedent or an expense of administration.

Section 3745, Revised Laws of 1905, treats the funeral expenses as a debt of the decedent.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Dec. 27, 1909.

422

INHERITANCE TAX

Attorney General's Office.

Jesse Foot, Esq., County Treasurer,

Dear Sir: Enclosed please find draft No. 130 on New York for $345,325.25, to my order as attorney general, and endorsed by me to your order as county treasurer.

This represents the amount which is due from the estate of the late John S. Kennedy, of New York City, to the state of Minnesota as an inheritance tax upon his property situate in this state, consisting of one hundred thousand shares of stock in the Great Northern Railway Company, a domestic corporation. The same is sent you for transmission to the state treasurer in the ordinary course provided by law, there to be placed to the credit of the general revenue fund.

This being the first payment ever made in this state in the nature of an inheritance tax upon property of the above character owned at the time of the death by a non-resident, it is perhaps proper for me to say that this estate comprised property in Minnesota and elsewhere; that the property in Minnesota, as above noted, consisted of one hundred thousand shares of stock in the Great Northern Railway Company valued at the time of his death at $140 per share, or $14,000,000; that he died leaving a will, and by that will disposed of his entire estate, in some instances to direct beneficiaries; as to others he created thereby a life estate with remainders over to certain persons named; that certain sums were left to Yale, Amherst, Williams, Dartmouth, Wellesley, and other like educational institutions; other sums to the Children's Aid Society, Infirmary for Women and Children, New York Society for the Ruptured and Crippled, and other like charitable institutions, and other sums to the Board of Church Erection, the Board of Foreign Missions, the Board of Home Missions, of the Presbyterian Church, and the American Bible Society, and other like religious institutions.

Using the foregoing facts as a basis, it gives me great pleasure to advise that the executors of this estate represented in Minnesota by M. D. Munn, Esq., of St. Paul, conceding in effect the force of the Minnesota statute, have in this manner paid to the state of Minnesota as an inheritance tax the full amount provided for by law, except as hereinafter stated. No tax was paid upon bequests to education, charitable and religious institutions, thereby recognizing, as to this estate, the claim of the executors that by the constitution of this state, and the general policy of the state since its inception, such institutions and their property are exempt from taxation.

Without litigation, then, the state of Minnesota has had acknowledged, and in a most substantial manner, the validity of its law, and a principle, which should result in the payment to the state in the years to come of immense sums of money. This fact, and the present payment, practically of the entire sum, which under any construction of the statute the state might lawfully recover, is deemed a sufficient basis for the above settlement of the inheritance tax against this estate.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

May 20, 1910.

423

INHERITANCE TAX—Allowance for support not an expense of administration.

Attorney General's Office.

Hon. Edmund W. Bazille, Judge of Probate.

Dear Sir: I am in receipt of your favor of the first instant, and in answer thereto I would say that it is the opinion of this office, that the amount allowed by order of the court for the support and maintenance of the family of the decedent, pending the administration of the decedent's estate, pursuant to the provisions of subdivision 3 of section 3653, R. L. 1905, is not a part of the expense of administering the estate to be deducted from the corpus of the estate for the purpose of determining the inheritance tax.

We are of the opinion that such amount so allowed should be apportioned among the beneficiaries of such allowance and added to the amount which they otherwise received under the will of the decedent or by way of inheritance for the purpose of determining the amount of inheritance tax to be paid by each of such beneficiaries.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

May 4, 1909.

424

INHERITANCE TAX—Law construed and procedure outlined.

Attorney General's Office.

Libbey & Struthers, Esqs.

Gentlemen: Shares of stock in corporations organized under the laws of the state of Minnesota, owned by non-resident at the time of his death, constitute property of the decedent having its situs in the state of Minnesota, so as to subject such property to the payment of an inheritance tax thereon, provided the value thereof bequeathed to any one person, or descending by operation of law to any one person, exceeds $10,000 in value.

Putnam vs. Pitney, 45 Minn. 245.
Murphy vs. Crouse, 135 Cal. 14.
In re Colley, 186 N. Y. 220.
In re Fitch, 160 N. Y. 87.
In re Bronson, 150 N. Y. 1.
Grayson vs. Robertson, 25 Southern Rep. (Ala.) 232.
In re Culvers estate, 123 N. W. Rep. (Ia.) 743.

Evidences of indebtedness secured by mortgage on property in the state of Minnesota owned by a non-resident at the time of his death, constitute property having its situs in the state of Minnesota, so as to be subject to the payment of an inheritance tax provided the value of any such property bequeathed or descending by operation of law to any one person exceeds $10,000 in value.

Blackstone vs. Miller, 188 U. S. 202.
In re Rogers' estate, 112 N. W. (Mich.) 931.
In re Houdayer, 150 N. Y. 40.

In case a non-resident of this state, at the time of his death, owned property in this state subject to the payment of an inheritance tax, the amount of the tax due the state, if any, can be ascertained and paid to the state treasurer, and a consent to transfer of the shares of stock and mortgages obtained without the necessity of resorting to administration in this state on application to this office.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Sept. 15, 1910.

425

INHERITANCE TAX—Manner of determining tax on life estate.

Attorney General's Office.

R. W. Terry, Esq., County Attorney.

Dear Sir: Yours of the 29th inst. enclosing copy of the will of Julius A. Smith is at hand. From the terms of said will it appears that the widow receives a life estate in notes and securities of the face value of $34,000 and also a life estate in the homestead and the personal property thereon. Assuming that the widow takes under the will and not under the statute of descent, you ask,

with reference to the inheritance tax on the legacy and devise of the widow: Does the suggestion contained in State vs. Probate Court of Hennepin County, 100 Minn. 192, govern this case?

In answer to this question I would say that we are of the opinion that the same should be answered in the affirmative, and that the present value of the legacy and devise to the widow is susceptible of determination, and that the tax should be computed and paid on such valuation.

You ask how the amount of the inheritance tax should be determined. In answer to this question I would say that the expectancy of a person who has arrived at the age of fifty-four is eighteen years. The $34,000 in securities, assuming that the same will produce an income equal to 4½ per cent thereon would produce the sum of $1,530 per year. To this sum should be added the rental value for one year of the homestead, furniture and personal property thereon, the appraisers taking into consideration, in fixing such rental value, the fact that it is the duty of the life tenant to pay the taxes on such property. Assuming for purposes of illustration that the appraisers would find that the annual rental value would be $300, the annual value of the income from the securities added to the annual rental value would be the equivalent of an annuity to the widow of $1,830.

The New York Life Insurance Company would charge for an annuity payable to a female of the age of fifty-four, for the remainder of her life, the sum of $14.09 for each dollar of the annuity agreed to be paid, in other words the present value of an annuity of one dollar to a female aged fifty-four is $14.09. To determine the present value of the annuity of $1,830 we multiply $1,830 by $14.09. This gives us a present value of the legacy and devise to the widow of $25,784.70. From this value the widow would be entitled to a deduction of $10,000 exemption, leaving a net value of $15,784, on which a tax of 1½ per cent should be paid.

Of course these figures would be subject to variation in accordance as the appraisers appointed should find that the annual income from the securities would be greater or less than the figures above suggested.

It is to be noted that the widow will not have any expense in the business management of the securities, as such management is intrusted to the executor, and his compensation for such services is provided for out of the other property belonging to the estate.

I might also say that the expectancy of a female of the age of fifty-four was arrived at by taking the average of the American Experience Table and the Actuary's Table, and that the value of the annuity was taken from the published rates of the New York Life Insurance Company on file in the insurance department of this state.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

July 5, 1910.

426

INHERITANCE TAX—Service of citation.

Attorney General's Office.

John Glaser, Esq.

Dear Sir: Your favor of January 6th to the attorney general is before me for attention.

An examination of section 13, chapter 288, G. L. 1905, does not disclose that it is obligatory upon the county treasurer to admit service of a citation served upon him. In order to save expense it would seem that such action might properly be taken by him. However, as above stated he is not obliged to. The law provides that "the probate court" shall cause a copy of the citation or order for the hearing of such petition to be served upon the county

treasurer of his county not less than ten days prior to such hearing. This service can be made by an officer, or be made by the judge of probate, or any private person selected by him. In case the service is made by one other than an officer authorized to serve processes then an affidavit can be made of such service.

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 8, 1910.

427

INSANE—Expenses of examination paid by county of his residence.

Attorney General's Office.

J. D. Mills, Esq., Secretary State Board of Control.

Dear Sir. In reply to your letter of March 1st, which has been referred to me for answer. I have to say that in my opinion the expenses of the examination of an insane inmate of a state penal institution, must be borne by the county of which he was a legal resident at the time of his sentence to imprisonment in such institution. I think that the fact that such inmate was on parole at the time he became insane would not change the law in this respect.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 3, 1909.

428

INSANE—Court must determine present sanity before proceeding to trial, if question raised.

Attorney General's Office.

Constant Larson, Esq., County Attorney.

Dear Sir: The question submitted is as to the proper procedure in case a person about to be tried is in such a state of insanity as to be incapable of understanding the proceedings for making the defense. So far as I have been able to investigate this question, it has seemed to me that the course most likely to be correct, would be for the county attorney to call the attention of the court to the possibilty of the insanity of the defendant, and ask the court to take such proceedingse as seem advisable to him for the purpose of determining the mental condition of the accused.

The statute does not indicate how the court may satisfy itself as to whether or not the person under accusation is in a condition such as to permit of his trial. It would be following such law as we have, for the court to refer the matter of the insanity of the person in question, to the probate court of the county in which the person is found, and that court should take jurisdiction of the matter so far as the statutes regulating its procedure are not in conflict with the powers of the district court. It would be well to suggest to the probate judge that he appoint as one of the examiners, a capable attorney so that the question of a person's mental condition as related to his trial in court, could be carefully investigated.

When the conclusion of the probate court has been reached, it should be followed by a return of the person under investigation to the district court with a report of his condition as respects his trial. Then the court could either try him or commit him under chapter 358, G. L. 1907, to the proper state hospital for safekeeping and treatment.

I am of the opinion that the district court has the power to determine by any means which is deems proper, whether or not a person under information or indictment should be tried. Of course a court could proceed according to the general principles of law recognized in such cases.

I assume that the word "information" in said chapter 358 is to be interpreted as equivalent to "complaint," and that after complaint is made against a person charging him with crime, of which no court but the district court has jurisdiction, the district court gets a certain jurisdiction over the proceedings which is superior to that of the probate court, and that whatever action the probate court may take for the proper investigating as to the sanity of the accused must be taken subject to and as the instrument of the district court. It is thought by some that nothing should be done for the purpose of determining the mental condition of the person about to be tried, until after that person is indicted, but that the proceedings should be taken between the time of reporting in the indictment and the arraignment of the accused.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 16, 1909.

429

INSANITY PROCEEDINGS—Compensation of state hospital commission to be paid by committing county.

Attorney General's Office.

F. M. Ringdahl, Esq., State Board of Control.

Dear Sir: Your letter of May 6th to the attorney general in reference to the payment of compensation to members of the state hospital commission has been referred to me for answer.

This office is of the opinion that the compensation of said commissioners is to come from the treasury of the county from which the patient was committed to the detention hospital.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 2, 1910.

430

INSANITY PROCEEDINGS—Pay of examiners in lunacy.

Attorney General's Office.

Hon. George Baker, Judge of Probate.

Dear Sir: In reply to your letter of November 12th, inquiring as to whether or not examiners are entitled to two days' pay for two examinations of the same person, I have to say that examiners are entitled to such pay provided the two examinations are separate. If the first is adjourned, and therefore the second is a continuation of the same examination, the doctors are entitled to only one day's pay at $5.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Nov. 14, 1910.

431

INSANITY PROCEEDINGS—Commitment to detention hospital.

Attorney General's Office.

E. Frankberg, Esq., Judge of Probate.

Dear Sir: Relative to the matter which we had under discussion yesterday, I have to advise you that chapter 224, G. L. 1909, has been before this office for a construction and the following opinion was rendered by me to Hon. P. M. Ringdal, chairman of the state board of control:

"An examination of the history of this act shows that sections 1 and 2 thereof constituted chapter 48, G. L. 1907, and that the legislature of 1909 amended the same by adding to said chapter 48, sections 3, 4, 5, 6, 7 and 8 as

now found in chapter 224. The difficulty which arises and to which you refer is caused by the inconsistency in the provisions found in the 1907 law (now sections 1 and 2 of the 1909 law) when taken into consideration with the remaining sections of said chapter 224. In order to harmonize these conflicting provisions and give force and effect to the entire chapter, I reach the conclusions hereinafter set forth.

"Section 3 provides for the receiving into a detention hospital of a person voluntarily placing himself therein and prescribes the manner thereof. Section 4 provides for the making of application to the judge of probate by a relative with the end in view of having a person afflicted with mental disease placed in a detention hospital. Upon such application the judge of probate makes the appointment of a board of three physicians and this board determines whether the proposed patient is in fact mentally disturbed and in need of treatment at such detention hospital. Section 5 provides for the filing of information with the judge of probate by some one other than a relative, and upon such filing the judge of probate is to make an investigation, and if he finds the statements of the information to be correct he then appoints a board as provided for in section 4 and like proceedings are had thereafter. Section 6 vests the power in the superintendent of a detention hospital to require any person placed therein, either voluntarily or otherwise, who has recovered, to leave the institution. If the superintendent is of the opinion that such person is in fact insane and that longer treatment therein will be of no benefit, he then is to report the matter to the state hospital commission, who proceed to determine the sanity or insanity of the patient, and if found by such commission to be insane the patient is committed to the insane hospital as provided for in section 3. Sections 7 and 8 provide for the creation of a state hospital commission and the times of their meetings.

"I am of the opinion that under section 1 the old form of procedure now in vogue as to the filing of information and hearing by a board of examiners is to be followed, and if the person so examined is found to be insane, commitment is made to the detention hospital, and when such patient is found to be sane he shall be discharged therefrom as now provided by law, but if after reasonable time the superintendent deems him a fit subject for a state hospital and so certifies to your board, you shall transfer him to a hospital or asylum.

"It will be noted that section 1 specifically refers "to the finding a person to be insane" and provides for his **commitment.**

"In the other instances referred to in this chapter the finding of the board is simply to the effect that the proposed patient is mentally disturbed and in need of treatment."

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 10, 1910.

432

INSANITY PROCEEDINGS—Expenses of—to be paid in first instance by committing county in case of non-resident insane.

Attorney General's Office.

Luke K. Sexton, County Attorney.

Dear Sir: It appears that in January, 1910, a non-resident of Meeker county was duly committed by the probate court of Meeker county to the state insane hospital; that the probate court of Meeker county found that the residence of said insane person was in Wright county, Minnesota; and that certain expenses of commitment have been necessarily incurred.

You inquire whether Meeker county pays such expenses in the first instane and afterwards recoups the same from Wright county.

The question involves the construction of sections 3862, 3863 and 3864, R. L. 1905.

Section 3862 covers the fees to be paid in proceedings in insanity and provides that the amount thereof shall be audited by the judge of probate and judgment entered of record therefor to be paid out of the county treasury

upon the order of the judge of probate, and on the payment thereof the judgment shall be satisfied of record; it also provides that the county auditor of the committing county shall forthwith issue his warrant upon the county treasurer in payment of the costs and expenses of the examination and commitment. Said section 3862 has nothing to say on the question of the payment of the costs and expenses of examination and commitment in the case of a non-resident insane. It does indicate, however, that in the first instance the costs and expenses of examination and commitment are to be paid forthwith after being audited by the committing county.

No provision existed under the statutes of this state for the reimbursement to the committing county of the expenses incurred in the commitment of a non-resident insane until the passage of chapter 16, G. L. 1899. The power, however, has always existed in the county to commit a person found therein who was insane and in need of care and treatment.

Section 3863 and section 3864 are the codification of chapter 16, G. L. 1899.

The title of chapter 16, supra, is: "An act providing for the reimbursement of counties in which insane persons are examined or committed to a state hospital and whose residence is another county of the state."

I think this title clearly indicates that the proper construction to be placed on section 3863, supra, is that the necessary costs and expenses of such examination and commitment shall be paid in the first instance by the committing county and thereafter certified by the probate court to the auditor of the county found to be the legal residence of such insane person. Such costs and expenses are filed as a claim in favor of the committing county and against the county of legal residence and are to be paid as other claims against such county; that is, it is filed with the county auditor and comes before the county board for action as other claims.

Section 3864 covers proceedings when the county to which the costs and expenses have been certified, denies that the insane person has a residence in such county. In case of such denial the matter is certified to the board of control whose action is final on the question of residence, subject, however, to the right of appeal by either county to be taken within ten days after the filing of the decision of the board of control.

The county to which the costs and expenses have been certified, when the claim comes on for allowance before the county board, may of course disallow any costs and expenses if unreasonable or contrary to law.

GEORGE T. SIMPSON,
Attorney General.

Mar. 29, 1910.

433

INSANITY PROCEEDINGS—Judge of probate, in his discretion, may require receipts for expenses of sheriffs.

Attorney General's Office.

Axel Haller, Esq., Judge of Probate.

Dear Sir: In your favor of March 19th you state that the public examiner has requested you as judge of probate to issue no orders to the sheriff of your county for his actual expenses in conveying insane persons to the hospital without the sheriff filing with you duly signed receipts for each actual expense. You state further that the sheriff has refused to do so. You ask whether or not you are justified in declining to honor the request of the public examiner.

Replying thereto, I beg to advise that in my opinion the request of the public examiner is for the best interests of the state as an administrative measure, and for that reason is entitled to every possible consideration. Indeed, I believe from my acquaintance among sheriffs of the state, very few, if any, would present to the probate judge claims other than the actual amounts expended by them in the performance of their duty. But on the other hand, I am equally well aware that circumstances might arise, particularly in the transportation of an insane person, where it would be practically impossible for a sheriff to obtain a receipt for each expenditure actually incurred. It is entirely competent

for the probate court to require such receipts and it is equally competent for the probate court to dispense with them.

The directions of the public examiner in such matters do not control, rather it should be said that the whole matter is under the jurisdiction of the probate court to be dealt with by the judge thereof in the exercise of a sound discretion.

GEORGE T. SIMPSON,
Attorney General.

Mar. 22, 1910.

434

INTOXICATING LIQUORS—State local option law does not extend to cities.

Attorney General's Office.

N. F. Field, Esq., City Attorney.

Dear Sir: I am in receipt of your favor of March 7th, in which you ask my opinion as to whether the local option law of this state extends to the city of Fergus Falls. You state that in 1903 the city of Fergus Falls adopted what is commonly known as a home rule charter; that this charter contains the following provisions relating to intoxicating liquors, and none other:

"All the general laws of the state of Minnesota pertaining in any manner to intoxicating liquors shall, so far as applicable, be in force in and apply to the city of Fergus Falls."

And the city council shall have authority—

"To license and regulate the sale of spirituous, vinous, fermented malt or other liquors, provided that no saloon shall hereafter be established within four hundred feet of any school house; provided, that no such license shall be issued for less than $1,000.00 per annum."

And you state that you have advised the city clerk and city council of your city that the local option law of the state is not extended thereto by these provisions.

The local option law of the state, so far as I am advised, extends only to villages and towns and does not include cities, and I quite agree with you in your opinion that the above quoted sections are not sufficient to carry over to the city of Fergus Falls the provisions of the local option law.

GEORGE T. SIMPSON,
Attorney General.

Mar. 9, 1909.

Note: Opinion affirmed by supreme court, see Kleppe vs. Gard, 109 Minn. 251.

435

INTOXICATING LIQUORS—Patent medicine as, a subterfuge.

Attorney General's Office.

Sam G. Anderson, Jr.

Dear Sir: It appears from your favor of recent date that the city of Hutchinson, under the local option laws of the state, has voted against the licensing of intoxicating liquors; that the proprietor of a local soft drink establishment desires to sell in packages, a patent medicine known as "Triner's Elixer Bitter Wine and Bitter Tonic"; the medicine shows on anaysis 12 per cent alcohol in weight and 15 per cent alcohol in volume.

You inquire whether the sale of the "Triner's Elixer Bitter Wine and Bitter Tonic" in the city of Hutchinson is lawful.

In answer you are advised that in case the said tonic is actually sold as a beverage, and as a subterfuge and is in fact intoxicating liquor, a case is made out justifying a conviction, as such sale is in violation of the state laws; otherwise not.

In this connection let me state that it appears by a letter of an acting commissioner of internal revenue of date, June 17, 1908, that the sale of said tonic does not require the payment of any tax under the revenue laws of the United States government. This is a circumstance, but not conclusive, that the tonic is not an intoxicating beverage.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 31, 1909.

436

INTOXICATING LIQUORS—Municipalities with special charter must pay 2 per cent license moneys to state.

Attorney General's Office.

A. S. Maloney, County Attorney.

Dear Sir: In my opinion your point that chapter 288, G. L. 1907, in respect of the apportionment of two per cent of liquor license fees, as provided in section 19 of the act, is not operative as against chapter 443, Special Laws of 1889, relating to the disposition of liquor license moneys in Alma City, is not well made. It is conceded that the general rule of construction is that a general law does not repeal a special law unless the intention so to do is manifest.

State ex rel. vs. Bailer, 91, Minn. 186.

It is also conceded that chapter 443, supra, is recognized as a subsisting law by chapter 443, G. L. 1907.

I call your attention to the following excerpt:

"Now, the section does not purport to levy a tax upon any money belonging to any municipality, but upon license fees for the sale of intoxicating liquors. It also provides that, whenever a license is granted, 2 per cent of the amount charged (received) for such license shall be set aside and immediately remitted to the state treasurer. It is manifest that the 2 per cent is to be set aside—that is segregated—and at once sent to the state treasurer when received; hence 2 per cent of every license fee received by a municipality is not **its property but belongs to the state,** and that the so-called tax is not levied upon the property of the municipality. We accordingly hold that the legal effect of the act is to appropriate 2 per cent of **all liquor license fees** to the state for the erection nd mintenance of a hospital farm for inebriates, and that it is not unconstitutional for the alleged reason that it levies a tax upon property exempt from taxation by our constitution."

Leavitt vs. City of Morris, 117 N. W. Rep. 394.

It is manifest that it was the intention of the legislature in enacting chapter 288, supra, to segregate 2 per cent of all license moneys for the inebriate hospital. Whatever benefits arise from such a hospital accrue as much to the patrons of saloons in Alma City and inebriates, if any, in that community as elsewhere.

It is the proceeds of liquor license fees that come within the purview of chapter 443, Special Laws, supra, chapter 443, G. L. 1907, or any other act covering the distribution of license moneys. It is the theory of chapter 288, supra, tht two per cent of the license money never becomes the property of the local municipality, county, city or village, but are the property of the state.

Let me suggest also that many cities of the state operate under special laws, having specific provisions in their charters as to the disposition of license moneys, and no such city in the state has ever raised the question that chapter 288 is not operative as against it.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 17, 1909.

437

INTOXICATING LIQUORS—Alderman law, so-called, as applied to unincorporated village.

Attorney General's Office.

J. H. Moore, Esq., County Auditor.

Dear Sir: The following facts appear from your oral statement:

The village of Blakely is an unincorporated village, situated in the town of Blakely, which is an organized township, situated in Scott county, Minnesota. The village of Blakely contained 181 inhabitants according to the state census of 1905. The town of Blakely, including the inhabitants in the village of Blakely, had a population, according to said census, of 781 inhabitants. At the time of the going into effect of chapter 75, G. L. 1909, one license for the sale of intoxicating liquors in said township had been granted by the board of county commissioners, the place of business in said license being in the village of Blakely. A few days ago the board of county commissioners granted a second license for the sale of intoxicating liquors, the place of business being likewise in the village of Blakely.

You inquire whether the issuance of the second license is in violation of chapter 75, G. L. 1909.

Your query is answered in the negative.

In my opinion the population of the town of Blakely, including the village of Blakely, is to be taken into consideration in determining the number of licenses which may be lawfully issued in the instant case. Where "village" is used in said chapter, incorporated village is meant.

It follows that two licenses may lawfully be issued within the town of Blakely, and it makes no difference whether the place of business in each case is within the unincorporated village of Blakely.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 10, 1909.

438

INTOXICATING LIQUORS—License, to whom issued and transferred.

Attorney General's Office.

N J. Enquist, President.

Dear Sir: In answer to your oral inquiry you are advised that a village council must either refuse an application for license to sell intoxicating liquors absolutely, or grant the same to the person named in the application, covering the place described in the application.

You are also advised that a transfer of a license, either to a different person or a different place, can only be entertained subsequent to the granting of a particular license, and upon notice as provided by law.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 23, 1909.

439

INTOXICATING LIQUORS—Licensing sale in villages is discretionary with council.

Attorney General's Office.

L. W. Bailey, Esq.

Dear Sir: In reply to your inquiry as to the right of a village council to act upon its own judgment in the matter of licensing, or refusing to license a saloon, I have to say that it is the settled law of Minnesota that a village

council or other similar body, can grant or refuse a license as it sees fit, when an application to sell intoxicating liquor has been made.

I quote the following from the case of State against Common Council, 94 Minn. 81:

"The power to regulate and control (the sale of intoxicating liquors), includes the power to do all that is deemed, in the judgment of the council, for the best interests of the municipality and its inhabitants. It necessarily confers the power to refuse a license, or to limit the number of licenses to be granted, when, in the judgment of the council, the welfare of the city suggests such action."

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 10, 1909.

440

INTOXICATING LIQUORS—Who may be licensed to sell.

Attorney General's Office.

Mr. C. W. Willey.

Dear Sir: In reply to your letter of January 10th, with reference to the liquor license of Aug. Schwanka, I have to say—

1. That no license can be granted to any person who has within one year knowingly violated any law relating to the sale of liquor. It is to be presumed that a man who has plead guilty to selling liquor on Sunday has knowingly violated a law relating to the sale of intoxicating liquor

2. The fact that he plead guilty to selling liquor on Sunday does not have any bearing upon his change of location. Such change cannot be made without the permission of the council after notice of application for transfer.

3. You cannot extend his license on account of his place of business having burned.

4. You cannot refund him any part of his license fee because of his place of business having burned.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 15, 1909.

441

INTOXICATING LIQUORS—Saloons may not be licensed for part of a year on a pro rata basis.

Attorney General's Office.

T. H. Pridham, Esq.

Dear Sir: In reply to your letter, I have to say that the question which you ask is whether you can charge a pro rata portion of a thousand dollars liquor license fee for a license issued for a part of a year expiring July 1st. It is the opinion of this office that you cannot do so and should not issue a license for a portion of a year.

Your home rule charter requires all licenses to end July 1st of each year. The general law which prevails throughout the state requires licenses to be issued for one year, section 1522, R. L. 1905. If licenses must terminate July 1st and must be issued for one year from the date thereof, then it follows that licenses must be issued to begin July 1st each year and run one year. The case of Evans vs. City of Redwood Falls, 103 Minnesota Reports 314, settles the question as to the issuance of licenses under such conditions and sustains a charter which requires that licenses be issued to terminate on a specified day of the year.

You will find quite a number of cases that hold that the general law controls when it and the provisions of a home rule charter conflict and the constitution which provides for home rule charter states that "Such charter shall always be in harmony with and subject to the constitution and laws of the state of Minnesota."

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 8, 1909.

442

INTOXICATING LIQUORS—Beer cannot be shipped into no license territory and then be sold at wholesale.

Attorney General's Office.

Mr. Morgan J. Clarity.

Dear Sir: You state that in your village (Osakis) no license carried at the last election, and you inquire as to whether you have a right to have beer shipped into the village and sell it out by the keg or barrel in wholesale lots, and replying I have to inform you that your question is answered in the negative.

Section 1533, R. L. 1905, insofar as applicable, is as follows:

"1533. **Sale Where Forbidden**—The sale of such liquor **in any quantity** whatever is also forbidden in the following places:

"1. In any town or municipality in which a majority of votes at the last election at which the question of license was voted upon shall not have been in favor of license, or within one-half mile of any such municipality, except that any intoxicating liquor, manufactured within any such district, may be sold to be consumed outside of such district."

Insofar as the law of this state now exists there is no prohibition against selling malt, non-intoxicating liquors, in no license territory.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 17, 1909.

443

INTOXICATING LIQUORS—Licensed pharmacist who is a physician may in "good faith" sell liquor on his own prescription.

Attorney General's Office.

W. A. Fleming, Esq., County Attorney.

Dear Sir: You present the following inquiry:

"Can a pharmacist, duly qualified, sell liquor on a prescription written by himself, he being also a duly licensed physician of this state? Can he (a duly licensed practicing physician, who runs a drug store and is a licensed pharmacist) write prescriptions, in good faith, and furnish or sell liquor on such prescriptions?"

Your questions are answered in the affirmative. The answer is based largely upon the question of "good faith." Section 1520, R. L. 1905, reads as follows:

"1520. **Sales by Pharmacists**—Any duly licensed pharmacist actually carrying on business as such may, in good faith, as such druggist or pharmacist, dispense such liquors upon the written prescription of a reputable, practicing, and licensed physician; but only one sale of liquor shall be so made upon any one prescription."

Your attention is also called to section 1557, R. L. 1905, relating to pharmacists, and also section 1558, relating to physicians. The latter section is as follows:

"1558. **Physician**—Every physician who shall give a prescription of liquor for other than medicinal purposes, or with intent to aid in the evasion of the liquor laws of this state, shall be guilty of a misdemeanor, and shall be subject to the penalties prescribed for the illegal sale of liquor, and shall also forfeit his license as a physician."

It thus appears that it was the intention of the legislature that the utmost good faith in these transactions must prevail and that the fact that a man was at the same time a pharmacist and physician should not afford immunity for violating and evading the liquor laws.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 17, 1909.

444

INTOXICATING LIQUORS—Physicians may compound prescriptions containing intoxicating liquors for use in their own practice.

Attorney General's Office.

Mr. Geo. T. Freyer.

Dear Sir: In reply to your inquiry as to the relations of practicing physicians to the disposition of alcoholic liquors, I have to say that the supreme court of our state has said that,

"Physicians are permitted to compound prescriptions for use in their practice, and to furnish their patients with such articles of medicine as they may deem proper, but are not permitted to carry on the business of pharmacist, generally, without complying with the statute and obtaining license from the state board of pharmacy.' "

This is the only statement that I find relative to the powers and privileges of doctors in this respect, and I think it applies to other drugs the same as to intoxicating liquors.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 24, 1910.

445

INTOXICATING LIQUORS—Where council is a tie on granting liquor license none can be issued.

Attorney General's Office.

Mr. John O. Hagebak.

Dear Sir: You state that the granting of license is permissible in your city and that the council is a tie on the proposition as to whether any license shall be granted or not.

In license territory a liquor license may be granted on the compliance with the requirements of law, upon the vote of a majority of the council. If upon the question of granting a license, the vote of the council results in a tie, an equal number voting in favor of granting and against granting, then the question does not carry and a license cannot be issued to the applicant.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 23, 1909.

446

INTOXICATING LIQUORS—Amount of license fee, disposition of deposit.

Attorney General's Office.

Mr. L. F. Von Eschen, Clerk.

Dear Sir: Section 1525, R. L. 1905, reads as follows:

"1525. Deposit, how disposed of—If for any cause no license be issued to the applicant, the auditor or clerk shall return to him any part of the deposit

remaining after payment for the publication aforesaid; otherwise he shall pay such remaining sum into the county or municipal treasury, and the amount of such deposit shall be credited as part of the license fee."

If a license is not granted, then the expense of the publication is taken from the deposit made and the balance is returned to the applicant by the clerk. If the license is granted then the balance of the deposit remaining after paying for such publication fee is by the clerk turned in to the treasury and the applicant is required to pay to the treasurer the amount of the license less the whole deposit. The full amount required to be paid by the applicant for his license, if the same is granted, is the amount fixed by the council, being in the case that you mention, $1,000, and not $1,000 and the publication fees.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 6, 1909.

447

INTOXICATING LIQUORS—Restrictions as to sales of do not apply to non-intoxicating malt.

Attorney General's Office.

Mr. J. H. Virgin.

Dear Sir: You ask if a man can sell malt without obtaining a license and in reply I have to say that there is no law of this state requiring a license for the sale of malt, providing such malt is non-intoxicating. A license is required for the sale at retail of intoxicating liquors and if the beverage that you refer to as "malt" is intoxicating then it cannot lawfully be sold without a license; if it is non-intoxicating then no such license is required.

There are restrictions in the law as to days and hours during which intoxicating liquors can be sold and also sales to certain persons, such as minors and habitual drunkards, are prohibited. That prohibition does not apply as to the sale of non-intoxicating liquors. Sales of intoxicating liquors on the Sabbath are prohibited. The sale of malt (non-intoxicating) as such is not prohibited on the Sabbath day, but such sale under certain conditions and circumstances might be in conflict with the law against Sabbath breaking.

See sections 4980-4982, R. L. 1905.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 26, 1909.

448

INTOXICATING LIQUORS—Granting of license discretionary with council in license territory within legal restriction.

Attorney General's Office.

Mr. Sebert Lien.

Dear Sir: When the granting of a liquor license is permissible in a village, the village council has the authority and right to grant a license, but cannot be compelled to do so. An application for a license may be rejected by the village council without giving any reason for such action.

If I understand the action contemplated by your council, I have to advise you that I do not think the same is warranted in law. I take it from your letter that it is the purpose of the village council to issue a license to three men, who will in effect be employes of the village, for tne purpose of operating the

saloons under such rules, regulations and restrictions as the council may from time to time prescribe. Any one securing a license must do so in the manner provided by law, pay the license fee and give the bond required by law.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 24, 1909.

449

INTOXICATING LIQUORS—License question cannot be voted on at special election.

Attorney General's Office.

Mr. J. S. Gunelson.

Dear Sir: You state that at your last village election the license question was not voted upon. That now a petition has been circulated asking the council to refuse the granting of liquor license.

When the licensing of intoxicating liquor is permissible in a given village, the village council may grant, within the requirements of law, such liquor licenses, but the council cannot be compelled to do so.

You inquire—

1. Can the council order a special election to vote upon the question of license or no license?.

2. Does not the statute direct that such question shall be submitted at the annual election?

3. Does this not bar the voting on the proposition at a special election.

Your first question is answered in the negative and the last two in the affirmative.

The question must be submitted, if at all, at the annual election and cannot be voted upon at a special election called for that purpose.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 24, 1909.

450

INTOXICATING LIQUORS—Saloonkeepers cannot employ their minor children as bartenders.

Attorney General's Office.

Mr. August L. Riesberg.

Dear Sir: You inquire as to the right of saloonkeepers to employ their minor children in tending bar after school hours and during their summer vacations.

Such procedure is in violation of law. Section 4936, R. L. 1905.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 16, 1909.

451

INTOXICATING LIQUORS—Parent cannot permit minor child to be in a saloon.

Attorney General's Office.

Mr. A. Wernicke.

Dear Sir: You inquire as to whether a father has the right to take his twelve-year-old child into a saloon, even though he does not furnish him with any liquor.

Your question is answered in the negative. Section 4936, R. L. 1905, makes it a misdemeanor for any one to permit a person under the age of twenty-one years to be or remain in a place where intoxicating liquors are sold or given away.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 30, 1909.

452

INTOXICATING LIQUORS—License for sale of may not be granted to non-resident of state.

Attorney General's Office.

Mr. P. S. Aslakson.

Dear Sir: You state that it has been reported that an opinion has been rendered by this office that it was competent for saloon licenses to be granted to a non-resident of this state.

In this you are in error. An opinion was rendered to the effect that a non-resident of this state could not be granted a saloon license to sell intoxicating liquors. The law expressly provides that a person to be qualified to receive a license for the sale of intoxicating liquor must, among other things, be a bona fide resident of this state.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 12, 1909.

453

INTOXICATING LIQUORS—Parent not permitted to purchase liquor for minor son in saloon.

Attorney General's Office.

Mr. Levi Smith.

Dear Sir. You inquire as to whether a father has the right to take his minor son into a saloon and buy liquor by the drink for him, and if a saloon-keeper may allow such minor to drink at the bar.

Both questions are answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 12, 1909.

454

INTOXICATING LIQUORS—Where license it voted out license cannot be granted until voted in again.

Attorney General's Office.

Mr. Andor Sylte.

Dear Sir: You inquire as to whether county commissioners have a right to grant a license for the sale of intoxicating liquors in a township that voted out the liquor traffic two years ago and which has not voted on the proposition since. Your question is answered in the negative.

Section 1533, R. L. 1905, so far as applicable, is as follows:

"1533. **Sale, where Forbidden**—The sale of such liquor in any quantity whatever is also forbidden in the following places:

"1. In any town or municipality in which a majority of votes at the last election at which the question of license was voted upon shall not have been in favor of license."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 24, 1909.

455

INTOXICATING LIQUORS—Druggist cannot sell on prescription of verterinarian or dentist.

Attorney General's Office.

Charles E. Houston, Esq., President Village Council.

Dear Sir: You inquire whether under the provisions of section 1520, R. L. 1905, a druggist may sell intoxicating liquor under the prescription of a dentist or veterinary surgeon. Replying, I have to say that I agree entirely with the opinion that you have rendered to the effect that veterinarians and dentists do not come within the provisions of the statute, and cannot be considered as "reputable, practicing and licensed physicians." To hold otherwise would certainly be a forced construction of the language used, and I do not believe that it was the legislative intent to have dentists and veterinary surgeons write prescriptions which would authorize a druggist to furnish intoxicating liquor.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1909.

456

INTOXICATING LIQUORS—No refundment can be made to saloonkeeper whose license has been revoked.

Attorney General's Office.

Mr. J. F. Thompson.

Dear Sir: You state that the council of your village revoked a saloonkeeper's license for running his saloon in violation of the liquor laws of this state, and you inquire as to whether the village council can refund to him his unused license money.

Your inquiry is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Oct. 13, 1909.

457

INTOXICATING LIQUORS—Home rule charters cannot lower standard fixed by state laws.

Attorney General's Office.

Mr. K. Lokensgard.

Dear Sir: It is competent for a city by home rule charter to provide for regulations of the liquor traffic that are not in conflict with the general laws of this state in that regard. Under the provisions of your proposed charter, if the returns at an election show that a majority vote is cast against license, then no license may be granted, while if the majority of the votes cast are in favor of license, then the council shall grant such license. This eliminates the question of a tie vote, but under the general law, in case of a tie vote no license can be granted.

I am inclined to the opinion that the terms of your proposed charter, in which it is provided that in case license carries then a license must be granted by the village council when a person applying for the same, against whom a statutory objection cannot be made, are not in harmony with the laws of this state. It is competent for a city or village by its charter or ordinances, to raise the standard and place additional restrictions around the liquor traffic, but it is not competent for the standard to be lowered. Under our state law as it now exists, the question of granting or refusing a license to a properly qualified person rests in the discretion of the granting power, and it may not be mandamused and compelled to grant a license. It occurs to me that the provision of your charter taking this discretion away from the village council is a lowering of the standard and therefore not permissible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 13, 1909.

458

INTOXICATING LIQUORS—Screen and curtain ordinances may be passed by village.

Attorney General's Office.

Don C. Anderson, Esq., City Attorney.

Dear Sir: You inquire as to the right of a village to provide by ordinance that front window curtains of all saloons must be drawn back at 11:00 o'clock p. m. and on Sundays, and I have to inform you that the enactment and enforcement of such an ordinance is a valid exercise of village authority.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1909.

459

INTOXICATING LIQUORS—Territory within one-half mile of no license village is dry territory, even though within another village.

Attorney General's Office.

H. H. Jewett, Esq.

Dear Sir: In compliance with your request by telephone I herewith submit the following opinion:

You state that the village of Sandstone became no license territory at the last village election, a majority of the votes cast thereat on the proposition not being in favor of license, and you inquire whether a saloon may be licensed within the corporate limits of your village (Banning) such saloon to be located within one-half mile of the boundary line of Sandstone.

Your question is answered in the negative. Section 1533. R. L. 1905.

The fact that some of the territory within one-half mile of the village of Sandstone is also within the corporate limits of your village can make no difference, and a licensed saloon cannot exist therein.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1909.

460

INTOXICATING LIQUOR—Liquor license money—Refundment by village and county.

Attorney General's Office.

A. B. Church, Esq., County Attorney.

Dear Sir: From your letter of November 18th it appears that a licensed saloonkeeper in Todd county, died after his license had run about two months,

The license money had been fully paid into the treasury of the village of Long Prairie and 10 per cent of said license money had been paid by the village, under the statute, into the treasury of Todd county. An administrator of the estate of the licensee has been duly appointed and he has qualified.

You inquire generally as to the power and method of refundment of the license money covering the unexpired license period.

In answer you are advised that in my opinion an application for refundment should be made by the administrator to the village council under and pursuant to section 1536, R. L. 1905; a like application should be made by the administrator to the board of county commissioners. The village council has power to refund money which it still retains and the board of county commissioners has the same power, and you are so advised.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Nov. 19, 1910.

461

INTOXICATING LIQUORS—Construing "Alderman law."

Attorney General's Office.

Mr. Don C. Anderson, City Attorney.

Dear Sir: You state that on February 27th your village council granted a license to "A" for a saloon to be located in a new building then under construction; that on March 2d "A" furnished the bond which has never been approved by the council; that later an old saloonkeeper of the village secured a transfer of his license from the building formerly occupied by him to the one that "A" had been granted a license for, and that since that time the old saloonkeeper's license has been renewed for the building in question.

You inquire generally as to the proper construction of the law limiting the number of saloons in a given locality. The law that you refer to is now found in chapter 75, G. L. 1909. In this law the legislature uses the word "granted or issued," and it is to be presumed that the words were used advisedly and that each of said words are to be given the usual interpretation and are of different meanings. It is fair to say that "issued" has reference to the formal execution and delivery of a license after the bond has been furnished and the license fee paid. The legislature evidently intended the word "granted" to mean the favorable action of the council upon a proper application in voting a license to the applicant. The question resolves itself simply to this—on March 16th, how many saloon licenses had been granted or issued in your village. It would seem that there had been nine saloon licenses issued and one granted, making a total of ten.

I am forced to the conclusion that it will be competent for your village to have not to exceed ten licenses in force as long as it remains license territory. The status of the village immediately after the passage of the act in question (March 16th) is what determines, not what may have happened since.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 29, 1909.

462

INTOXICATING LIQUORS—Licenses may be transferred.

Attorney General's Office.

Mr. John C. Hessian.

Dear Sir: You call attention to chapters 75 and 283 of the General Laws of 1909. I do not see wherein the two laws are in conflict. The purpose of chapter 75 is to limit the number of licenses that may be in force at any one

time in a given locality. It does not occur to me that chapter 283, in permitting, among other things, a transfer of a license, would in any way increase the number of licenses. Whether the license was held by the original licensee or a transferee, would not increase the number of saloons.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 4, 1909.

463

INTOXICATING LIQUORS—Limitation as to number of licenses in newly incorporated village.

Attorney General's Office.

J. B. Himsl, Esq., County Attorney.

Dear Sir: You state that in a township having more than 500 population the county commissioners have heretofore granted two liquor licenses; that after these licenses were granted the village was incorporated within the township in question and the territory of such incorporated village includes the two saloons in question; that the village has a population of 350 people. You inquire whether the village council can grant two liquor licenses and have two saloons within its territory.

Your inquiry is answered in the negative. Immediately upon the incorporation of the village in question the two saloon licenses were annulled. The village in question can grant but one license until such time as by a federal or state census it is shown that such village contains a population of over 500 people.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 3, 1910.

464

INTOXICATING LIQUORS—Proper petition and notice necessary in order that license may be voted on.

Attorney General's Office.

Mr. Algot Anderson.

Dear Sir: You state that you are town clerk of the town of Field; that a petition signed by fourteen legal voters of your town, dated February 17th, 1909, was filed in your office on the 19th day of February at 3:00 o'clock, requesting that you give proper notice for the submission of the question of license or no license; that said notice was made by you and posted on the 26th day of February, 1909, and that at the election held there were cast 28 votes in favor of license and 32 against license, and you state the question arises as to the binding effect of such result.

The petition for the submission of the question was not filed with you in time and it was, therefore, improper for you to include the question in the notice of the annual town meeting, and it was not competent for the electors at such annual town meeting to vote upon the question. I am, therefore, of the opinon that the result of the election, as far as the license question was concerned, was inoperative, and the same as though the question had not been voted upon.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1909.

465

INTOXICATING LIQUOR—Strict observance of law required.

Attorney General's Office.

Mr. H. K. Lee. z

Dear Sir: You inquire—

1. "Can the president of a village council give a saloonkeeper the right to open his saloon after six o'clock on election day?"

Your question is answered in the negative.

Your further inquire—

2. "What steps should be taken in regard to the same?"

If, with or without the authority of the president of the village council, a saloonkeeper kept his saloon open at a time prohibited by law, such saloonkeeper is guilty of the offense provided for in section 1532, R. L. 1905. The matter should be brought to the attention of the county attorney of your county to take such action in the premises as the facts in the case and the law would seem to warrant.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1909.

466

INTOXICATING LIQUORS—License fee must be paid in cash, not in unpaid village orders.

Attorney General's Office.

Mr. Jas. D. Middleton.

Dear Sir: You inquire whether a saloonkeeper can pay a portion of his liquor license fee in village orders regularly audited, allowed and issued by the village council of the village in which the saloonkeeper is to do business, or if he has even the privilege to do it.

This question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1909.

467

INTOXICATING LIQUORS—Residents of no license territory may purchase liquor at a licensed saloon.

Attorney General's Office.

Mr. W. H. Dolphin.

Dear Sir: There is no provision of law that prevents a saloonkeeper from selling intoxicating liquor to qualified persons in the place in which he is licensed, even though such persons reside in no license territory.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 24, 1909.

468

INTOXICATING LIQUORS—In absence of charter provisions, license question cannot be voted upon in cities.

Attorney General's Office.

Mrs. Mertie Shane Stewart.

Dear Madam: You state that an attempt is being made to bring the question of license or no license before the voters at the coming spring election

on April 6th. If Janesville is a city, it is the opinion of this office that in the absence of any provision of the city charter authorizing the submission of that question, it cannot be voted upon. If, however, Janesville is a village then I think that ample authority for voting upon the question is found in section 1528, R. L. 1905, and chapter 10, G. L. 1905. The provisions of these laws, so far as applicable to a given village, must be complied with by the filing in ample time with the clerk of a petition signed by the requisite number of voters.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 17, 1909.

469

INTOXICATING LIQUORS—City may not fix license fee in excess of charter provisions.

Attorney General's Office.

Mr. A. M. Eckstrom, City Attorney.

Dear Sir: You state that Warren is a city of the fourth class, and that by the provisions of your charter liquor licenses may not be less than $500, nor more than $1,000, and you inquire if it would be competent for the city council to increase the liquor license fee to an amount exceeding $1,000 without the charter being amended. Your inquiry is in my opinion to be answered in the negative. See 103 Minn. 314.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 21, 1910.

470

INTOXICATING LIQUORS—When license fails to carry saloons must close at once.

Attorney General's Office.

Mr. J. C. E. Halmen.

Dear Sir: You inquire whether, if Kenyon votes "no license" at next Tuesday's election, the saloons, whose licenses do not expire until April 16th, will have to close their business at once and the village return to them the license money for the unexpired term.

Your inquiry is answered in the affirmative. Section 1536, R. L. 1905, so far as here applicable, is as follows:

"1536. Licenses—how annulled—Every liquor license shall be annulled by operation of law * * *

"2. By the sale of liquor becoming unlawful in the place for which such license is granted * * *

"In such cases, and in no other, such part of the license fee as corresponds to the time such license had yet to run may be returned."

Immediately upon the canvassing and determination of the result of the vote upon the license question, if it appears that a majority of the votes cast thereat were not in favor of license, then the sale of liquor in your municipality becomes unlawful and the licenses theretofore in force are annulled and the pro rata portion of the fee should be paid to the license holders.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 4, 1910.

471

INTOXICATING LIQUORS—Village council may refuse to grant licenses.

Attorney General's Office.

Mr. Ed. B. Howe, Village Recorder.

Dear Sir: You state that four saloons are now existing in the village of Minnesota Lake. You ask in effect whether the council may arbitrarily grant but two licenses during the coming year although other applicants therefor be ready to pay the license fee and give the required bond.

In reply I beg to advise that your inquiry is to be answered in the affirmative.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 21, 1910.

472

INTOXICATING LIQUORS—Decision as to whether license question was voted upon is for the courts.

Attorney General's Office.

Mr. J. H. Baldwin.

Dear Sir: I have your favor of March 11th with enclosure of petition, notice of election and ballot used at the last village election in Frazee.

The query of importance submitted is as to whether or not the license question was properly voted upon at the village election. The only ticket used and voted contains the words "Shall the sale of intoxicating liquors be licensed in the village of Frazee, Becker county, Minnesota, for the year commencing April 1, 1910, and ending March 31, 1911?"

Following the above quoted language on the ticket were the words, one above the other, "Yes" and "No," each followed by a circle, and at the bottom of the ticket appeared these words: "Place an 'X' in the circle to indicate your vote."

The petition presented to the village recorder seems to have been signed by the requisite number of voters asking that the question of granting license for the sale of intoxicating liquors be submitted to the voters, which said petition seems to have been filed in ample time, and it further appears that the posted notice for the annual village election, in addition to the usual provisions therein, contained the following: "Also the question of license for the sale of intoxicating liquors in said village for the ensuing year shall be voted upon."

When the license question is properly voted upon at an election and a majority of the votes cast thereat are not in favor of license, then immediately upon the canvassing of said vote and the determination of said result, the sale of intoxicating liquor at once becomes unlawful and all saloons must immediately close up, the licenses being by the result of said vote at once annulled. It then becomes incompetent for the village council to issue a license until such time in the future as upon the submission of the question the majority of the votes cast shall be in favor of license, whether such time be one or more years thereafter.

You will understand that this office has none of the powers of a court and any opinion that we might render herein would have no binding force and effect; the determination of the question involved should be sought in a court of competent jurisdiction. However, it would seem that it was not within the power of the voters to decide at the election in question, that if license failed to carry, then the saloons in operation should continue to so operate until April 1, 1910 for, as stated above, they must close down at once. It is equally apparent that it was not competent for the voters at said election to decide that no license should be granted prior to March 31, 1911, for perchance at the 1911 annual village election license might carry, and, if it did, it would then be within the power of the village council to issue licenses as soon after the determination of that result as the requirements of law could be complied with relative to the giving of notice, etc.

The ballot in question is by no means clear in its terms. Was it the intention of a voter voting "No" on the proposition, that no license should be issued between April 1, 1910, and March 31, 1911; and that the licenses already granted and in force should continue until the time of the expiration thereof? If so, it was clearly not within the purview of the law that such a condition could exist.

As above suggested, the proper procedure indicated would seem to be that upon properly instituted proceedings the question should be submitted to your courts.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 21, 1910.

473

INTOXICATING LIQUORS—In case of a tie vote, no license prevails.

Attorney General's Office.

Mr. W. E. Cruzen.

Dear Sir: You state that your village has just voted on the license question and that the vote resulted in a tie. You further state that a saloon has been in existence in your municipality for several years back and you inquire whether license or no license wins under the circumstances as above set forth.

You are advised that in case of a tie vote, license may not be granted, in other words, "no license" wins.

Section 1533, R. L. 1905, insofar as applicable, reads as follows:

"Sale—Where Forbidden—The sale of liquor (intoxicating) in any quantity whatever is also forbidden in the following places:

"1. In any town or municipality in which a majority of votes at the last election at which the question of license was voted upon shall not have been in favor of license. * * *"

In case of a tie vote there is not a **majority of** votes in favor of license.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 9, 1910.

474

INTOXICATING LIQUORS—Village council not liable under section 1531, R. L. 1905, for granting license in "Indian country."

Attorney General's Office.

Mr. P. F. Schroeder, County Attorney.

Dear Sir: I have before me your favor of recent date to the attorney general, submitting the question as to whether or not members of a village council would lay themselves liable under the provisions of section 1531, R. L. 1905, in granting a saloon license in the village of Detroit, said village of Detroit being in so-called "Indian country."

Assuming that the village of Detroit is "license territory" under the laws of this state, that is, assuming that at the last election at which the question was voted upon, a majority of the votes were in favor of license, then I have to inform you that in my opinion a member of your council will not be subject to the penalty prescribed in said section 1531 by voting in favor of the issuance of a license to a properly qualified applicant for such license within the other restrictions of the state laws.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 21, 1910.

475

INTOXICATING LIQUORS—Limitation as to number of licenses.

Attorney General's Office.

Mr. Wm. Warburton.

Dear Sir: Your favor of February 5th to the attorney general is before me for attention.

Chapter 75, G. L. 1909, is an act limiting the granting of licenses for the sale of intoxicating liquors. Section 1 limits the number of licenses that may be granted to one each for 500 of population or fraction thereof. If a village at the last preceding state or national census showed a population in excess of 500 inhabitants, and less than 1,000 the council of such village (providing it is license territory) may grant two saloon licenses to properly qualified persons. If on March 16, 1909, the date of the passage of the law in question, there were in force in any such village, two or more saloon licenses, it will be competent for the council to grant saloon licenses equal in number to those in force at that date, to properly qualified persons, as long as such village remains "license territory." If license should be voted out in any such village, then upon its being voted in again, the number of licenses would be based upon the population as indicated by the last state or federal census, being not to exceed one for each 500 of population or fraction thereof. If the village had two or more saloon licenses in force on March 16, 1909, and thereafter the council should grant but one saloon license, which condition should continue even for one or more years, it would still be competent for the council to grant licenses in number up to the number in force on said March 16th, as long as such municipality remained license territory.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 10, 1910.

476

INTOXICATING LIQUORS—Indictment under chapter 54, G. L. 1905.

Attorney General's Office.

Mr. Louis Hallum, County Attorney.

Dear Sir: You refer to section 1550, R. L. 1905, and inquire whether a number of convictions thereunder, in the same county and within two years, would be ground for indicting the defendant under chapter 54, G. L. 1905, being for the crime of "common and habitual liquor selling without a license."

I am obliged to answer your inquiry in the negative, being forced to the conclusion that the convictions in said chapter referred to, have reference to those under section 1519, R. L. 1905.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 10, 1910.

477

INTOXICATING LIQUORS—Not to be sold on annual village election or town meeting day.

Attorney General's Office.

Arthur B. Church, Esq., County Attorney.

Dear Sir: Your favor of February 16th is before me for attention.

Your communication is as follows:

"Section 1532 of the 1905 laws prohibits the sale of intoxicating liquors on any general, special or primary election day.

"Is it the opinion of your office that this forbids such sale on the second Tuesday in March, being the day for the annual village elections and town meetings."

I have the honor to advise you that your inquiry is to be answered in the affirmative.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 21, 1910.

478

INTOXICATING LIQUORS—Distance of licensed saloon from school house outside municipality.

Attorney General's Office.

Mr. W. R. Nash.

Dear Sir: You inquire relative to the law fixing the distance that a licensed saloon may be located from a public school house. Section 1533, R. L. 1905, insofar as applicable, provides as follows:

"The sale of such liquor (intoxicating), in any quantity whatever, is also forbidden in the following places. * * *

"5. Within 1,500 feet of any state normal school or any public school outside of a municipality."

When a public school is located outside of a municipality a licensed saloon may not be located within 1,500 feet of the same, whether such saloon be within or without the municipality. In the instance that you cite, the school house is located outside of the village of Pequot and it therefore will not be competent to locate a saloon either within or without the village at a place that is less than 1,500 feet from such school house.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 8, 1910.

479

INTOXICATING LIQUORS—Petition filed on legal holiday is valid.

Attorney General's Office.

Mr. J. M. Kalnes.

Dear Sir: You state that a petition was filed with the village recorder on February 12th, signed by the requisite number of voters, requesting that the question of the granting of saloon licenses be submitted to the electors at the coming village election. You inquire as to whether the fact that February 12th was a legal holiday in this state, and that the petition was filed on such date, would thereby invalidate such petition. Your inquiry is answered in the negative.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1910.

480

INTOXICATING LIQUORS—Time in which petition may be filed.

Mr. Thomas Vallom.

Attorney General's Office.

Dear Sir: You state that a petition has been filed with the village clerk asking that the license question be submitted at the coming spring election, such petition being filed on February 16th, and you inquire whether the same was filed in time. Your inquiry is answered in the affirmative. The law provides tnat such petition shall be filed at least twenty days before the election,

and the rule followed in computing time in such matters is to exclude the first day (being the day of filing,) and include the last day (being election day). It therefore follows that the petition was filed in time.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1910.

481

INTOXICATING LIQUORS—Submission of question of license.

Attorney General's Office.

Mr. A. R. Holman.

Dear Sir: You enclose copy of a petition signed by twelve legal voters and filed with the village recorder, requesting the submission of the question of "saloon license" at the next village election.

Section 1528, R. L. 1905 (see also chapter 10, G. L. 1905) makes provision for a petition and the submission of the question. In the section referred to this phrase is used: "Question of license."

In a matter where an effort is made by the required number of voters to have submitted any question permitted by law, whether it be the liquor question or any other, a too technical construction should not be invoked. There is no question as to what the intention of the petitioners and the same is easily ascertainable from the reading of the petition. In view of the language of the statute, the manifest intention of the petitioners and the policy above outlined, I am of the opinion that the question should be submitted. The right of petition hsould maintain irrespective of the local conditions and whether or not those petitioning are in favor or are against the sale of intoxicating liquor.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 11, 1910.

482

INTOXICATING LIQUORS—Percentage of alcohol.

Attorney General's Office.

Mr. Swan C. Hillman.

Dear Sir: Your favor of February 8th to the attorney general is before me for attention.

There is no law of this state prescribing the amount of alcohol that is necessary to make a liquid intoxicating. The law prohibits the sale of intoxicating liquor without a license and the question as to whether or not it is intoxicating is a question of fact to be determined in each case. See State vs. Schagel, 102 Minn. 401.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 11, 1910.

483

INTOXICATING LIQUORS—Distance of saloon from school house to be measured in straight line.

Attorney General's Office.

Mr. Chris Hermann, Jr.

Dear Sir: You inquire as to the proper construction to be placed upon the provisions of section 1533, in which it is provided that:

"The sale of such liquor (intoxicating), in any quantity whatever, is also forbidden in the following places: * * *

"5. Within 1,500 feet of any state normal school, or any public school out-

side of the municipality."

Your specific inquiry having to do with whether the 1,500 feet referred to is to be measured in a straight line, or by the usual, most convenient or practical way of travel, you are advised that the distance is to be measured in a straight line, and that it is not competent for the county commissioners to grant a license for a saloon to be located in a building which in a straight line is less than 1,500 feet from a school house, the locality in question not being an incorporated village.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 25, 1910.

484

INTOXICATING LIQUORS—Number of license under chapter 75, G. L. 1909.

Attorney General's Office.

Mr. Alfred P. Stolberg, County Attorney.

Dear Sir: You quote from section 2 of chapter 75, G. L. 1909, and call particular reference to the words "or fraction thereof," and wish to know whether such words mean a minor or major fraction.

You are advised that the words in question mean either, a major or minor fraction. In other words, a municipality having 500 inhabitants or less, can issue but one saloon license. If there are over 500 inhabitants and less than 1,000, then two licenses may be granted, providing of course that the municipality in question is license territory.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 24, 1910.

485

INTOXICATING LIQUORS—Number of saloons permissible under the "alderman law" not affected by interim with less number.

Attorney General's Office.

Mr. E. A. Smith.

Dear Sir: You state that Lake City on March 16, 1909, the date of the passage of the so-called "alderman law," had twelve saloons; that one saloon license expired last week and the council refused to grant a new one for good and sufficient reasons, thus reducing the number to eleven. You further state that next week another license will expire and that it is possible that the council will refuse to renew this license, thus reducing the number of saloon licenses to ten. You also state that the population of Lake City, as determined at the last preceding state or national census is such that with ten saloons there are more than one saloon for each 500 inhabitants or fraction thereof. You inquire whether it would be competent for any city council in the future, as long as Lake City remains "license territory," to grant licenses so that the total number will not exceed twelve.

Your inquiry is answered in the affirmative. The law in question limits the number of licenses that may be granted to the number that were in force on said March 16th. The mere fact that at some time since the passage of the law in question there were less than twelve licenses in force in your city would in no way affect the right of the ccouncil to grant to properly qualified persons, licenses in the future, as long as Lake City remains "license territory," so that the maximum in force does not exceed twelve.

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 21, 1910.

486

INTOXICATING LIQUORS—Indian country—State's 2 per cent of license fee.

Attorney General's Office.

U. G. Wray. Esq.

Dear Sir: Your favor of February 9th, addressed to the state treasurer, has been handed me for reply.

It appears therefrom that the village of Park Rapids has heretofore had paid to it certain moneys as license fees for the sale of intoxicating liquor therein; that the state has made demand for its share thereof amounting to two per cent and that refusal to pay the same is made upon the ground that the saloons were closed under the provisions of the treaty between the federal government and the Indians and that therefore because a refundment of such money paid by such licensees to the village of Park Rapids might, or perhaps necessarily will have to be made, the village is not liable.

You ask as to the position of the state in the premises.

I am of the opinion that the state is entitled to its share of the fees. In the first place, the state's portion, under the law, never belonged to the village of Park Rapids, but the instant that the license money was paid to the treasurer of the village, two per cent of it became the property of the state, and under the law should have been remitted at that time. As to any refundment which might hereafter occur, it has not yet been determined in any court what the duties and rights of the villages are which have received such money. Equitably and perhaps legally an obligation rests on the village to return the money, but however that may be, the obligation would only extend to moneys which are in the possession of the village and under its control and in no wise would affect the money in its hands belonging to the state. Apparently the latter is a matter for the legislature.

I therefore beg to suggest that you instruct the village treasurer to transmit to the state treasurer whatever sum is due and owing to the state.

GEORGE T. SIMPSON,
Attorney General.

Feb. 11, 1910.

487

INTOXICATING LIQUORS—Sheriff's duty.

Attorney General's Office.

Orin Daniels, Esq., Sheriff.

Dear Sir: Complaint has been made to the governor in regard to the violation of the liquor laws in the sale of intoxicating liquors at East Grand Forks. I have suggested to the governor that in view of the fact that the sheriff is his personal representative in a way, that he take the matter up directly with you.

I need not call your attention to the provisions of sections 1561 and 1562. Under these sections I think your duty is performed when you arrest men caught in the act of violating the law. However, I do not think that you can go through your county day after day and keep your eyes closed to conditions which are common knowledge to the public in general, and thereby escape liability. You will appreciate I am not referring to you in this, but am simply stating what I believe the law to be. No complaint whatever has been made as to you; I thougnt best, however, to write you and give you the situation as it exists, that you may thereupon govern yourself accordingly.

GEORGE T. SIMPSON,
Attorney General.

Jan. 2, 1910.

488

INTOXICATING LIQUORS—Refundment of fee in Indian country.

Attorney General's Office.

Mr. G. H. Tibbetts.

Dear Sir: You state that certain saloons in your village were closed by the United States authorities and you inquire as to whether the persons whose saloons were so closed can require a refundment from the village of the pro rata part of their license fees.

Under the law the council may make a refundment for a license that has been annulled for any one of three reasons found in section 1536, R. L. 1905. This office has held that the word "may" as found in said section should be construed as meaning "shall." The exact situation that you present is not covered by said section 1536, but it is likely that a court would say that the conditions involved come under paragraph 2 of said section, in which the following language is found:

"Every liquor license shall be annulled by operation of law * * * by the sale of liquor becoming unlawful in the place for which such license is granted."

The sale of liquor became unlawful by the enforcement of a hitherto unrecognized and unenforced Indian treaty. Our supreme court has not as yet passed upon this question, but I understand that at least one district court has held that there should be a refundment under conditions such as you present.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

489

INTOXICATING LIQUORS—Village is not entitled to demand any portion of 10 per cent paid to county.

Attorney General's Office.

L. R. Johnson, Esq.

Dear Sir: You inquire is to whether under the state law a portion of the 10 per cent intoxicating liquor licenses paid by a village to the county can be demanded from the county for use on highways in such village. Your inquiry is answered in the negative.

The provision in chapter 450, G. L. 1909, to the effect that—

"Such council may also appropriate the whole or any part thereof to the construction or repair of roads or streets within or adjacent to or leading from such municipality."

has reference only to that part of the license fee (88 per cent) as remains in the village treasury after paying 10 per cent to the county, and 2 per cent to the state.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

490

INTOXICATING LIQUORS—What is meant by vote of "no license."

Attorney General's Office.

Mr. M. H. Harrison, City Recorder.

Dear Sir: In reply to your letter of August 2d relative to the number of licenses which your city may issue, in view of the provisions of chapter 75 of the General Laws of Minnesota for 1909, I have to say that I am of the opinion that section 3 of the Alderman law, aforesaid, in speaking of "voting no license," means a vote of the people, and not a failure of the council to grant licenses. It says that the vote which determines the question of whether or not a municipality may have more than one saloon for five hundred inhatibants, is a "vote of no license" under the provisions of the local option laws of this state, or the provisions of any municipal charter.

Your letter indicates that the city of Madison has not recently voted "no license," and if it can issue license at all, and there has been no vote on the subject since March 16th, 1909, then it would seem as though the limitation of one saloon to five hundred inhabitants did not apply to your city.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 10, 1910.

491

INTOXICATING LIQUORS—Municipalities may adopt more stringent regulations than are provided for in state laws.

Attorney General's Office.

James A. Geer, Esq.

Dear Sir: I hereby acknowledge the receipt of your letter of August 6th to the attorney general.

It has been decided in this state that villages may increase the restrictions thrown around the sale of intoxicating liquor, but may not in any way lessen or impair the restrictions contained in the state law.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 9, 1910.

492

INTOXICATING LIQUORS—Village council may fix license fee in excess of minimum provided by law.

Attorney General's Office.

H. Bofenkamp.

Dear Madam: The power to determine the amount of the license for the sale of intoxicating liquor in a village in excess of the minimum is vested by law in the village council. Any person may appear before the village council and present his views in regard to the same.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 9, 1910.

493

INTOXICATING LIQUORS—Sales prohibited on election days.

Attorney General's Office.

Mr. Wm. Murphy, Town Clerk.

Dear Sir: The law does not prescribe the distance that a saloon may be located from the regular place of holding an election in the township. Elections, however, cannot be held in the same room with or in a room adjoining a saloon, and saloons are not allowed to be kept open on election day.

A license for the operation of a saloon in a township can only be granted by the county commissioners of the county in which such township is located. An inquiry sent to the county auditor will advise you as to whether or not the county commissioners granted such license. If the saloon in question is open on any election day, the saloonkeeper lays himself liable to prosecution, and information as to such law violation should be forthwith presented to your county attorney.

There is no such thing as a state license for the sale of intoxicating liquor. The United States government issues a so-called license or permit but this is a revenue license and is not in itself sufficient to authorize the sale of intoxicating liquor without a local license.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 16, 1910.

494

INTOXICATING LIQUORS—Use of license fees by villages—refundment.

Attorney General's Office.

Mr. John Graftaas, Village Recorder.

Dear Sir: You inquire, generally, as to whether or not a village may retain the ten per cent of intoxicating liquor license fees which the law says shall be paid into the county treasury, such retention to be for the purpose of using the money in improving the streets in and about the village.

Your inquiry is answered in the negative. The ten per cent in question must be paid into the county treasury, and becomes county funds. The provision of the law having reference to the use of intoxicating liquor license fees by a village for improvements of streets, has reference to the eighty-eight per cent of such license fees remaining in the village treasury after the state has been paid its two per cent and the county its ten per cent.

Your further inquire as to whether a saloonkeeper can have a refundment from the village of a proportionate part of the license fee where the saloons have been closed by government authority, for the reason that the village in question is in Indian country.

The supreme court has not passed upon this question as yet, although I am advised that one or more district courts have held that such refundment might be made by the village, and it is likely that such course of procedure is a fair and just one. However, if a refundment is made by a village, such refundment need only be of the proportionate part of the eighty-eight per cent of the original license fee which remained in the village treasury.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 4, 1910.

495

INTOXICATING LIQUORS—Justice of the peace has jurisdiction to try offense of running an unlicensed drinking place.

Attorney General's Office.

Anton Thompson, Esq., County Attorney.

Dear Sir: I am in receipt of your favor of July 6th, in which further inquiry is made in regard to the decision in the case of State vs. Kight, 106 Minn. 371, and my ruling that a justice of the peace has jurisdiction to try and determine an offense committed under the provisions of section 1550, R. L. 1905.

Shortly after the filing of the decision in the Kight case an inquiry was sent to this office by County Attorney R. D. O'Brien, of St. Paul, and in response to that inquiry the following opinion was rendered by Assistant Attorney General Peterson:

"This office is in receipt of your letter of recent date in which you call attention to the decision of our supreme court in State vs. Kight, of date December 31, 1908.

"Said cause was a prosecution by indictment under section 1519, R. L. 1905, which reads as follows:

"'Any person who shall sell any intoxicating liquors in quantities less than five gallons, or in any quantity to be drunk upon the premises, except as hereinafter provided, is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars and the costs of prosecution, and by imprisonment in the county jail for not less than thirty days.'

"The constitutionality of said statute was attacked on the ground that no maximum punishment was provided for therein. The court sustained the statute and held that the maximum penalty for misdemeanors, when not expressly fixed by a statute declaring certain acts to constitute the offense, is prescribed by section 4763, R. L. 1905, which reads as follows:

"'Whoever is convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars.'

"You construe the holding in said case to be that in a prosecution under section 1519, supra, any punishment may be imposed within the limitations of section 4763, supra, and you accordingly inquire whether the municipal court of St. Paul has jurisdiction to try, hear and determine all prosecutions under section 1519, supra, thus avoiding the necessity of an indictment by the grand jury and a trial in the first instance in the district court.

"In answer you are advised that the correct construction to be placed upon the decision in State vs. Kight, supra, is that the minimum punishment for a violation of section 1519, supra, is by fine of fifty dollars and the costs of prosecution and by imprisonment in the county jail for thirty days, and the maximum punishment is by a fine of one hundred dollars and the costs of prosecution, and by imprisonment in the county jail for ninety days. Within these limitations punishment may be imposed.

"The munipical court of St. Paul has jurisdiction in criminal matters concurrent with the jurisdiction of a justice of the peace. See section 131, R. L. 1905. Under section 8 of article VI of the constitution, the jurisdiction of a justice of the peace to hear, try and determine criminal cases is limited to criminal causes where the punishment shall not exceed three months' imprisonment or a fine of not exceed one hundred dollars.

"State vs. Anderson, 47 Minn. 270.
"State vs. Lindquist, 77 Minn. 542.

"It accordingly follows that the municipal court of St. Paul has not jurisdiction to try, hear and determine offenses arising under section 1519, supra."

In other words, it was held that under the provisions of section 1519, R. L. 1905, in which a minimum punishment was fixed in the conjunctive, that is both fine and imprisonment being provided for, then reference should be had to section 4763, R. L. 1905, for the maximum of each, such last named section fixing the maximum fine that should be imposed and the maximum imprisonment, and as section 1519 provided for a minimum penalty in the conjunctive, then the maximum penalty should also be in the conjunctive.

As to your specific inquiry I am of the opinion that as in section 1550, supra, the minimum penalty is fixed in the disjunctive, and referring to section 4763 for the maximum penalty as regards the fine to be imposed, or the imprisonment, the disjunctive is also to be used, and under said sections the punishment provided for is not less than $50 nor more than $100 fine, **or** not less than thirty days or more than ninety days in the county jail.

It therefore follows that a justice of the peace has jurisdiction to try and determine a case brought under the provisions of section 1550, R. L. 1905.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

July 8, 1910.

496

INTOXICATING LIQUORS—In prosecutions for unlawful sale, intoxicating qualities of liquor is question for court or jury, percentage of alcohol not necessarily determinative.

Attorney General's Office.

Mr. Fred W. Senn.

Dear Sir: You state that the city of Waseca voted no license and that no saloons are in operation. You inquire as to whether, under ordinance No. 71 of your city, it is competent for persons to sell malt liquor, and I have to advise you that the ordinance in question and also the state law regulating the sale of liquor has to do with intoxicating liquor and does not include non-intoxicating malt.

You inquire as to whether two per cent malt can be sold in license territory, and I presume you mean by that, malt containing two per cent of alcohol. You are informed that there is no law in this state defining how much alcohol a beverage must contain in order to be intoxicating. Whether it be two per cent, more or less, makes no difference; the question in each instance to be determined is whether in fact the beverage is intoxicating. If it is, then irrespective of the amount of alcohol it contains, the law is violated by a sale. The question is one for the court or jury to determine in each case.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

July 11, 1910.

497

INTOXICATING LIQUORS—Municipality not required to refund pro rata part of license fees paid to state and county.

Attorney General's Office.

Mr. S. A. Stromme, Village Clerk.

Dear Sir: You state that the village council, on May 12th, 1910, granted to M. J. Fitzgerald a license to sell intoxicating liquor for one year, the license fee being $800, the village having previously voted "for license"; that on June 12th, 1910, Fitzgerald, the licensee, died, and an application has been made to the council by his legal representative for a refundment of eleven-twelfths of the total license fee of $800.

You inquire as to whether the village must refund any part of the license fee, and if so, how much.

Section 1536, R. L. 1905, provides as follows:

"Licenses, how annulled—Every liquor license shall be annulled by operation of law: 1. By the death of the licensee * * * In such cases, and in no other, such part of the license fees as corresponds to the time such license had yet to run may be returned."

This office has heretofore held that the word "may," as used in the above statute, is to be construed as meaning "shall." It therefore follows that a refundment should be had.

From the license money paid, the village is required to pay to the state of Minnesota two per cent, and to the county ten per cent. This leaves in the village treasury but eighty-eight per cent of the license fee. The amount to be refunded to the legal representatives of Mr. Fitzgerald will, in my opinion, threfore be eleven-twelfths of the 88 per cent of the license fee, which remains in the village treasury.

It will be noted that if the village was required to refund eleven-twelfths of th entire $800, or $733.34, and has paid to the county $80 and to the state $16, then the village will be out upwards of $30 in cash, and have received no pecuniary benefit from the operation of the saloon for the one month in question.

You state that an application has been made to the village council for a license in the same building formerly occupied by Fitzgerald, and you inquire whether the council can issue the license for one year, or whether the license can be issued for the unexpired term of the Fitzgerald license.

The license must be for one year—neither more nor less.

Upon the granting of a new license to the applicant in question, it will be incumbent upon the village to pay two per cent of that license fee to the state, and ten per cent to the county.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 8, 1910.

498

INTOXICATING LIQUOR—Division of 10 per cent to counties where village is located in two counties.

Attorney General's Office.

W. R. Salisbury, Esq., Village Clerk.

Dear Sir: You state that five saloon licenses have been granted by the village council of Eden Valley, which is situate in the counties of Meeker and Stearns; that the physical location of the saloons in question is in that part of the village which is located in Meeker county. You inquire is to whether Meeker county is entitled to all of the ten per cent of the license money, or whether there should be a division made between Meeker and Stearns county of such ten per cent, to-wit: by the payment of five per cent to each county.

You are advised that in my opinion the division should be made between the two counties in question, five per cent being paid to each. Chapter 450, G. L. 1909, among other things, provides:

"All money (intoxicating liquor license fees) so paid into any municipal treasury, except cities of the first, second and third class, shall be distributed as follows:

"Ten per cent thereof shall be paid into the county treasury and credited to the general revenue fund. * * * provided that in case any such municipality is situated in two or more counties, then said ten per cent shall be divided pro rata among such counties.

As the municipality in question is situated in the counties of Meeker and Stearns such division should be made, even if the saloons are all in that part of the municipality which is within the limits of but one of the counties in question.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 16, 1910.

499

INTOXICATING LIQUORS—License fee may be raised—Not, however, to affect licenses in force.

Attorney General's Office.

Mr. J. C. King, Village Attorney.

Dear Sir: You ask if it is competent for a village council to fix the amount of intoxicating liquor license fees, in excess of $500, and in excess of the fee that has theretofor obtained in the village. The fact that a number of licenses are in force which have been granted for the sum of $500 each will not prevent the village council from fixing the license fee at a higher rate to be applicable to future licenses to be granted. Such raising of the mount of the fee, however, will not affect licenses in force at the time such action is taken.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 2, 1910.

500

INTOXICATING LIQUORS—Ten per cent payable to county goes to general revenue fund.

Attorney General's Office.

J. T. Johnson, Esq., County Commissioner.

Dear Sir: You inquire generally as to the law relating to the payment of ten per cent of intoxicating liquor license fees to the county and I have to inform you that the same is found in chapter 450, General Laws of 1909. It is in said law provided that ten per cent of such license fees shall be paid into the county treasury and credited to the general revenue fund. There is no provision in this law providing that such ten per cent shall go into the road and bridge fund. After it is once in the general revenue fund it is not in any way to be distinguished from other moneys properly in that fund, and disposition may be made thereof in the same manner as are other moneys in such fund, in accordance with the provisions of law, either by way of expenditure or transfer.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 22, 1910.

501

INTOXICATING LIQUORS—Ten per cent due county should be paid into county treasury at once.

Attorney General's Office.

Eric L. Thornton, Esq., County Attorney.

Dear Sir: You make inquiry as to the construction to be placed on chapter 430, G. L. 1909, and I respectfully refer you to opinion No. 34, written by the undersigned as published in the March Selected Opinions.

I am further of the opinion that 10 per cent of the license fees paid to a municipality should be at once upon its receipt paid into the county treasury. There is no reason for any delay in the matter, and as the money belongs to the county it should be turned over at once.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 25, 1910.

502

INTOXICATING LIQUORS—Number of licenses

Attorney General's Office.

Mr. Louis Hallum, County Attorney.

Dear Sir: Your favor of January 22d to the attorney general is before me for attention.

Construing chapter 75, G. L. 1909, I have to inform you that this department has held that the number of liquor licenses that may be granted to qualified persons in a municipality can equal but not exceed the number of licenses in force in such place on March 16, 1909, the date of the passage of the law in question. This rule maintains until such time as the municipality may become no license territory. It is not necessary that the licenses granted be to the same persons who held licenses on March 16, 1909. The law does not so require but simply places a limitation on the number. The village council may grant or refuse a license to a qualified applicant as such council may see fit, the entire number of licenses granted not to exceed the number above referred to. The granting or refusing of a license to any particular qualified person, within the limits of said chapter is a matter of discretion with the village council.

CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 24, 1910.

503

INSURANCE—Discount of premium unlawful.

Attorney General's Office.

Hon. John A. Hartigan, Insurance Commissioner.

Dear Sir: You state:

"Certain mutual fire insurance companies organized and doing business in this state are giving a discount amounting in some cases to 25 per cent, on the premium written in the policy, for payment of the premium within sixty days after the policy takes effect."

You also attach a blank agreement such as is being used by the companies following this practice. You ask if in our opinion such practice is a violation of chapter 427, Laws 1909.

In answer thereto I have the honor to inform you that it is the opinion of this department that unless such agreement is embodied in the policy contract of insurance it constitutes a violation of chapter 429, Laws 1909.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

June 3, 1909.

504

INSURANCE—Vacancy permit—What constitutes vacancy.

Attorney General's Office.

Hon. John A. Hartigan, Commissioner of Insurance.

Dear Sir: This department has for acknowledgment your favor of the 15th instant, in which you state:

"The standard fire insurance policy of this state, section 1640, R. L. 1905, provides that: 'The policy shall be void * * * if the premises hereby insured shall become vacant by the removal of the owner or occupant and so remain vacant for more than thirty days without such (the company's) assent.'"

You ask if in our opinion

"The premises become vacant by the removal of the owner or occupant, when the owner and his family are absent from the premises for more than thirty days, the furniture and fixtures, however, remaining in the house, and the owner and his family intend to return thereto."

In answer to this query, I beg to advise you that we are of the opinion that the premises do become vacant under such circumstances. The courts of the different jurisdictions are divided in their opinion as to the meaning of such provisions in an insurance policy, some of them holding that under such circumstances the premises are not vacant and others holding that they are. Thus the courts of Illinois, Wisconsin, North Carolina and Missouri have held that a house is vacant and unoccupied when it is without an occupant. On the other hand, the New York court of last resort, in the case of Herman vs. Merchants Insurance Co., 81 N. Y. 104, where the condition was that the policy should become void if the house should become vacant and unoccupied, it was held that force should be given to both words, and to affect the policy the premises must not only be unoccupied, but also vacant, and that a house thoroughly furnished, from which the owner has removed for a season, intending to return again and assume possession, is not, in any proper sense, a vacant house.

Were it not for the expression of our own supreme court hereinafter referred to, we would be inclined to the conclusion arrived at by the New York court, but our supreme court, in the case of Stensgard vs. National Fire Insurance Co., 36 Minn. 181, in speaking of a clause in a policy which read,

"Vacant **or** unoccupied, or not in use," said:

"The main object of the clause of the kind under consideration in an insurance policy, is that the building insured shall be under the care and supervision of some one **actually occupying and using it.**"

It is to be noted too that the language of our standard policy declares that

the policy shall be void if "the premises hereby insured shall become vacant by the removal of the owner or occupant."

If, as stated by our supreme court, the object of the clause is to require the actual occupancy of the premises in order to continue the liability of the insurer, then the removal of the owner and his family for more than the period of thirty days, deprives the premises of the protection given to them by one "actually occupying and using them."

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

June 18, 1909.

505

INSURANCE COMPANIES—Mere collector need not be licensed.

Attorney General's Office.

Hon. John A. Hartigan, Commissioner of Insurance.

Dear Sir: Yours of 26th inst., in which you ask for the opinion of this office on the hereinafter stated questions, is hereby acknowledged.

You ask—

1. "Is a collector for an insurance company an agent?"

By the word "collector" I understand you to mean a person authorized by an insurance company to collect premiums or assessments on policies issued by it. Such a person is, of course, an agent of the insurance company. Any person authorized to act for another is an agent.

You further ask—

2. "Must a collector, under our law, have a license from this department?"

Assuming that the powers and duties of a collector are limited to the functions specified in our answer to query one, I would say that it is the opinion of this office that your question should be answered in the negative.

You call our attention to section 1722, Revised Laws 1905, which provides that—

"Every * * * collector of such corporation in this state who fails or neglects to procure from the commissioner a certificate of authority to do such business, or who fails or refuses to comply with, or violates any provision of the insurance law, shall be guilty of a gross misdemeanor,"

and section 1710, Revised Laws 1905, which provides that—

"No officer or agent of any foreign company, except fraternal beneficiary associations, **shall make, procure to be made, or in any manner aid in the negotiation of any insurance by such company,** until he shall have obtained from the commissioner a license therefor, etc."

Section 1722 is a penal provision and in no other place in our insurance laws have I been able to find any statutory provision requiring a license from one who is merely a "collector." Such section is insufficient of itself to make it the duty of the collector to take out a license. The law does not elsewhere provide for the issuance of a collector's license and make it the duty of the commissioner to issue one, or prescribe a fee to be charged for the issuance of a collector's license. Assuming a collector's functions to be only those hereinabove stated, section 1710 does not apply to such a person.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Mar. 29, 1909.

506

INSURANCE COMPANIES—Mutual—Standard form—By laws, etc.

Attorney General's Office.

Hon. John A. Hartigan, Insurance Commissioner.

Dear Sir: Your favor of the 9th instant, in which you ask for the opinion of this office on the hereinafter stated questions, was duly received. You state that section 1640, R. L. 1905, provides for the standard form of fire insurance

contract which must be used in this state. Sections 1626, 1627 and 1629, R. L. 1905, relate to the additional requirements in the case of a mutual fire insurance company. You ask:

1. Can a mutual fire insurance company, doing business in this state, lawfully incorporate in its contract any provision in conflict with the above sections, or anything in addition thereto?

In answer to this query I would say that it is the opinion of this office that the same should be answered in the negative.

"Changes and additions are now forbidden except as specifically permitted, but the policy must still contain all the conditions of insurance." Wild Rice Lumber Co. vs. Royal Ins. Co., 99 Minn. 195.

2. You further ask: Can a mutual fire insurance company, operating in this state, legally adopt any by law which would be in conflict with the sections hereinbefore mentioned.

In answer to this question I would say that we are of the opinion that any by-laws adopted by a mutual fire insurance organization under the laws of this state and doing business in this state, would be ineffectual to change in any way the terms of the insurance contract evidenced by the standard form, which under our laws they must issue in writing insurance.

3. Does the printing of its by-laws by a mutual fire insurance company on the back of its policies make the same (by-laws) a part of the insurance contract?

We are of the opinion that this question should be answered in the negative. As above indicated, we are of the opinion that mutual fire insurance companies organized under the laws of this state are now prohibited from enacting any by-laws affecting the contract of insurance other than those by-laws which they are specifically authorized to enact and make a part of their contract of insurance under the provisions of sections 1626, 1627 and 1629, R. L. 1905, above referred to.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Aug. 10, 1909.

507

INSURANCE COMPANIES—Taation.

Attorney General's Office.

A. W. Wright, Esq., County Attorney.

Dear Sir: You ask:

"What, if any, assessment should be paid upon the assets of a domestic fire insurance company which has reinsured its business and it not now engaged in writing new business, but is awaiting opportunity to liquidate and surrender its charter, when it shall be so authorized to do by the termination of its contracts?"

You call our attention to section 1625, R. L. 1905, as amended by chapter 321, Laws of 1907.

In answer to your query I would say that it is the opinion of this office that under the circumstances stated, no tax is to be imposed upon the personal property of such a company, unless of course it receives the premiums on the business which it has reinsured. If the premiums on the reinsured business are paid directly to the reinsuring company, then the latter company would be required to report such premiums as a part of its premiums. So, too, if the reinsured company should collect any premiums during any year for business previously written by it and for which it had extended credit, it would be obliged to report such premiums so received and pay the two per cent thereon. I assume, however, that there are no premiums received by either company on

the business reinsured and hence there would be nothing to be paid under the two per cent clause.

There is no authority of law for the assessment in the usual way of the personal property of such company. The real estate owned by such company would be assessed and taxed as is the real estate of all other persons.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

May 18, 1909.

508

INSURANCE COMPANIES—Organization—Deposit of securities with commissioner.

Attorney General's Office.

Hon. John A. Hartigan, Commissioner of Insurance.

Dear Sir: You state:

"The Indemnity Life and Accident Company of this state filed its articles in the secretary of state's office on May 7th, 1908. Section 1635, R. L. 1905, provides inter alia as follows:

"'The capital of every stock company shall be paid in full in cash within six months from the date of its certificate of incorporation.'

"The Indemnity Life and Accident Company on this date has notified me that it is ready to make the deposit required by law and will apply for license to do business."

You ask:

"What, in the legal effect of the failure of the company to comply with the requirements of section 1635, above quoted?"

In answer to this query I would say that we are of the opinion that the statutory provision does not constitute a condition precedent to the legal organization of the company, but that it is merely a directory provision which might have been taken advantage of by the state. The company having complied with the statutory condition, through not within the time specified in the statute, no previous action having been taken by the state to forfeit its charter, is duly organized, and you are authorized to issue a license to it.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Aug. 24, 1909.

509

JUDGE OF PROBATE—Fees.

Attorney General's Office.

Hon. Henry Spindler, Judge of Probate.

Dear Sir: This office is in receipt of your favor of the 29th instant in which you ask for the opinion of this office on the hereinafter stated matter. You ask:

"In case of an appeal from a decision of the probate court, is the judge, upon making out of the transcript as provided by section 3875, R. L., entitled to charge and receive the fees therefore provided for by sections 615 and 3634 of the Revised Laws and chapter 341, Laws of 1909, awarding him fees for certified copies?"

In answer to this I would say that it is the opinion of this office that your inquiry should be answered in the affirmative.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Aug. 6, 1909.

510

JUDGE OF PROBATE—Recovery of fees paid into county treasury.

Attorney General's Office.

Mr. Fred H. Schweppe, Judge of Probate.

Dear Sir: You call attention to chapter 419, G. L. 1909, which legalizes collection and retention by judges of probate, of certain fees prior to the enactment of chapter 322, G. L. 1907, and inquire whether or not you are entitled to receive back from the county treasurer, certain fees paid by you under protest.

I regret to be obliged to inform you that it is the opinion of this office that the law in question is not broad enough in its scope to warrant the payment back to you, by the county treasurer, of such fees so paid, nor the allowance by the county board of a bill therefor.

As a matter of strict equity there is no reason why a judge of probate who in opposition to the law and its interpretation, retains the fees, should have his act legalized, and on the other hand the judges of probate who turned the fees into the county treasury should not be allowed to receive the same back. However, a construction of the law is called for and we are obliged to hold as above indicated.

Two remedies are open to you. You may either take the matter into court and have a judicial determination of the 1905 law as to the right of your recovery of such fees from the county, or at the next session of the legislature, upon a proper presentation of the situation, you may be able to obtain the enactment of a law that will afford you the relief you desire and the authorization of repayment to you by the county treasurer of such fee.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 1, 1909.

511

JUDGE OF PROBATE—Entitled to postage for official business.

Attorney General's Office.

Mr. Peter Matson, Judge of Probate.

Dear Sir: You inquire as to whether or not the judge of probate is entitled to receive from the county the necessary postage used by him in the conducting of his office in probate matters, and I have to inform you, that it is the opinion of this office that your question should be answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 16, 1909.

512

JURIES—When and how drawn in certain counties.

Attorney General's Office.

H. J. Maxfield, Esq., County Attorney.

Dear Sir: In your favor of February 21st you submit the following queries as to the drawing of the petit and grand juries in Wadena county, which has a population of less than 15,000 inhabitants:

"(1) Does section 5262, R. L. 1905, and the 1909 amendment thereto require an order from the court, in this county of less than fifteen thousand inhabitants, for a petit jury, as well as a grand jury?"

"(2) May the clerk, sheriff and justice under sections 5264 and 4329, R. L. 1905, draw the petit jury at any time before the fifteenth day period?"

Your first query is answered in the negative. Section 5262, supra, as amended by chapter 221, G. L. 1909, deals exclusively with grand juries. So far as chapter 221, supra, purports to deal with petit jurors, it relates to counties of more than 200,000 inhabitants. See chapter 35, G. L. 1907.

In answer to your second query it appears that pursuant to section 5262, supra, as amended, no grand jury shall be summoned for a particular term of court in counties of less than 15,000 inhabitants, unless at least fifteen days before the first day thereof the judge shall file with the clerk an order directing the summoning of such grand jury.

Section 4329, supra, provides in effect that the petit jury shall be drawn at the same time and in the same manner as the grand jury. The grand jury is drawn pursuant to section 5264, supra, at least fifteen days before the sitting of the district court.

The next term of the district court of Wadena county convenes March 21, 1910. Fifteen days before March 21st is March 6th, which is Sunday. The last secular day is March 5th. Accordingly the district judge may file his order for a grand jury on March 5th. In case he files his order before March 5th the petit and grand juries may be drawn any time after the filing of the order and up to March 5th. In case the order of the district judge is not filed until March 5th, which is the last day for the filing thereof, both juries shall be drawn on that day. If no order is filed on March 5th the petit jury shall be drawn on that day and no grand jury shall be drawn.

GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 1, 1910.

513

JURORS—In justice court are not entitled to mileage.

Attorney General's Office.

Isaac La Bissonniere, Jr., Justice of the Peace.

Dear Sir: Jurors in justice court are not allowed mileage, section 2713, R. L. 1905, provides as follows:

"Each juror sworn in any action pending in the justice court * * * shall receive one dollar, to be paid in the first instance in all civil actions by the party calling for such jurors."

No provision is made for mileage and none can be paid.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 20, 1909.

514

JUSTICE OF PEACE—Jurisdiction of village justice is coextensive with limits of county.

Attorney General's Office.

Mr. J. T. Brooks.

Dear Sir: You make inquiry as to the jurisdiction of a village justice, particularly asking whether that jurisdiction extends to all parts of the county in which he holds office.

Replying, I have to inform you that section 3882, R. L. 1905, provides, "The jurisdiction of the justices of the peace is coextensive with the limits of the county in which they reside, except in the following cases." (The exceptions have nothing to do with the question that is submitted.)

"Chapter 104, G. L. 1905, provides that justices of the peace have power and jurisdiction throughout their respective counties as follows:"

(The act then provides for the extent of a justice's jurisdiction in criminal cases.)

Chapter 459, G. L. 1907, provides, as far as herein applicable, as follows:

"Village justices of the peace shall possess all of the powers as those elected by the towns, and be governed in the exercise thereof by the same laws in all respects, except that their official bonds shall run to the village and be approved by the council * * *."

I presume that your village is incorporated under the general law and for that reason that there are no particular provisons in your village charter that would make the rule any different. I am therefore of the opinion from the foregoing quoted laws that as a village justice of the peace your powers and jurisdiction are equal to that of a township justice, and that such jurisdiction extends over the entire county. It would therefore follow that you have jurisdiction to try and determine an assault case if the same comes with the definition of assault in the third degree, or assault and battery, which was committed in a township adjoining your village.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 26, 1909.

515

JUSTICES OF PEACE—Must furnish his own blanks.

Attorney General's Office.

Harry F. Miller, Esq.

Dear Sir: You inquire:

"Is not the village to furnish the justice with all his legal blanks same as county does its officials?"

This question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 7, 1909.

516

JUSTICE OF THE PEACE—Criminal jurisdiction—Punishment under ordinances.

Attorney General's Office.

F. S. Stewart, Esq.

Dear Sir: Your first question is whether your city council has power to pass an ordinance, the violation of which would subject a person convicted thereunder to a fine, or in lieu of the payment of such fine, imprisonment.

I have to answer this question in the affirmative, and would refer you, for a general treatment of the subject, to cases cited in State vs. Robitshek, 60 Minn. 123.

Your second question is as to whether or not a justice of the peace, or municipal court, may convict a person under an ordinance permitting a fine of not to exceed $100.00, or imprisonment not to exceed 30 days, and sentence such person to pay a fine of $50.00 and in default of payment thereof, commit such person to imprisonment not exceeding 50 days.

I have to say that the court would not be justified in imposing such sentence. The imprisonment term is not for the purpose of enforcing the payment of the fine, but in lieu of the fine, and as the ordinance does not provide for imprisonment to exceed 30 days, that would be the extreme limit of imprisonment. Whether the sentence would be entirely void, or void only as to the excess over 30 days is a question, but in discussing this our supreme court, in the Williams case, 39 Minn. 172, said:

"When a criminal judgment, which is erroneous because an excessive penalty is imposed, has been satisfied in that particular or to that extent, which would

have been lawful in no further penalty has been included, it is a satisfaction of the demands of law."

Your third question is as to whether or not the defendant has a right to trial by jury, when tried for an offense against the ordinances of a city.

I have to say that a person under trial under those circumstances does not have a constitutional right to a jury trial. In state vs. Harris, 50 Minn. 128, the court held that:

"The right of trial by jury did not extend to a prosecution for the violation of a city ordinance, under the charter authorizing summary trials."

Your charter seems to do this; chapter 8, section 4. The same case also holds that "acts which are punishable under the general law may also be made punishable by ordinance."

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 25, 1909.

517

LABOR LAWS—Construing laws of 1907 and 1909 relating to child labor.

Attorney General's Office.

Hon. W. E. McEwen, Commissioner of Labor.

Dear Sir: You call attention to chapter 400, G. L. 1909, and referring to chapter 299, G. L. 1907, you submit to this department the following questions which are answered in turn:

1. "May a child between the age of eight and fourteen be excused from attendants at school for the purpose of laboring while the public schools are in session?"

The above question requires a negative answer.

2. "Does the labor law prohibit the father or guardian of a child from employing him at farm labor under the age of sixteen, while the public schools are in session?"

3. "Does the labor law prohibit the father or guardian of a child under the age of fourteen from employing him at farm labor at any time during the year?"

I am inclined to the opinion that your second and third questions should be answered in the negative. This conclusion is reached from a construction of the so-called "labor law" which I do not think was intended to apply to ordinary farm labor performed by a child for his father or guardian. It will be noted, however, that the compulsory education act (Chapter 400, G. L. 1909) requires attendance at school of all children not excepted or excused under the provisions of that act.

4. (a) "If the parents or guardian of the child, by reason of poverty, is unable to clothe such child properly, is it compulsory on the part of the school authorities to issue an employment certificate to such child, or children, between fourteen and sixteen years of age?"

(b) "Or would the offer of the poor commissioners or charitable organizations to obviate the special cause of poverty be a sufficient reason for refusing the employment certificate?"

I answer (a) the negative. The condition stated is not in itself a sufficient reason for the issuance of an employment certificate, although it is a reason for the issuance of an excuse from school attendance. (Chapter 470, G. L. 1909.)

Subdivision (b) of your fourth question I am of the opinion should be answered in the affirmative.

5. "Is the presentation of a physician's certificate, certifying that a child's bodily or mental condition is such as to prevent his attendance at school, or application to study, a sufficient reason for granting an employment certificate to such child if between the ages of fourteen and sixteen years?"

The question last above named is answered in the negative. A presentation of such a certificate is not in itself sufficient, but the various other conditions precedent, provided for in section 4, chapter 299, G. L. 1907, must be complied with.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 8, 1909.

518

LABOR LAWS—Child labor law construed.

Attorney General's Office.

Hon. W. E. McEwen, Commissioner of Labor.

Dear Sir: I have had before for consideration for some time past your communication to the attorney general, receipt of which has heretofore been acknowledged.

You ask generally for an interpretation of the laws of this state having to do with the employment of children under the age of fourteen years and make particular inquiry as to whether under the law a child under fourteen years of age can be prevented from appearing upon the stage of a reputable theater in a play of high moral character and where such child is not a resident of this state, the troupe putting on the play in question being a traveling troupe that is temporarily in this state and but for a few days only.

I am clearly of the opinion that the so-called compulsory education law has no application to the conditions above referred to. This law, among other things, provides that children of or between the ages of eight and sixteen years in ordinary school districts, and between the ages of eight and eighteen years in school districts containing cities of the first class shall attend school during the entire time the public schools of such district are in session. The law has reference entirely to children of the ages mentioned who are residents of some school district in this state and does not apply to transients.

Chapter 299, G. L. 1907, being an act to regulate the employment of children and providing penalties for its violation, in section 1 provides as follows:

"No child, under 14 years of age, shall be employed, permitted or suffered to work at any time, in, or in connection with any factory, mill or workshop, or in or about any mine; and it shall be unlawful for any person, firm or corporation, to employ any child under 14 years of age in any business or service whatever during any part of the term during which the public schools of this district in which the child resides are in session."

A mere reading of this section clearly indicates that it applies only to children who are residents of some school district in the state and therefore would have no application to the inquiry that you submit.

Chapter 299, supra, is amended in certain particulars by chapter 499, G. L. 1909, but the provisions of the latter act are in no way determinative here.

Section 4939, R. L. 1905, prohibiting the employment of minors under certain conditions, among other things prohibits the employment of a minor actually or apparently under the age of eighteen years:

"1. As a rope or wire walker, dancer, gymnast, contortionist, rider or acrobat * * *

"3. In any indecent or immoral exhibition or practice * * *

"4. In any practice or exhibition dangerous or injurious to life, limb, health or morals * * *

"5. In labor of any kind outside the family of his residence before seven o'clock a. m. or after six o'clock p. m."

In construing the word "dancer" it will be necessary to take into consideration the other occupations described by the words with which this word is connected in the statute. I am of the opinion that the dancing referred to and prohibited is such as can be construed to be of a harmful nature likely to produce physical or nervous strain similar to that occasioned by rope or wire walking, professional gymnastic performers, acts of contortion, etc., and that the mere fact that a child, incidental to its turn upon the stage and as a secondary and

not a substantial part of its act does some dancing, would not be within the contemplation of this law.

Paragraphs 3 and 4, supra, apply to acts that are immoral or indecent or which are dangerous or injurious, and it would seem that they do not cover the specific conditions that you refer to.

As to the fifth subdivision above referred to, your attention is again called to chapter 299, G .L. 1907, which I am inclined to think should be construed as amendatory thereof. In the 1907 law above referred to, children under the age of sixteen years are prohibited from being employed or suffered or permitted to work more than sixty hours in any one week, or ten hours in any one day, or before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening, **except that on Saturday and for ten days prior to Christmas such persons may be employed until ten o'clock p. m.** It is also provided that the employer shall post in a conspicuous place in every room where a minor is employed, a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work, etc. It is likely that this law has reference to the employment of children in mercantile and similar establishments.

From all of the foregoing I am forced to the conclusion that the law of this state as it now stands does not make it an offense for a child, not a resident of this state, under the age of fourteen years, to appear upon the stage of a reputable theater in a play of clean, moral character.

An examination of the laws of states where such child acting is not allowed clearly shows that the legislatures of such states have in express and definite terms prohibited the act in question. Criminal laws must be strictly construed, and where there is a reasonable doubt as to whether or not certain acts constitute an offense, the courts construe that doubt, and rightly so, in favor of the defendant. If it be the opinion of your department that a child under the age of fourteen years should not be permitted to act upon the stage at all, whether such child be a resident of this state or not, and irrespective of the tone and character of the performance, then the attention of the legislature should be called to the matter, to the end that if that body in its wisdom should determine that the policy of the state should be along the lines indicated, then in plain and unequivocal terms a law can so provide.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 11, 1910.

519

LABOR LAWS—Sections 1 and 2, chapter 499, G. L. 1909, do not apply to telegraph and telephone operators.

Attorney General's Office.

Hon. W. E. McEwen, Labor Commissioner.

Dear Sir: You inquire whether, under the provisions of sections 1 and 2, of chapter 499, G. L. 1909, the hours of labor therein referred to apply to women working for telephone and telegraph companies, and also to office work for public utility corporations.

Assuming that the first question has reference to operators of telegraph instruments and telephone exchange switchboards, I have to inform you that in my opinion both of your questions should be answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 11, 1909.

520

LAW ENFORCEMENT—Defining "an officer of the law."

Attorney General's Office.

Mr. C. R. Lundberg.

Dear Sir: I have before me your favor of May 31st and have to inform you that under the provisions of section 3, chapter 386, G. L. 1907, it is made the

duty of an officer of the law who may have cognizance of such offense to arrest any person under the age of eighteen years or minor pupil in any school, college or university, who shall violate the provisions of said chapter. A constable, marshal or city police officer is "an officer of the law." Any person knowing of the violation of this law may make complaint before a justice of the peace and upon such complaint a warrant may be issued and placed in the hands of an officer for service.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 1, 1909.

521

LIBRARIES—Funds must be placed in municipal treasury.

Attorney General's Office.

Dr. L. W. Krueger.

Dear Sir: You inquire as to whether a library board of a public library, organized under the laws of this state, can have a treasurer of its own, or if the village treasurer is to act as such.

Section 2259, R. L. 1905, provides that "all moneys received for such libraries shall be paid into the city or village treasury to be credited to the library fund, be kept separate from other moneys of the municipality and be paid out only upon itemized vouchers approved by the board."

All library funds must be placed in the village treasury.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 12, 1909.

522

LIVE STOCK SANITARY BOARD—Discriminatory regulations.

Attorney General's Office.

S. H. Ward, Esq., Secretary Live Stock Sanitary Board.

Dear Sir: Enclosed herewith I am returning to you copy of regulation adopted by the live stock sanitary board "Regulating the importation of horses, mules and asses from Montana and South Dakota."

It is the opinion of this office that this regulation is of no legal effect, and advise that it be not promulgated by your board. Your board have no authority to make regulations which are applicable to articles of commerce to be brought to this state from any particular state or states of the United States. Such regulations are a discrimination against the citizens of the states with reference to which the regulation is operative.

"The several states have no authority to prescribe different regulations in relation to the commerce in certain articles, dependent upon the state from which they are brought."

Higgins vs. 130 Casks of Line, 130 Mass. 1.

You can, of course, enact reasonable regulations for the protection of the health of live stock of this state, which are applicable alike to all the states of the Union.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

May 4, 1909.

523

LIVE STOCK SANITARY BOARD—Effect of exhaustion of appropriations.

Attorney General's Office.

S. H. Ward, Esq., Secretary.

Dear Sir: You state that the live stock sanitary board has no money available for the purpose of paying for animals killed and will not have any until the first of August, at which time $35,000 will be available. You ask:

1. "Can this board legally, between now and August 1st, condemn and slaughter tuberculosis cattle?"

In answer to this, I would say we are of the opinion that same should be answered in the negative.

2. You further ask: "Can we refuse to quarantine and kill tuberculosis cattle which may be condemned by local boards of health under sections 2158 and 2161, R. L. 1905, when no funds are available to reimbuse the owner of the diseased animals?"

We are of the opinion that this question should be answered in the affirmative.

3. You further ask: "May this board, when its appropriation is exhausted, refuse to appraise and slaughter diseased animals which are required to be appraised by law?"

We are of the opinon that this question should be answered in the affirmative.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

May 4, 1909.

524

LIVE STOCK SANITARY BOARD—Expense of quarantine.

Attorney General's Office.

Dr. S. H. Ward, Live Stock Sanitary Board.

Dear Sir: This office is in receipt of your favor of the 17th instant in which you ask for our opinion on the hereinafter stated question. You state:

"The Canadian government requires what it known at the mallein test (an agent used to determine whether or not an animal is affected with glanders) on all horses imported into the Dominion. Recently a party living at Maple Lake, Minnesota, offered a number of horses for entry into Canada and in accordance with the Canadian regulations these animals were tested and one of them indicated by test that it was affected with glanders. Entry was refused and the animal turned over to the inspector of the bureau of animal industry, United States department of agriculture, stationed at Pembina, North Dakota, to be held under his care for thirty days in order to again have the mallein test applied to determine beyond question whether or not the animal was diseased. At the expiration of the quarantine period the animal again reacted to the test and was killed, and it having been owned in Minnesota the required length of time it was appraised under the regular course."

You further state that you are in receipt of a bill for feed for this animal while in quarantine. You ask whether the state or the town in which the animal was killed, the town from which is was originally shipped, or any or either of them are liable in whole or in part for the expense of maintenance of the animal while so in quarantine. You also inform me that the animal was not ordered quarantined by either the state live stock sanitary board or any local board.

In answer to your query I would say that it is our opinion that neither the state nor either of the towns mentioned are liable for any part of the expense of maintaining the animal while so quarantined. Section 2163, R. L. 1905, provides that the expense of quarantine, when the animal is taken from the possession of its owner, shall be defrayed four-fifths by the state and one-fifth

by the town or place. In our opinion this means that the expense of quarantine is to be borne by the state, and the town or place where the animal was usually kept when it was taken from the possession of the owner by the order of either the state board or a local board of health. Such section further provides that when such quarantined animal is left upon the premises of its owner or keeper, he shall bear the expense.

When an animal is quarantined while being shipped into the state the expense shall be borne by the owner or keeper. We are of the opinion that under the circumstances stated in your letter the parties who kept the animal during the period of quarantine must look for their compensation to the person at whose request the animal was so kept or maintained.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

July 20, 1909.

525

LIVE STOCK SANITARY BOARD—Distribution of tuberculin and mallein.

Attorney General's Office.

Dr. S. H Ward, Live Stock Sanitary Board.

Dear Sir: You state:

"Chapter 445, Laws of 1909, requires this board to distribute tuberculin and mallein to licensed veterinarians, whether graduates of a verterinary college or not. The tuberculin and mallein which is used by this board is received free of charge from the United States department of agriculture, with the understanding that it shall be distributed for the use only of graduate veterinarians and local health officers, whose competency and reliability the board vouch for."

You ask if in view of the above understanding with the federal department, your board can be compelled to observe the provisions of chapter 445, irrespective of the ability and trustworthiness of the applicant.

In answer to this inquiry I would say that it is our opinion that is to tuberculin and mallein furnished to you for free distribution by the United States department of agriculture, that you would be bound as their agents to distribute it only to such persons as they designate, or to persons possessing such qualifications as they might designate.

It is to be observed, however, that section 1 of said chapter 445 provides that your board—

"Shall furnish and distribute tuberculin and mallein to veterinarians in this state for such tests without regard to whether such veterinarians are graduates of a veterinary college or not."

Under this statutory provision we are of the opinion that it would be the duty of the board to supply itself with tuberculin and mallein and distribute it to licensed veterinarians without regard to whether such veterinarians are graduates of a veterinary college or not. There is nothing in the law however that compels the board to make a free distribution of such tuberculin and mallein, and we are of the opinion that the board could make a charge therefor sufficient to compensate it for the original cost thereof and the expense, if any of distributing it to the applicants therefor. In other words, to resume our statements, the board should distribute free tuberculin and mallein received by it from the United States authorities to only such persons as are entitled thereto by the terms and conditions under which the United States intrusted it to the live stock sanitary board, but that in addition thereto, it is the duty of the board to furnish tuberculin or mallein to any licensed veterinary making application therefor, though he does not fall within the class designated by the United States authorities.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

July 20, 1909.

526

LIVE STOCK SANITARY BOARD—Cattle to be paid for by state when killed under government inspection under certain circumstances.

Attorney General's Office.

S. H. Ward, Secretary.

Dear Sir: From your oral statement the facts are as follows: A slaughtering or packing house exists in the city of Albert Lea that has the United States government inspection system; a retail butcher in the city of Albert Lea has his cattle slaughtered at said packing house, said cattle being in nowise owned by the owners of said slaughtering or packing house, but merely slaughtered there for the convenience of the retail butcher, and to assure the sale at the meat market of the retail butcher a wholesome quality of meat; the United States government inspector condemned, as infected with tuberculosis, a certain animal belonging to the retail butcher; the local board of health also found the animal to be infected with tuberculosis and three disinterested persons were appointed to appraise the value of the carcass.

You inquire whether the owner of said carcass is entitled to receive from the state any sum of reimbursement pursuant to the provisions of chapter 401, G. L. 1909. In answer I call your attention to section 1 of chapter 401, G. L. 1909, which, as far as material, reads as follows:

"When cattle have been bought in good faith for slaughtering purposes by butchers who are retail dealers, and the carcasses thereafter found to be infected with tuberculosis, it shall be the duty of the local board of health to appoint three (3) disinterested persons to appraise the value of said carcass, and the owner of said carcass shall be entitled to receive from the state two-thirds (⅔) of the amount of such appraisement, and the hide shall also be returned to him; provided, however, that this provision shall not apply to a slaughtering or packing house that has a state or United States government inspection system."

The retail butcher in question clearly comes within the above quoted language, except for the proviso; in other words, in case the animal in question was slaughtered elsewhere than at a packing house having government inspection, clearly the retail butcher would be entitled to reimbursement. I think the proviso is to be construed as having reference to animals killed at a packing house that has government inspection, which animals are the animals of the owners of the packing house.

It accordingly follows that in my opinion the retail butcher in question comes within the statute above quoted and his right to reimbursement is not defeated by the proviso which in this case does not apply to him.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 1, 1909.

527

MARRIAGES—Who may contract.

Attorney General's Office.

Mr. George A. Bradford, Clerk of District Court.

Dear Sir: Section 3554, R. L. 1905, prohibits the contracting of marriage between parties "who are nearer of kin than first cousins," whether of the half or whole blood, computed by the rules of civil law.

You state that he father of the man making application for the marriage license was the cousin of the mother of the proposed bride and that the mothers of the man and woman were first cousins. This does not make the applicant and the lady that he wishes to marry nearer of kin than first cousins, and therefore a marriage license may be granted to them providing there are no other disqualifications.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 5, 1909.

528

MINERAL RIGHTS—May be reserved in deed.

Attorney General's Office.

Mr. H. J. Schwietert.

Dear Sir: You inquire as to whether under the laws of this state you can legally sell a piece of property therein and retain the mineral right in the same property.

Your inquiry is answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 30, 1909.

529

MINORS—Are not permitted in dance halls.

Attorney General's Office.

Mr. W. H. Stoll.

Dear Sir: You make inquiry relative to a law of this state having to do with the allowing of minors in dance halls, and in compliance with your request, I have to advise you that section 4936, R. L. 1905, reads as follows:

"Keepers of public places to exclude minors—Whoever permits any person under the age of twenty-one years to be or remain in any dance house, concert saloon, place where intoxicating liquors are sold or given away, or any place of entertainment injurious to the morals, owned, kept, or managed by him in whole or in part, or shall permit any person under the age of twenty-one years to play any game of skill or chance in an such place, shall be guilty of misdemeanor, and be punished by a fine of not less than twenty-five dollars."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

530

MORTGAGE REGISTRATION TAX—How computed.

Attorney General's Office.

Henry Rothschild, Esq.

Dear Sir: You make inquiry geneally as to the mortgage registry tax law and inquire as to what tax should be collected on a mortgage in the sum of $1,350.

Section 2 of chapter 328, G. L. 1907, insofar as here material, provides as follows:

"A tax of 50 cents is hereby imposed upon each $100 or major fraction thereof of the principal debt or obligation which is * * * secured by any mortgage of real property situated within the state."

Fifty dollars is not a major fraction of $100, and you are therefore advised that the mortgage registry tax on the mortgage in question is $6.50.

CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 18, 1910.

531

MORTGAGE REGISTRY TAX—Value of annuities.

Attorney General's Office.

Parsons & Brown, Esqs.

Dear Sirs: This office is in receipt of your favor of recent date involving the registry tax to be paid upon a mortgage which secures the payment of an annuity of $10,000 for life. It appears that this office, in an opinion of date December 29, 1908, held that the rule of valuation to be adopted in the instant case was to multiply the annuity by the expectancy of life according to the mortality tables.

You suggest that the registry tax should be calculated upon the present value of the several annuities, the number of annuities being based upon the expectancy of life.

There is no question but that the present value of said annuities is to be figured upon the rule you have laid down. The question in this case, however, is rather upon what sum the tax shall be imposed. I call your attention to section 2 of chapter 328, G. L. 1907, which, so far as material, reads as follows:

"A tax of fifty cents is hereby imposed upon each $100, or major fraction thereof, of the principal debt or obligation which is, or in any contingency may be secured by any mortgage * * *."

It would seem that the amount secured is the amount arrived at by the use of the rule which has been laid down by this department. In other words, it would seem as if a mortgage for $10,000 due in five years without interest, would be subject to a tax not upon the present value of $10,000 due in five years, but upon the sum of $10,000.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 16, 1909.

532

MORTGAGE REGISTRY TAX—Tax must be paid on commission or interest mortgage.

Attorney General's Office.

Mr. Frank Jeffers, Register of Deeds.

Dear Sir: You enclose two mortgages which have been presented to you for filing and record, one, a first mortgage on land securing the payment of the principal sum and interest; and the other, a so-called commission mortgage of like date, between the same parties, upon the same land, and securing the payment of a part of the interest of the same debt, and ask if it is necessary to have the mortgage registry tax paid upon both of these mortgages, under the provisions of chapter 328, G. L. 1907.

Replying to your inquiry I have to advise you that it is the opinion of this office that your question should be answered in the affirmative, and that both of the mortgages in question are subject to the registry tax.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 18, 1909.

533

MORTGAG EREGISTRATION TAX—Extension of loan is subject to payment of fees.

Attorney General's Office.

Mr. H. E. Ives, County Treasurer.

Dear Sir: You inquire as to whether an extension of the loan covered by a real estate mortgage is subject to a registration tax, and I have to inform you that your question is answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 30, 1909.

534

MORTGAGE REGISTRY TAX—Application of law.

Attorney General's Office.

James Parker, Esq.

Dear Sir: You make inquiry relative to the workings of our mortgage registry tax, and you ask the following questions:

1. "Under the Minnesota law do banks pay the registry tax on mortgages taken in the name of the bank?"

2. "Do domestic insurance companies pay the registry tax on mortgages taken by them in the name of the company?"

3. "Do foreign insurance companies pay the registry tax on mortgages taken by them in the name of the company?"

4. "Are corporations, which are taxed on their shares of corporate stock, required to pay the registry tax on mortgages taken by them?"

Your first three questions are answered in the affirmative. The fourth question can best be answered by quoting from the mortgage registry law. Section 3 of chapter 328, G. L. 1907, so far as applicable to the point in question, is as follows:

"Provided, that this act shall not apply to mortgages taken in good faith by persosn or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

535

MORTGAGES—Registration tax need not be paid on assignment of mortgage recorded prior to April 30, 1907.

Attorney General's Office.

Mr. P. R. Davis.

Dear Sir: You inquire as to whether the registration tax should be paid on an assignment of a mortgage, which mortgage was dated on April 1, 1903, and became due on April 1, 1908.

Assuming that the mortgage in question was recorded prior to April 30th, 1907, the date of the passage of the mortgage registration tax law, I have to inform you that such an assignment is not subject to the payment of the registration tax.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1909.

536

MORTGAGES—Securing support contract subject to registry fee.

Attorney General's Office.

Francis J. Hanzel, Esq., County Attorney.

Dear Sir: In reply to your letter of December 22d, inquiring whether a contract for support secured by a mortgage is subject to a registry tax, I have to say that I agree with you that such instrument falls under the definition of a mortgage, and is therefore subject to such tax.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 27, 1909.

537

MORTGAGE REGISTRY TAX—Value of contract of support, how computed, under mortgage registry tax act.

Attorney General's Office.

H. L. & J. W. Schmitt, Esqs.

Gentlemen: This department is in receipt of your favor of the 21st from which it appears that a mortgage bearing date November 5, 1907, from Paul F. Hartwig and wife to C. J. Hartwig, has been offered for record in the office of

the register of deeds of Blue Earth county, Minnesota, wherein is situated the lands described in the mortgage The mortgage in question is, in legal effect, a contract for the life support of C. J. Hartwig and fixes the sum of $50.00 to be paid each year as long as the mortgagee shall live.

You inquire whether the instrument in question is entitled to record without the payment of the mortgage registry tax, so called, provided for by chapter 328, G. L. 1907.

This department has passed upon instruments of this kind in a great variety of cases. The rule in the premises is as follows: The consideration of the instrument is ascertained by multiplying the value of the annual support, in this case $50.00, by the life expectancy of the mortgagee according to the tables of mortality. The amount of the tax is then figured, under the statute, upon the consideration arrived at.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 23, 1909.

538

MORTGAGE REGISTRY TAX—Not applicable to mechanic's liens.

Attorney General's Office.

Edward T. Teitsworth, Esq.

Dear Sir: In answer to your favor of recent date you are advised that in the opinion of this department a mortgage registration tax need not be paid under chapter 328, G. L. 1907, upon a mechanic's lien statement filed for record with the register of deeds.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 16, 1909.

539

MORTGAGE REGISTRY TAX—Applies to executory land contracts.

Attorney General's Office.

H. C. Odney, Esq., Register of Deeds.

Dear Sir: Your letter of January 30th is received and I have to say that you should immediately notify all parties holding the contracts for the sale of land which you have recorded, that the record of the same is of no effect because of their failure to pay registry tax, for the supreme court has held the registry tax valid and the amendment under which it was imposed to have been carried. The result of this is, these contracts for deed are all taxable as so much personal property in addition to the taxes upon the real estate, unless they come in and pay their registry tax and have the contracts re-recorded.

It is possible that some curative legislation is being considered which will help out the situation, but I have not heard of any such.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Feb. 3, 1909.

540

MUNICIPAL COURT—Costs in state cases, how paid.

Attorney General's Office.

Arthur R. Church, County Attorney.

Dear Sir: This office is in receipt of your favor of recent date from which it appears that the municipal court of the city of Staples, Todd county, Minnesota, was organized under and pursuant to section 124 et seq., R. L. 1905. That bills for expenses in said municipal court, covering fees of the clerk of said

court, officers, witnesses and jurors in prosecutions in said court for offenses against the criminal laws of the state, have been filed with the county board of Todd county for allowance. Said bills on their face purport to charge the county for all such expenses less the amount of fines and costs actually paid by defendants convicted in such prosecutions.

You inquire whether said bills, or any portion thereof, are legal charges against Todd county.

The municipal court charter of the city of Staples is found in section 124 et seq., supra, which charter embraces the body of law governing the instant case.

Section 134, supra, provides that the clerk of the municipal court shall receive all fines, deposits, penalties and other moneys paid into court, and that said clerk shall pay to the city treasurer all sums in his hands as clerk of said court, except such fees as he may retain as part of his compensation.

It follows from the above section that the city receives all moneys, including fines and costs which are paid into said court in criminal prosecutions.

Section 136, supra, provides that the constable, marshal or chief of police shall act as the officer of said court, and they shall receive the same fees as are allowed to constables by law. It also provides that their fees shall be collected by the clerk and paid into the treasury of the city.

By reference to section 138, supra, it appears that the judge of said court and the clerk of said court are officers of the municipality in which the court is situated, and are paid either a salary or fees. In case of salary, it is apparent that such salary would be paid by the municipality. In case such officers are paid by fees, the inference is that the city shall pay the same. Where any fees are collected, such fees are to be paid into the city treasury. No provision appears that the county shall pay any such fees or salary.

Section 142, supra, provides that he fees of jurors, and witnesses in criminal cases shall be paid by the city.

It follows from a reference to the above statutes, that it was the intention of the law-making body that the city should pay the costs of criminal prosecutions for the violation of state laws in said courts, and should receive the fines.

It follows that in my opinion the claim in question should be disallowed.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

June 8, 1909.

541

NATIONAL GUARD—Construing certain provisions of military code.

Attorney General's Office.

Capt. Arthur J. Stobbard, Commander Company 1, First Infantry, M. N. G.

Dear Sir: In answer to your oral inquiry I have the honor to advise you that, in my opinion, the peralty to be imposed on an enlisted man upon conviction for non-attendance or tardiness at drill is that prescribed in section 1100, R. L. 1905, rather than the penalty found in section 1106 of said laws.

These sections, insofar as applicable to the question submitted, are as follows:

1100. "Any enlisted man may be tried by court-martial or summary court for non-attendance or tardiness at any drill, parade, encampment, inspection, or other duty ordered by competent authority; and, in case of absence, each day thereof shall be a separate offense. Upon conviction, he shall be fined not exceeding ten dollars, or be imprisoned not more than five days."

1106. "Summary court to consist of one officer for the trial of enlisted men are hereby established * * * *. Their jurisdiction shall extend to all offenses cognizable before regimental courts-martial, and they shall have power to inflict any punishment not exceeding a fine of ten dollars and costs of prosecution, or imprisonment not exceeding five days, besides dishonorable discharge with loss of time served, at the discretion of the court."

These sections are not in conflict. Section 1106 is general in its terms and relates primarily to "summary courts" and their jurisdiction. Section 1100 confers upon such courts the right to try an enlisted man for non-attendance or tardiness at drills, etc., but in specific terms provides for the punishment upon conviction therefor.

A familiar rule of statutory construction is, where there are in one act specific provisions relating to a particular subject they will govern in respect to that subject as against general provisions contained in the same act.

It would seem that the provisions of section 1100 must control.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 5, 1909.

542

NEWSPAPERS—Legal defined.

Attorney General's Office.

Mr. H. L. Nicholson.

Dear Sir: You submit the following question:

"When there is but one newspaper in a town, fifteen hundred population, and that newspaper is one year old but finds it practically impossible to secure two hundred and forty subscribers, there being not very many more than that number of English speaking people in the community, is that newspaper a legal paper?"

Your question is answered in the negative. Chapter 3, G. L. 1907, prescribes the requisites of a legal newspaper, and the one that you mention does not meet the requirements.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 22, 1909.

543

NEWSPAPERS—Must have legal standing during whole time of publication of legal notices.

Attorney General's Office.

Mr. Chas. T. Kelley.

Dear Sir: You inquire as to whether your newspaper would be a proper medium for the publication of a notice of application for liquor license, such application to be heard on September 8th, and further stating that your paper will not be published one year until September 3d.

I am obliged to advise you that your question must be answered in the negative. During the full time of the publication your paper must be a legal one in order to be qualified to so publish.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 28, 1909.

544

NEWSPAPERS—(Legal).

Attorney General's Office.

M. S. Norelius, Esq.

Dear Sir: You submit the issue of the Chisago County Press for January 27, 1910. It is a newspaper of eight pages with six columns to the page, consisting of reading matter and advertisements printed in the English langauge. The columns are about twenty-four inches in length. Two of the columns are printed

in a foreign language. You ask whether such matter so printed in such language affects the paper as a medium of official and legal publication.

Replying thereto, I beg to advise that in my opinion your inquiry is to be answered in the negative.

The legality of the paper, assuming that it otherwise conforms to the statute, is not affected by the publication of such foreign matter.

Jan. 29, 1910.

GEORGE T. SIMPSON,
Attorney General.

545

NEWSPAPERS—Legality of.

Attorney General's Office.

A. T. Archer, Esq.

Dear Sir: In answer to your favor of recent date, you are advised that the legality of a paper and the legal notices running therein are not affected by the fact that the newspaper in question is regularly published on Friday of each week, but to expedite the delivery thereof, the same is deposited in the local postoffice on Thursday evening.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 25, 1910.

546

NEWSPAPERS—Legal newspapers only can publish applications for liquor license.

Attorney General's Office.

Mr. Thos. H. Parsons.

You state that your newspaper has not yet become a legal one and you inquire whether an application for a saloon license can be published therein prior to its so becoming a legal paper.

I am obliged to state that your inquiry must be answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 2, 1910.

547

NOTARY PUBLIC—Marriage of woman does not revoke commisson.

Attorney General's Office.

Mrs. L. E. Frame.

Dear Madam: You state that in 1903 a notarial commission was issued to you under the name of L. E. Tunnicliffe; that since said time you have married and that your name is now L. E. Frame. You ask what is necessary to be done in reference to the change of your name so far as the exercise by you of the powers of your office as notary is concerned.

In answer to this query I would say that nothing is required except that you sign certificates and jurats executed by you as notary in the following manner:

L. E. Frame, formerly L. E. Tunnicliffe, Notary Public, Hennepin County, Minnesota. My commission expires.....

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Feb. 3, 1909.

548

NOTARY PUBLIC—Resignation of, on acceptance by governor becomes effective.

Attorney General's Office.

M. V. Seymour, Esq.

Dear Sir: This office is in receipt of your favor of recent date in which you refer to the opinion of this office to the effect that a notary public is an officer of the state and may not lawfully receive a railroad pass under the provosions of chapter 449, G. L. 1907.

You are advised that a notary public may lawfully resign to the governor of the state and such resignation, upon its acceptance by the governor, becomes effective.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 6, 1909.

549

NOTARY PUBLIC—Powers of—cease on change of residence to another county.

Attorney General's Office.

John Swendiman, Jr.

Dear Sir: You inquire as to whether a change of residence of a notary public terminates the power of such notary to take acknowledgments as a notary in the county from which he moved. Your inquiry is answered in the affirmative. While a man is a notary public and resident of any particular county, he may take acknowledgments elsewhere in the state, signing the same as notary public of the county for which the notarial commission was issued. If, however, he moves to some other county and becomes a resident thereof, it will be necessary for him to secure a new notarial commission.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 21, 1910.

550

NUISANCE—Slashings are under certain circumstances.

Attorney General's Office.

C. C. Andrews, Forestry Commissioner.

Dear Sir: In answer to your favor of recent date, you are advised that the presence of large quantities of slashings (tops and refuse left in logging) within one or two hundred yards from, in one instance a school house, in another instance the dwelling of a settler and in another instance valuable state timber, and which is set on fire in dry weather would probably cause the destruction of the property mentioned, is, in my opinion, both a statutory and common law nuisance, and as such may be abated in a direct civil action for that purpose.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 3, 1909.

551

OPTOMETRY—Board of—Examination of applicants for license.

Attorney General's Office.

C. A. Snell, Secretary State Board of Examiners in Optometry.

Dear Sir: You ask if your board has authority to require applicants for examination to demonstrate by a "preliminary" examination that they have certain educational qualifications.

Section 2322, R. L. 1905, provides inter alia:

"The board shall examine the applicant, and, if he be found to possess the knowledge essential to the practice and is twenty-one years old, shall register him as a licensed optometrist, and issue to him a certificate of such registration."

Under this statutory provision your board would have authority to require an applicant to submit to an examination which would demonstrate whether or not he possessed **the knowledge essential to the practice of optometry.** The board would have no authority to require the demonstration of any educational qualification other than such knowledge. As to what general education qualifications would be essential to the possession of the knowledge essential to the practice of optometry is a matter vested within reasonable limits in the discretion of your board. The law provides for the appointment of a board of experts because it is presumed that they know what knowledge on the part of an applicant is essential to his intelligent practice of the profession. If it was reasonably essential to the practice of the profession, that a person should be well versed in mathematics and able to pass an examination in algebra, then the board would have authority to examine an applicant in that subject, and require him as a condition precedent to the issuance of a license, to demonstrate that he was proficient in algebra. The same would be true with reference to all other branches of learning.

It is difficult to answer your question any more specifically than the foregoing. A general education is essential to the intelligent practice of any profession, but it is conceivable that a man might be very proficient and capable in the profession of optometry, and still not be able to pass a creditable examination in spelling. You would have authority to require a preliminary examination but such preliminary examination must be of such a character as would reasonably have a bearing on the applicant's possession of knowledge essential to the practice of the profession. This limitation applies both to what you might term preliminary examination as well as what you might term a final examination.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

April 13, 1909.

552

PENSIONS—Widow, when pensionable.

Attorney General's Office.

Fred B. Wood, Esq., Adjutant General.

Dear Sir: You inquire orally:

1. Whether under chapter 315, G. L. 1905, as amended by chapter 459, G. L. 1909, a widow, otherwise qualified, whose husband died since the passage of chapter 315, supra, without having a pension granted to him, although he was entitled thereto, may lawfully be granted a pension.

2. Whether under said acts a widow, otherwise qualified, whose husband died prior to the passage of chapter 315, supra, but who otherwise came within the purview of the act, may be lawfully granted a pension.

In answer to your first query I call your attention to section 1, chapter 459, supra, which reads as follows:

"Any and all persons, citizens and residents of the state of Minnesota, who rendered active service, bore arms, or otherwise rendered efficient aid and suffered any disabilities in the Indian massacre of 1862, from August 15th to September 15th, in the year 1862, according to the reports and files of the adjutant general's office in this state, or upon due proof of service as aforesaid shall be and is hereby declared to be entitled to a pension of not to exceed twelve dollars ($12.00) per month from the first day of January, 1905,, during their natural lives, and upon their decease the said pension, **if granted, and the right to make proof of such claim for pension and secure the same** shall descend, and be payable to the widow of such decedent whose marital relation has existed since the year 1885."

The only effect of chapter 459, supra, upon chapter 315, supra, is to add the underscored language.

In my opinion the effect of the amendment is to make the right to the pension descendible to the widow, who is otherwise qualified under the act, in cases where the pension had been granted to her husband and likewise in cases where the pension had not been granted, provided the husband came within the purview of the act and had died since the passage thereof.

Your first query is accordingly answered in the affirmative.

In answer to your second query, I have to advise you that this department, in an opinion of date October 7, 1908, rendered to James E. Jenks, in construing chapter 315, supra, held that "it was evidently the intention of the legislature to bring within the purview of the act, persons in being who had rendered service as stated in the act, and on the death of any such person, the surviving widow would be entitled to the pension, provided the marital relation had existed since 1885."

Under the facts of your second query, the husband was not in being at the time of the passage of the act, but had died previous thereto, and therefore no descendible right ever existed. The amendment in the act of 1909 made no change in this regard.

It accordingly follows that your second query must be answered in the negative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 2, 1909.

553

PENSIONS—Person receiving Indian war pension cannot receive further aid under soldiers' relief law.

Attorney General's Office.

Mr. F. S. Stewart.

Dear Sir: You make inquiry as to whether, under the statement of facts submitted by you, the man in question is entitled to state aid.

I have to advise you that in my opinion your question should be answered in the negative. It appears that the applicant is now drawing $12.00 a month as a pension from the state, presumably under the Indian war pension act. Section 3, chapter 315, G. L. 1905, provides as follows:

"This act shall not apply to or affect persons drawing relief by pension, or otherwise, from the United States or state of Minnesota."

If this man had been drawing aid from the state of Minnesota under the soldiers' relief law, at the time he applied for his Indian war pension, he could not have received the latter. It would seem to reasonably follow that as he is receiving the pension from the state, he should not now be entitled to the other aid.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 30, 1909.

554

PHARMACIST—Failure to pay annual dues cancels license.

Attorney General's Office.

Mr. O. S. Canright.

Dear Sir: This department is in receipt of your favor of the 15th instant, in which you state that you are a registered pharmacist in Minnesota, and paid your annual dues up to the year 1888; that since then you have not paid any dues. You ask if your old license is good if you commence paying dues.

In answer to this question I would advise you that the supreme court of this state, in the case of State against Hoverka, 100 Minn. 249, has held that under such circumstances a pharmacist is not entitled to a license by paying the license fee.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

July 20, 1910.

555

POLL TAX—Poll tax constitutional.

Attorney General's Office.

Fred Salter, Esq.

Dear Sir: Your letter inquiring whether the poll tax law is constitutional is at hand. This law was held constitutional by the supreme court of this state some thirty-five years ago and the ruling has never been doubted since. This office has recognized the constitutionality of this law in all opinions which it has given and there is no room now for questioning it.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 22, 1909.

556

POLL TAX—Village poll tax law—When and how enforced.

Attorney General's Office.

Mr. James J. Daly, Village Attorney.

Dear Sir: Paragraph 21 of section 727, R. L. 1905, authorized villages to levy and collect a poll tax but provided no mode of procedure therefor. It has been hald that in the absence of an ordinance duly adopted by a village, providing a mode of assessment, procedure, collection, etc., a poll tax could not be enforced. To remedy this defect, chapter 189, G. L. 1909, was adopted. It, however, did not become a law until April 14, 1909.

The provision in section 2 of that chapter providing for action by the village council within twenty days after the annual election was impossible of fulfillment in any village in this state in which the election was held at the usual time. It therefore follows that under this law no poll tax in such village can be enforced during the year 1909.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 14, 1909.

557

POLL TAX—Applies to persons not citizens.

Attorney General's Office.

P. E. Berset, Esq.

Dear Sir: Chapter 324, G. L. 1905, provides that "Every male inhabitant being above twenty-one years and under the age of fifty, excepting paupers, idiots, lunatics, and such others as are exempt by law, shall be assessed not less than one nor more than four days in each year."

The question of citizenship does not enter into the proposition, and a person who is an inhabitant and not excepted as above provided can be compelled to work his poll tax.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug 19, 1909.

558

POLL TAX—Volunteer fireman not exempt therefrom.

Attorney General's Office.

Mr. Chas. Swanstrom.

Dear Sir: There is no state law that exempts from poll tax duty in this state a volunteer fireman who has served as such for five years.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 17, 1909.

559

POLL TAX—Is enforcible.

Attorney General's Office.

Mr. Henry Pepprecht.

Dear Sir: You inquire in regard to the poll tax law and its enforcement, and I have to inform you that unless your township has voted under the provisions of section 1241, R. L. 1905, to abolish the poll tax, then the same may be enforced against all male inhabitants not excepted, over the age of 21, and under the age of 50. In case of the failure to work poll tax, the attention of your county attorney should be called to the matter, and proper steps taken to bring the offenders to justice. In various counties in this state successful attempts along that line have been made, and there is no reason why the poll tax should not be enforced in your county.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1909.

560

POLL TAX—Who are exempt from.

Attorney General's Office.

S. S. Castle, Esq.

Dear Sir: In reply to your letter of recent date, I have to say that an extended search of the different statutes does not result in finding any exemptions from road work except for paupers, idiots, lunatics, persons over fifty years of age, and members of the militia.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 6, 1910.

561

POLL TAX—Abolition of in towns—Town caucus ticket.

Attorney General's Office.

T. L. Phelps, County Auditor.

Dear Sir: In answer to your favor of recent date you are advised that after a town has abolished the poll tax and required all road taxes to be paid in cash, pursuant to section 1241, R. L. 1905, the town may not return to the old system of a poll tax by subsequent action of the electors. The statute provides for abolishing but not reinstating the poll tax.

You are also advised that a caucus is unnecessary in nominating township officers and a caucus ticket has no preference in law over any other ticket at an annual town meeting.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 23, 1910.

562

POLL TAX—School teacher not exempt from.

Attorney General's Office.

Mr. A. L. Jedlicke.

Dear Sir: Replying to your favor of August 31st, in which you ask whether a school teacher is relieved from the payment or working out of his poll tax by reason of the fact that he is busy with his school work, I beg to advise that, in my opinion, your inquiry is to be answered in the negative.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Sept. 1, 1910.

563

POOR—Either county or township system must maintain, not both in same county.

Attorney General's Office.

Mr. Isaac Summerfield.

Dear Sir: You state that Carlton county, in which your city is located, is operating under the county system of the care for the poor, and you inquire:

1. Can the city of Cloquet arrange to take care of its own poor and dependent?

2. Can the city council make a levy for that purpose and create a poor fund of its own without contributing to the county poor fund?

3. Can the city prevent the county commissioners from levying on the valuation of Cloquet for that purpose?

I am of the opinion that your three questions should each be answered in the negative. Provision is made by law for the adoption of the township system of caring for the poor, and until such system is adopted the county system will maintain, and without express authority of law for so doing (and I know of none) the city of Cloquet cannot withdraw from the county system plan and operate independently.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 24, 1909.

564

POOR—Liability of counties, how determined.

Attorney General's Office.

Mr. Andrew C. Olson, County Commissioner.

Dear Sir: You state that on May 10th, 1908, a certain person moved into Jackson county from Cottonwood county and on November 28th, 1908, he became disabled and became a public charge; that Cottonwood county is operating under the township system of caring for the poor and Jackson county is under the county system, and you inquire as to which county is chargeable with the care of this poor person.

Your attention is called to sections 1488 and 1489, R. L. 1905. Acting on the supposition that the person in question had been a resident of the state for one year prior to November 28th, 1908, I have to inform you that Jackson county is the county properly chargeable with the care of this poor person.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 9, 1909.

565

POOR—Liabilty of municipality for care of.

Attorney General's Office.

Mr. N. F. Field, City Attorney.

Dear Sir: In reply to your letter of June 24th, relative to expenses paid in taking care of persons having a contagious disease, I have to say that the rule which has been followed, with the approval of this office, is that if the expenses are on account of the poverty of the sick person, they are to be met and discharged according to the laws regulating the support of poor persons, but if the expenses are for the prevention or suppression of a communicable disease, then the town must, in the first instance, pay all the bills, and then obtain reimbursement for one-half the amount from the county.

You will find this question touched upon in the opinions of the attorney general for 1907-08, No. 177.

You understand, of course, that people are to pay their own bills for help given in case of quarantine when the persons are able to do so.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

July 8, 1910.

566

POOR—Recovery by townships from county for care of.

Attorney General's Office.

Mr. H. J. Maxfield, County Attorney.

Dear Sir: In reply to your letter of July 13th relative to the support of paupers by towns, I have to say that the opinion of January 3d was rendered in a case in which a town was neglecting the care of the poor, and consequently did not apply to such a situation as you seem to have under consideration.

The specific question you ask is, whether the county is liable to the town for the funeral expenses paid by a town because of the death therein of a non-resident pauper. I have to refer you to paragraph 2 of section 1511, R. L. 1905, and particularly to the clause which says: "If such person is so sick or infirm as to render it unsafe or inhuman to remove him, and is in immediate need of support or relief, the board or council shall provide such assistance as it deems necessary, and if he die, shall give him decent burial. The expense so incurred shall be paid by the town ,city or village, and shall thereupon become a charge against the county."

Consequently, if the town referred to in your letter has brought itself within the conditions described in the second paragraph of subdivision 2 of said section, it can be reimbursed by the county for the expenses incident to giving a non-resident a decent burial.

I presume you are familiar with the decision contained in 101 Minn., page 11.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

July 22. 1910.

567

POOR—Liability of township for care of—How determined.

Attorney General's Office.

R. Nelson, Chairman.

Dear Sir: In reply to your letter relative to the liability of the town of Lincoln for the support of a pauper, I have to say that under the circumstances indicated by your letter the town of Lincoln is obliged to support the pauper in question. The law now says that where the town system has been adopted,

a pauper "shall have a settlement in the town, city or village therein in which he has longest resided within such year." The meaning of this is that the support of a pauper falls upon the town in which he lived the longest in the year previous to his receiving continuous public aid.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 8, 1910.

568

POOR—Manner of determining liability for care of between two townships.

Attorney General's Office.

Roy Kember, Esq.

Dear Sir: In reply to your letter of May 9th to the attorney general, which has been referred to me for attention, I have to say that the law relating to the liability of one town rather than another to pay for the care of a pauper, is found in sections 1488 and 1489 of the Revised Laws of Minnesota 1905.

If a county has a town system a poor person has a settlement (which means a right to support) in the town in which he has longest resided within any year of continuous residence in the county. The time during which a poor person has received relief from the poor fund of any town is not to be counted in determining the place of his settlement. If the poor person to whom you refer has lived in your town more than one-half of a year ending at the time when this person began to receive aid from the town into which he moved then your town is liable for the expenses necessarily incurred by the town into which he moved, in caring for him and his family during the time they were helpless through typhoid fever.

If your town has any doubt about this matter it should present the case to the county board and the county board is required by law to determine the settlement of such poor persons. This determination is not necessarily final, but the town in which such poor person had a settlement must pay the cost of caring for such poor person pending the investigation and of removing him to his place of settlement as found by the board, together with the expense of such investigation. The matter can be taken into court in the proper manner even after the determination of the question by the county board.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 11, 1910.

569

POOR—Liability for support of villages—Anticipating revenue.

Attorney General's Office.

Sam G. Anderson, Esq., County Attorney.

Dear Sir: Your favor of the 20th instant, in which you ask for the opinion of this department on the hereinafter stated questions was duly received.

1. You state:

"A resident of the village of Silver Lake has applied to the village for relief. She has a son living two miles from the village who is willing to take her to his home and care for her there, but he will not contribute anything for her support if she lives apart from him. She refuses to live with him but insists upon staying at Silver Lake."

You ask:

"Can the village contribute to her support and enforce reimbursement by the son?"

In answer to your query I would say that it is our opinion that the same should be answered in the negative.

"Where one relative who is liable for the support of another, as a parent for the support of his child, offers and is willing to support such other in his own home in a suitable manner, he cannot, it seems, be compelled to provide for his support elsewhere, nor is he liable to reimburse the town for the support furnished to such relative."

Vol. 22, Am. and Eng. Enc. Law, p. 1018.

2. You state:

"A village incorporated under the general laws is short of funds, and desires to issue warrants which it cannot pay until next year. The purpose of issuing the warrants is to repair a pumping station, and to complete a public building, the cost of which has exceeded the bond issue."

You ask:

"Will the issue be valid?"

We are unable with our present information with reference to the facts to give you a definite answer to this question. Of course if a tax has been levied which when collected will be sufficient to pay the warrants which you desire to issue, the warrants may be issued in anticipation of the collection of the tax. If, on the other hand, warrants have already been issued in excess of the amount which will be raised by the tax levied we are in doubt as to the validity of any further issue of warrants. In this connection we would call your attention to the provisions of section 874, R. L. 1905, and the case of Queal vs. Bulen, 89 Minn. 478. If you desire our further advice with reference to this matter I would suggest that you inform us whether or not the village levied the maximum amount of tax which it was authorized to levy at the time it made its last levy; the amount of warrants which have been drawn against the funds to be derived from such levy, also the amount of the funds, if any, on hand at the beginning of the current year.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Aug. 31, 1909.

570

POOR—Care of.

Attorney General's Office.

Dr. M. E. Withrow.

Dear Sir: In reply to your letter of January 1st, and in further answer to the question therein contained, I have to say that it is the duty of county authorities to take care of non-resident paupers when the county system of caring for the poor is in force; and where the town system of caring for the poor has been adopted, the town or village in which the non-resident is found must care for such pauper.

I might further add that the law requires the county physicians in counties where the poor are cared for by the county or the town, village or city physician in cases where the poor are cared for by such municipalities to attend upon and prescribe for any sick person entitled to receive support or relief upon the direction of a member of the county board in the case of counties or the town board or city or village council in cases of towns, cities and villages.

There is no doubt that transient paupers when sick are entitled to public assistance, that the assistance is due them from the county or the locality in which they are found according as the county or town system for caring for the poor prevails; that the members of the governing boards of the county, town, village or city as it may be, have a duty imposed upon them to see that the sick poor are cared for; that they should employ a physician to give them such care as is usually given by a physician to a sick person; that if they do not employ a physician whose duty it is to care for the sick poor upon direction of a member of the governing board, then any member of the governing board may employ a physician to care for such sick person; and if after proper notice

members of such boards do not furnish the necessary care to the sick poor, it may be done by others at the expense of the county or other municipality upon which the duty of caring for the poor is imposed.

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 3, 1910.

571

PRIZE FIGHTING—Does not include a wrestling match.

Attorney General's Office.

Rev. Walter A. Snow.

Dear Sir: You enclose a printed poster advertising a wrestling match to be given in your city, and inquire as to whether such match can be stopped for the reason that it appears from the same that there has been a side-bet made on the result of the contest.

There seems to be no provision of law prohibiting a wrestling match. The contest such as is advertised in not one that can by any construction come under the prohibition found in sections 5020-5022, R. L. 1905, relating to prize fighting.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 24, 1909.

572

PROBATE COURT—Compensation of clerk of probate—How paid.

Attorney General's Office.

Hon. Ira C. Richardson, Judge of Probate.

Dear Sir: Your letter of June 1st relative to the payment of the salary of the clerk of your court has been referred to me for answer.

I have to say that this office has held that a clerk for the probate judge in counties having a population of 12,000, and less than 45,000, is entitled to payment of his salary of $300 on the warrant of the auditor in the same manner as is the salary of the probate judge, subject to the proviso that the probate judge must certify that the expenditure has been made or incurred by him.

"To the extent of $300, it seems clear that the law is mandatory, and that no resolution of the county board is necessary as a prerequisite to the authority of the auditor to issue his warrant."

Opinion of Attorney General Young, June 13, 1907.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 6, 1910.

573

PROBATE COURT—Attorneys only can practice in (exception)—Judge or clerk of cannot practice therein.

Attorney General's Office.

A. E. Doe, Esq., Judge of Probate, Stillwater, Minn.

Dear Sir: In your letter of September 12th you call attention to section 2280, R. L. 1905, which reads as follows:

"2280. Unauthorized practice.—Every person not duly admitted to practice, who shall appear as an attorney at law in any action or proceeding in a court of record, except in his own behalf when a party thereto, or who for any consideration shall give legal advice, or in any manner hold himself out as qualified to give it or as being an attorney at law, shall be guilty of a gross misdemeanor, of which the district court shall have sole original jurisdiction, and which the county attorney shall prosecute, but an attorney admitted to practice and residing in another state, who shall attend any term of court here for the purpose

of trying or assisting in the trial or conduct of an action or proceeding therein pending, may be permitted to do so without being subject to such penalty."

You also call attention to section 3632, R. L. 1905, which reads as follows:

"3622. Judge or clerk not to be counsel. No judge or clerk of any probate court shall be counsel or attorney in any action or proceeding for or against any legatee, heir, creditor, executor, administrator, guardian or ward over whom, or whose estate or accounts, he has jurisdiction by law, nor shall either of them give counsel or advice, or draw or prepare any paper relating to any estate which is or may be brought before such court, except citations, orders, decrees, executions, warrants, or subpoenas issuing out of such court. Nor shall any such clerk, or the law partment of any probate judge or clerk, appear or practice as attorney in any matter or proceeding before such probate court."

You submit the following queries:

1. What right, if any, has a person, who is not a duly admitted attorney at law, to appear before the probate court, in any proceeding in such court and attempt to conduct such proceeding, or act in the capacity of an attorney?

2. Does not section 3632 mean to forbid a judge of probate examining witnesses to prove wills; witnesses to prove death and other allegations contained in a petition to administer an estate? Also witnesses in proof of the allegations and statements contained in final accounts; petitions for appointment of guardians, or in fact, any proceeding when the examination of witnesses ought to be had.

3. Should such judge inform persons desiring to probate a will, administer an estate, etc., that under the laws of this state none but attorneys can practice in such courts, and that it is required by law that, unless such person is able to conduct such proceeding himself, he being a party thereto (Section 2280), he must have an attorney qualified by law to represent him?

In answer to your first query you are advised that the probate court is a court of record (Section 3622, R. L. 1905), and no person not an attorney at law admitted to practice, has a right to practice in such court, except in his own behalf when a party to an action or proceeding in such court.

In answer to your second query you are advised that section 2632, supra, forbids the judge of probate, or his clerk, from acting as counsel or attorney in the cases specified in the statute. Of course the judge of probate, which is also the case of a judge of the district court, has a right to ask competent, relevant and material questions of witnesses in his court; but the general effect of section 3632, supra, is that actions and proceedings in the probate court are to be conducted by attorneys at law admitted to practice, except that persons in their own behalf, when parties to an action or proceeding in the probate court, may be their own attorneys.

In answer to your third query you are advised that the judge of probate should inform persons who are interested in an action or proceeding in the probate court, that attorneys at law duly admitted to practice are the only persons who are entitled to practice in the probate court, except that persons in their own behalf, when parties to an action or proceeding in the probate court, may be their own attorneys.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Sept 15, 1910.

574

PUBLIC BONDS—County commissioners cannot relieve surety on bond.

Attorney General's Office.

Mr. H. N. Jensen.

Dear Sir: In reply to your letter of August 18th, I have to say that it is my opinion that the action of a county board attempting to release a man from the bond of a county treasurer, is void, and that the taking of an additional bond

by the county board to cover a supposed or actual insufficiency of the original bond, is valid, provided it has been done in pursuance of the statutes relating thereto.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 22, 1910.

575

PUBLIC BONDS—Payment for recording of.

Attorney General's Office.

Phillip S. Congress, Esq., Register of Deeds.

Dear Sir: In reply to your letter of August 5th relative to the question of who should pay for the recording of township and county officers' bonds, I have to say that the natural construction of the laws on this subject seem to be that the towns should pay for the recording of the bonds of township officers and the county should pay for the recording of the bonds of county officers. I think that the officers have done their full duty when they have furnished the bonds required by statute and obtained the approval of such bonds by the proper authority.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 10, 1910.

576

PUBLIC DEPOSITORIES—May not change bonds.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: You have referred to this office an inquiry as to whether or not public depositories can substitute one bond for another during the time covered by the bond already given.

In reply to this question, I have to say that I can find no authority in law for the changing of the security given by public depositories, particularly those having county funds on deposit with them, unless such change is necessary for the protection of the funds deposited with them. It is hard to see how any advantage could accrue to any county by having the amount of the bond of the depository reduced, and it is the opinion of this office that neither the county treasurer, nor the board of county commissioners, can authorize a public depository to change its bonds during the time for which such bond was given, unless it be done for the better protection of the funds of the county.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 10, 1909.

577

PUBLIC EXAMINER—Compensation of deputies under chapters 264, laws 1909, and 344, laws 1907.

Attorney General's Office.

Hon. A. Schaefer, Public Examiner.

Dear Sir: I quote from your favor of August 31st as follows:

"Chapter 344 of General Laws 1907, authorizes the public examiner to examine the books of account and other records of townships, village and school district officers throughout the state when requested by the county board of the

county, and chapter 264, of General Laws 1909, confers authority to make similar examinations of cities of less than 10,000 inhabitants when requested by the city council of any such city.

"Section 3 of each of said chapters provides that 'the examiner in order to carry out the work of such examination may employ from time to time assistants and deputies, who shall receive for their compensation five dollars ($5.00) per day for the time employed, together with expenses,' to be paid by the county under chapter 344, of G. L. 1907, and by the city under chapter 264, of G. L. 1909.

"I therefore respectfully request your opinion upon the following questions:

"1. Under the provisions of said laws, would the public examiner be authorized to send out to make such examination a man who is receiving a regular salary as examiner, from the state?

"2. If the above be answered in the affirmative, could the per diem paid by the county or city, as the case may be, be turned into the state treasury and credited to the public examiner's contingent fund?"

Your first query is answered in the affirmative. Under and by virtue of section 1 of chapter 344, supra, and section 1 of chapter 264, supra, your department is given authority to act in the premises. In case you act by sending out a regular member of your department, as the same is organized under the law, the work in question as far as compensation therefore is concerned, is covered by the regular salary provided by law.

Your second inquiry is answered in the negative. The proper construction to be placed upon section 3 is to authorize the public examiner to employ assistants and deputies outside of his official force when the same is necessary, and in such case the compensation provided by section 3 obtains, and the same is to be paid to the assistant or deputy performing the work.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 31, 1909.

578

PUBLIC EXAMINER—"Moneyed corporations" defined—examination required.

Attorney General's Office.

Hon. A. Schaefer, Public Examiner.

Dear Sir: In reply to your inquiry of this date as to the interpretation of the attorney general's office of the term "moneyed corporation" as used in section 1584 of the Revised Laws of 1905, I have to say that this term must be construed with reference to the words with which it is associated, so construing it I think it refers to purely financial corporations. These are enumerated in section 2967, R. L. 1905, as banks, savings banks, trust companies and building and loan associations. Section 1584 referred to by you provides that you at least once in each year shall visit each bank, savings and other money corporations doing business within the state. This statute plainly imposes upon you the duty of inspecting such corporations when they are doing business within the state. This statute of course has no effect outside of the state, but if under proper circumstances you should desire to inspect institutions beyond state limits and such institutions refused you an opportunity to make such inspection it might be considered by you in determining whether you would make an application to have such corporation excluded from doing business in the state. The term, "doing business in the state," should be considered as having the same meaning as the similar expression used in the law forbidding foreign corporations doing business in this state.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 16, 1909.

579

PUBLIC OFFICER—Is indirectly interested in contracts of wife.

Attorney General's Office.

J. P. McMonan, Esq.,

Dear Sir. In reply to your letters of May 21st, inquiring whether or not a council may award a contract to the wife of one of the members, I have to say that is does not seem to be legal for a council to do so. A husband has an indirect interest in the estate of his wife. Our statute at present gives to the husband various contingent interests in his wife's estate, including a one-third interest in the residue of the estate after certain allowances to him and to her children, and these allowances cannot be taken from the survivor without his consent in writing.

It has been held that "by virtue of the marital right the law casts upon each a contingent interest in the other's property." While this interest is not direct, it seems to be indirect within the meaning of the statute making it a criminal offense for a public officer to take any part in making a contract in which he is interested directly or indirectly. Section 5032, R. L. 1905.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

May 24, 1909.

580

PUBLIC OFFICERS—Must not be interested in public contracts.

Attorney General's Office.

John Street, Esq.

Dear Sir. You ask whether a board of education may lawfully borrow money from a bank, the president of which is a member of the school board.

Replying thereto, I beg to advise that in my opinion your inquiry is to be answered in the negative. The statute provides in effect that members of school boards shall not be interested "directly or indirectly" in contracts by the district. Borrowing of money is a contract and therefore within the terms of a statute.

Yours truly,

GEORGE T. SIMPSON,
Attorney General.

May 24, 1910.

581

PUBLIC OFFICERS—May be removed for malfeasance in office—When.

Attorney General's Office.

Hon. A. O. Eberhart, Governor.

Dear Sir: In reply to your favor of this date inquiring whether in the case of a charge of malfeasance in office a technical violation of a statutory duty is sufficient to justify a removal of an officer in the absence of a wilful intent to violate a law, I have to say that there are various definitions of malfeasance, but that the definition which is most often accepted as controlling in the matter of the removal of officers who have been elected by the people, is stated in a New York case substantially as follows:

An act resulting from an error of judgment, a mistake as to the law, or a misapprehension on the part of the officer as to his duty, is not ground for his removal. The evidence of malfeasance should be sufficient to make it appear that the officer acted with a wrong purpose, knowing or believing, or having reason to know or believe, that such action was unlawful.

An officer might be responsible for an act forbidden by law, though he did it in ignorance of the law, provided such ignorance could have been removed by obtaining information readily accessible.

Elective officers are not to be removed for honest mistakes, but for failure to perform their duties or for the doing of unlawful acts if such officers are not acting up to the best light that they have, or could obtain by reasonable diligence.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

May 13, 1910.

582

PUBLIC OFFICERS—Must take required oath of office.

Attorney General's Office.

Samuel B. Green, Esq., University Farm.

Dear Sir: You inquire as to whether members of the board of administration of the state farmers' institute should qualify for office.

Your inquiry is answered in the affirmative. Section 1452, R. L. 1905, provides for the board of administration of farmers' institutes. In this section reference is made to the positions thus created as "offices" and provision is made to the effect that there shall be a tenure of office for three years and until their successors **qualify.**

Section 2677 provides, among other things:

"Every person elected or approved to any other public office whatsoever, including every official commissioner, or member of any public board or body, before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in section 8 of article V of the constittuion."

Section 8 of article V of the constitution is in the following language:

"Each officer created by this article, shall, before entering upon his duties, take an oath or affirmation to support the constitution of the United States and of this state and faithfully discharge the duties of his office to the best of his judgment and ability."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1910.

583

PUBLIC OFFICERS—Provision as to time of filing oath is not mandatory.

Attorney General's Office.

Mr. W. E. Hull.

Dear Sir: You state that you were the old director of your school district and that at the annual meeting held July 17th a new director was elected but that he failed to file his oath of office within ten days, not filing the same until July 30th, and you inquire whether you are still the school director for that reason or whether the newly elected man will hold the position.

Our supreme court, in 1901, held that the filing of the oath of office within the ten-day period was not mandatory but directory. The syllabus of the decision, among other things, contains the following:

"It is sufficient if he takes and files such oath within a reasonable time after his election, when no action has been taken looking towards filling the office by the appointment or election of another person."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 13, 1909.

584

PUBLIC OFFICERS—May not be interested in contracts (insurance) entered into by the boards of which they are members.

Attorney General's Office.

Tollef Jacobson, Esq.

Dear Sir: Answering your letter of March 16th relative to the right of a member of a city council or board of education to suffer such council or board to insure its property with a company for which a bank is agent, the president of which bank is a member of such council or board, I have to say that I do not think it legal for any board to make an insurance contract with a bank in which a member of such board is director or stockholder.

The law with regard to this matter is found in section 5032, R. L. 1905, and an interpretation and application of this law is found in the case of Stone vs. Bevans, 88 Minn. 127. The principle on which this decision is founded is that each stockholder of a bank is interested in the income of such bank and therefore indirectly interested in all the contracts from which the bank derives a profit. However if such contract be made and there be a loss the insurance would not be invalidated by reason thereof.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Mar. 19, 1910.

585

PUBLIC WAREHOUSES—Warehouse used in connection with private business—is not.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: I beg to acknowledge receipt of your favor of August 24th by Commissioner Elmquist relative to the true construction to be placed upon section 2084, R. L. 1905, and in connection therewith the opinion of this office under date of April 16th, 1907, by R. A. Stone, then one of the assistant attorneys general.

You state that at North Branch, Minnesota, the local mill has a warehouse in connection with its business; that it buys grain on the local market and manufactures it into flour; that it does not store or ship grain for others, and you ask whether such warehouse is a public warehouse within the purview of said section 2084.

Replying thereto I beg to advise that I have carefully read the former opinion of this office and cannot account for the same, except that the opinion of the supreme court of this state in State vs. W. W. Cargill Co., 77 Minn. 223, affirmed, W. W. Cargill Co. vs. Minnesota, 180 U. S. 452, was not called to the attention of the office when the opinion was written. The facts in this case are seemingly identical with those stated by you in your letter, and the opinion of the court being contrary to the opinion of this office above cited, the latter is accordingly reversed and your inquiry is answered in the affirmative.

Yours truly,

GEORGE T. SIMPSON,
Attorney General.

Aug. 30, 1910.

586

PURE FOOD—Fines for violation of pure food law must be paid into state treasury.

Attorney General's Office.

Mr. A. H. Adams, Village Treasurer.

Dear Sir: You inquire as to the disposition of fines collected by a justice of the peace, upon conviction, of a person charged with violation of the pure food laws of the state.

Chapter 426, G. L. 1907, provides that all fines collected thereunder shall be paid into the state treasury.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 23, 1909.

587

RAILROADS—Balance due other railroads is part of gross earnings.

Attorney General's Office.

Hon. I. B. Mills, Chairman State Railroad and Warehouse Commission.

Dear Sir: Replying to your letter of February 1st, inquiring whether a railroad has a right to deduct from its gross earnings the balance which it pays to another railroad company for their cars employed in transportation in excess of the amount paid to it for the use of its cars by the companies, I have to say that it is the opinion of this office that a railroad company has no right to make such deductions from its gross earnings before computing the amount of gross earnings to be paid thereon.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Feb. 4, 1909.

588

RAILROADS—Must bear expenses caused by newly established highway crossings except for planking and grading.

Attorney General's Office.

M. E. Isherwood, Esq.

Dear Sir: Your letter of January 26th, inquiring as to whether or not a railroad company must build crossings over their railroad tracks when roads are established on section lines, has been handed me by the attorney general for answer.

I have to say that the courts have divided up the expense of building crossings when a new road is laid out over a railroad already constructed. At the present time the law as laid down by the supreme court is that the town or village laying out the road must pay for planking and grading the crossing and that the company must pay for signs, cattle guards, wing fences, bridges and everything that goes to make a crossing safe for public use. While the railroad company is required by statute (Section 1995, R. L. 1905) to construct and maintain grades and planking, yet it has been held and appears to be the law now that the company is to be paid as damages for laying out the new road across its track the cost of constructing and maintaining the grades and planking. All other expenses must be borne by the railroad company itself.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 27, 1909.

589

RAILROADS—Passes may not be issued to policemen.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: In response to your inquiry of January 26th as to whether or not a railroad may give free transportation to the policemen of cities who have done police work in the yards of the railroads, I have to say that such policemen are

not included in the exception of the law forbidding the issuance of free transportation. City policemen are not the employes of the railroad companies running through or extending into such cities.

Yours truly,
LYNDON A. SMITH.
Assistant Attorney General.

Jan. 27, 1909.

590

RAILROADS—Allowance for shrinkage in the weight of grain shipped permissible.

Attorney General's Office.

A. C. Clausen, Esq., Secretary Railroad and Warehouse Commission.

Dear Sir: Your letter to the attorney general under date of January 28th, 1909, requesting the opinion of this office as to the proper construction of section 2093, R. L. 1905, relating to the allowance of sixty pounds per car for loss in transit on grain shipments, has been referred to me for answer.

I have to say that the allowance of sixty pounds per car for loss of weight of grain in the shipment of it should be construed to be a general allowance made for the shrinkage which usually and probably always occurs and that such allowance is made for the benfit of the carrier and is to be allowed to the carrier in all cases when the apparent loss of weight is sixty pounds or more to the car. This law applies only to shipments from points within the state to points within this state. Consequently this law would not apply to a shipment from South Dakota to Minnesota, nor would it apply to cases in which grain was shipped from a point in Minnesota to a point without Minnesota, with the privilege of milling in transit. This privelege has been held by the interstate commerce commission to be consistent with the character of the shipment as interstate commerce. If it should be found that the traffic of the carrier transporting the grain from the point where it was received to the point where it was milled did not provide for the privilege of milling in transit, then the shipment would be deemed to be within the state and the allowance of sixty pounds to the car would be proper.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 29, 1909.

591

RAILROADS—Hours employes may be on duty.

Attorney General's Office.

Hon. Chas. E. Elmquist, Railroad and Warehouse Commissioner.

Dear Sir: In response to your inquiry whether under the requirements of section 1, chapter 253, of the General Laws of 1907, a railroad employe may be on duty to exceed sixteen hours in any consecutive twenty-four when those sixteen hours of employment are not consecutive but divided into parts each of which is less than sixteen hours, I have to say that the law does not permit any such employe to be on duty to exceed sixteen hours in any consecutive twenty-four hours.

This expression is affected in the law by the words "at any time." I do not think that those words mean at any one time because that would be consecutive employment and the subject of consecutive employment for sixteen hours is already treated of earlier in the same section. To so construe this last paragraph of the section for the proviso contained therein would be to make it

meaningless and to restrict it, when the natural effect of the phrase at any time would be to enlarge and make more comprehensive the requirement that a railroad employe should not be on duty to exceed sixteen hours in any consecutive twenty-four hours.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 29, 1909.

592

RAILROADS—Bills of lading.

Attorney General's Office.

Ira B. Mills, Esq., Chairman Railroad and Warehouse Commission.

Dear Sir: In reply to your letter of January 8th, inquiring whether the provisions of the uniform bill of lading submitted are such as common carriers may lawfully insist upon in dealing with the public, I have to say that common carriers are not entitled in this state to any modifications of their common law liability as such carriers, except by contract with the shipper. "The responsibility of a common carrier for damage to shipments entrusted to it is primarily that expressed in the common law." Murphy vs. Wells, Fargo & Co. Express, 99 Minn. 230.

There is nothing in the law of this state which would prevent the use of the uniform bill of lading submitted as a contract between the shipper and the carrier. It has been uniformly held in this state that there may be modifications by contract of the common law rules of liability. The modifications stated in the contracts submitted are those which are supported by the current of authorities and most of them have been approved by the courts of this state.

The limitations upon such a contract as is proposed are:

1. That the modifications of the common law liability of the carrier must be stated in their published classifications schedules. Revised Statutes of Minnesota, 1905.

2. There must be nothing in such a contract which limits the absolute responsibility of the carirer for the acts of its agent in reference to the property transported by it.

This office would recommend that a clause be added to the proposed contract to the effect that "No provision of this contract shall be construed to limit the absolute responsibilty of the carrier for the acts of its agent in reference to the property described within." This clause would cover any possible contingency which might arise where the responsibility of the carrier is other or greater than provided for by the proposed contract.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 12, 1909.

593

RAILROADS—Care of station grounds—Town guide posts.

Attorney General's Office.

A. A. Rankin, M. D.

Dear Sir: In reply to your first question as to whether or not railroads are required by law to heat and light depots at night and keep a night operator in villages of about eight hundred inhabitants, I have to say that there is no law requiring this. If the circumstances are such as to render it desirable and necessary for the public convenience, an application could be made to the railroad and warehouse commission, and that commission could, if the circumstances justified it, order the railroad company to do the things you mention in your letter.

In answer to your second question, I have to say that the law as stated by the supreme court of Minnesota on the question you ask is as follows:

"A railway carrier of passengers is bound to use all reasonable means to keep in a safe condition all portions of its platforms and approaches to which the public do, or would naturally resort, and all portions of their station grounds reasonably near to the platforms where passengers, or those who have purchased tickets with a view to taking passage on its cars, would naturally or ordinarily be likely to go." Bueneman vs. St. Paul, M. & M. Ry. Co., 32 Minn. 390.

This being the law, you can apply it to the fact better than I can as you are familiar with the patronage of the railroad and the necessity of better approaches in order to accommodate the persons doing business with the railroad.

Your third question is as to the law in regard to the erection and maintenance of guide boards. The law is as follows:

"Every town shall erect and maintain suitable guide posts and boards at such places on the public roads therein as shall be convenient for the direction of travelers." Section 684, R. L. 1905.

There has been no decision rendered in reference to the number and location of such guide posts nor as to what shall be on the boards. The ordinary definition of a guide board is a board placed upon a post and indicating the direction of the roads at the junction of which the post is set up. The duty of attending to the erection of guide posts is with the town boards.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Sept. 20, 1909.

594

RAILROADS—Suburban electric lines.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: Your letter of February 1st, relative to the status of the Minneapolis & St. Paul Suburban Railway Company, has been referred to me for answer.

I have to say that the laws of Minnesota recognize only two classes of railways; one is commonly called commercial railroads and the other street railways. In the absence of any intermediate class of railroads all railways must be in one or the other class.

The supreme court of this state in the case of the Minneapolis & St. Paul Suburban Railway Company vs. Manitou Forest Syndicate, 101 Minn. 132, clearly classes that railway company in the class of commercial railroads. It states that it is a common carrier of persons; that the use of the word **street** before the word **railway** in its articles of incorporation is not significant. It calls attention to and emphasizes the fact that the railways of the plaintiff company run from the limits of one city to another through land where there are no streets and that—

"The essential and predominate distinction (between a street railway and a railroad) is that a street railway is operated upon the streets in aid of the street as a highway."

These and other positions taken by the supreme court in the case cited compel the conclusion that this company is a railroad within the meaning of chapter 28 of the Revised Laws 1905, and that as such it is under the jurisdiction of the commission and is required to make return of gross earnings for the purpose of taxation.

The answer to the question whether its duty is to conduct both a freight and passenger business is much more uncertain. In Wisconsin it has been held that under a law providing that railway corporations may exist for public use in the conveyance of persons or property the word **or** must be read **and** and all railroads must carry both freight and passengers.

Chicago & N.-W. Ry. Co. vs. Oshkosh A. & B. W. R. Co., 101 Wis. 192.

The question in this case is very similar to the question stated last above, and this office in inclined to hold that it is the duty of the Minneapolis & St. Paul Suburban Railway Company to conduct both a freight and passenger business. There are difficulties in the way of holding with the Wisconsin court. One is, it is not clear that the articles of incorporation of the company in question authorize it to be a common carrier of freight, and no corporation can engage in any business except such as it was organized to engage in and such incidental business as may be reasonably necessary for effectuating the purpose of its organization. Merchants National Bank of St. Paul vs. Minnesota Threshing Mfg. Co., 90 Minn. 144, and cases cited on page 147.

The decision of our supreme court first above referred to seems to intimate that this company is a common carrier of persons and adds—

"It is clearly expressed in the articles that its business is to transport persons from place to place,"

and decline to pass on the question whether the carriage of freight is within the emplied powers of the corporation.

It seems to me that the construction of articles of incorporation has been so liberal as to justify holding that it is within the incidental and implied powers of the Minneapolis & St. Paul Suburban Railway Company to carry not only persons but property under the very board terms of its charter. The articles include a statement that the company may operate lines of street railway within the state of Minnesota, operate boats upon lakes and do other things which would be best promoted by the right to carry a certain amount of freight, and if the word **street** is to be read out of the term "Suburban street railway" it leaves the charter as authorizing the operation of suburban railroads within the state of Minnesota, and the import of the decision is that suburban railways are railroads within the provisions of chapter 28, R. L. 1905, and said chapter applies equally to the carriage of freight as well as to the carriage of passengers.

My conclusion is that your question as to the duty of this company to conduct both a freight and passenger business is that such is its duty.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Feb. 3, 1909.

595

RAILROADS—Meaning of word "wreck."

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: In reply to your letter to the attorney general, which has been referred to me for answer, in which you inquire as to the proper construction of the word "wreck" as used in chapter 253 of the General Laws for 1907, I have to say that the word "wreck" was originally a term applied to injuries to ships which prevented them from continuing on their course. By analogy I think that the word "wreck" as applied to railway trains refers to such accidents and injuries to the train as prevent its going on to the end of its run as a train. The word "accident" is used immediately before the word "wreck," and it seems to me that the word "accident" is the board word and the word "wreck" is a narrower term, meaning some serious interference with the train disabling it from continuing its run I cannot think of any case in which a wreck could exist without an accident, so that the construction of the word "wreck" does not seem of much practical value.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Feb. 25, 1909.

596

RAILROADS—Commutation tickets.

Attorney General's Office.

Hon. Chas. E. Elmquist, Railroad and Warehouse Commissioner.

Dear Sir: In answer to your letter of September 3d, relative to the regulation of certain matters involved in the management of the Minneapolis Suburban Railway Company, and submitting specific questions to be answered by this office, I have to say that those questions and answeres to them are as follows:

First—"Has the railway company the right to issue commutation tickets in the manner specified in your said letter?"

It is the opinion of this office that his question should be answered in the affirmative. At the time of the passage of the anti-pass law of 1907, the Revised Laws of 1905, section 2010, permitted the issuance of commutation passenger tickets at rates equal for all. This law is not to be considered repealed by any subsequent legislation, unless it is impossible to harmonize such legislation with it.

"To justify the court in holding that an act is repealed by one subsequently passed, it must appear that the latter provision is certainly and clearly in hostility to the former. If by any reasonable construction the two statutes can stand together, they must so stand?"

See State vs. Archibald, 43 Minn. 328, 330.

Second—"Has this commission the right to compel the issuance of commutation tickets?"

This question has been answered in the negative by the supreme court of the United States in Lake Shore & M. S. Ry. Co., 173 U. S. 684.

Third—"Is the issuance of commutation tickets an unreasonable and unequal preference and advantage in favor of Minneapolis as against Hopkins on intermediate point to which the commutation tickets are not issued?"

The issuance of commutation tickets is not, of itself as a matter of law an unreasonable and unequal preference or advantage in favor of Minnetonka as against Hopkins. By the issuance of commutation tickets, passenger traffic is to a certain extent, classified and within these classes rates must be equal for all.

See Spriggs vs. Baltimore & Ohio Ry. Co., 81 C. R. 443.

Fourth—"Are the suburban railways subject to the provisions of the two-cent passenger fare law?"

It is the opinion of this office that the legislature did not have in mind electric lines when it passed the two-cent fare law, and did not intend to regulate the charges to be made by such lines for the transportation of passengers. They were being conducted on a plan analigous to the system in use on street railways and this plan was not the subject of criticism, or made a basis of complaint to the legislature. Laws are to be construed according to the intent of the law-makers.

Funk vs. St. Paul City Railway Co., 61 Minn. 435.

State vs. Bazille, 97 Minn. 11.

In the case first cited it is said:

"Through our territorial and state legislation, the term 'railroad' has acquired a definite and well-understood meaning, * * * * It is usually applied to the ordinary steam railroad of commerce."

Your question, therefore, answered in the negative.

Fifth—"To what extent is the judgment of the commission to regulate suburban railways limited by the loca lvillage ordinances?"

The law of this state is not entirely clear upon this question, but the principles underlying the law are substantially these The railroad and warehouse commission enforced laws made by the legislature whenever circumstances arise such that the laws ought to be put into operation. Whenever such circumstances arise and the commission so finds the general laws of the state are put into operation, and the action of the railroad and warehouse commission is effective just as far as general legislation is effective as against the power of villages, as expressed in ordinances passed in accordancet with fundamental law of the village passing such ordinances.

Whenever a general law conflicts with an ordinance of a village, that general law is superior to such ordinance, when it prescribes the only law applying to the matter under consideration.

See Nicol vs. St. Paul, 80 Minn. 415.

Whenever the railroad and warehouse commission acts within the scope of its powers in matters other than those of purely local importance, its acts are of superior effect to the ordinances of villages affected by such acts.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Oct. 29, 1909.

597

RAILROADS—Hours of labor on.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: In reply to your letter of October 13th, inquiring in substance when the sixteen-hour limit provided by chapter 253 of the General Laws of 1907, begins, I have to say that I am of the opinion that the sixteen hours apply and commence when one of the employes mentioned in that chapter goes on duty. Further, I am of the opinion that an employe goes on duty when he begins the performance of any duty assigned to him by his employer, connected with and incidental to the operation of the particular train in connection with the running of which he is employed. If a trainman is required to do switching before the train starts out, the sixteen hours of his consecutive employment would date from the time when he was required to begin work in the making up of his train and the helping in the switching incident to the making up of such train.

If it be an engineer, the sixteen hours in my opinion would begin to run when he actually began to perform the duty assigned him in connection with the running of his train. If he was required to go to the roundhouse and prepare an engine to make the trip, the sixteen hours would begin from the time when he began to prepare the engine for such trip. On the other hand, if a railroad makes a regulation that an employe shall be on hand for a certain reasonable length of time before his train starts, but does not assign him duty to perform during that time, but makes this regulation for the purpose of knowing that the employe will be ready to go on his run at the appointed time, then I think that the sixteen hours does not begin to run at the time of the arrival of the employe on the scene of action, but only when he begins the actual performance of his duties. The statute is intended to prevent the running of trains after the mental faculties of the employes are weakened by the continuous strain of their work, so that they are no longer able to concentrate their minds upon the performance of their duties and any work assigned to them in connection with their trips and in preparation therefor tends to reduce to a large extent the mental energies and alertness of the employe.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Oct. 14, 1909.

598

RAILROADS—May charge greater rent for private warehouses than public elevators.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: Your letter of April 24th to the attorney general, in reference to a price charged by a railroad company for the rent of a warehouse on its right of way, has been referred to me for attention.

You ask whether it is an unlawful discrimination for a railroad company to charge more for the rent of ground for a private warehouse, than for proportionate ground space and facilities to elevators. I have to say that in my opinion it is not an unlawful discrimination. The warehouse in question appears by the correspondence submitted with your letter, to be a private warehouse, and not one which on account of a public interest is subject to treatment on a uniformity with the public warehouses along the same line or track and within the same depot grounds. If this warehouse were in any sense a public warehouse and property was stored therein for the public, a different question might be raised.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 27, 1909.

599

RAILROADS—Must repair and rebuild sidewalks across right of way, as a rule.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: Your letter of April 24th to the attorney general as to the liabilty of a railroad to repair a sidewalk across its track when it has paid a gross earnings tax, and as to whether the commission should compel it to do so, I have to say that under ordinary circumstances the railroad is obliged to repair and rebuild sidewalks across its track without reference to the gross earnings tax but that the duties of the railroad and warehouse commission do not require it to take any action in the matter. The repair of a sidewalk is incumbent upon the railroad as a part of the burden it assumes when compensated for the laying out of a highway across its track, or assumes when it builds the track across an existing highway, and should be enforced by the municipal authorities of the village or city interested.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 29, 1909.

600

REGISTER OF DEEDS—Fees for recording.

Attorney General's Office.

John W. Clover, Esq., County Attorney.

Dear Sir: In answer to your favor of January 7th you are advised that section 2706, R. L. 1905, as amended, provides that for indexing and recording any deed or other instrument ten cents per folio shall be paid the register of deeds when such instrument is left for record.

There is no separate charge for indexing such instruments in the grantor's and grantee's reception books, except as the same is covered by the above.

You are also advised that this department, in an opinion by Assistant Attorney General Simpson, of date April 4, 1906, to J. J. Cameron, held that punctuation marks should be included in counting folios. (See section 5514, R. L. 1905, subdivision 4.)

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 15, 1909.

601

REGISTER OF DEEDS—Compensation of for recording plats.

Attorney General's Office.

Frank X. Bastien, Esq., Register of Deeds.

Dear Sir: In reply to your letter of August 24th relative to the fees of register of deeds for recording plats, I have to say that the matter is regulated by section 3368, Revised Laws of 1905, and gives you the option to either attach the plat to a book provided for that purpose, or to transcribe the plat at a compensation of five cents a lot. I do not see how any other interpretation can be given to the statute.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 21, 1910.

602

REGISTER OF DEEDS—Should include all mortgages in list prepared for assessor.

Attorney General's Office.

Hon. A. Schaefer, Public Examiner.

Dear Sir: You inquire whether or not the register of deeds should include in the list of mortgages that he furnishes for purposes of taxation, a statement of those mortgages upon which registration tax has been paid. I am of the opinion that he must. There are good reasons why an inquiry should be made as to whether or not registration tax has been paid upon such mortgages, and it is not anywhere made the duty of the register of deeds to determine that question.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 14, 1910.

603

REGISTER OF DEEDS—Duty to record notice of intention to redeem.

Attorney General's Office.

L. S. Orwoll, Esq., Register of Deeds.

Dear Sir: In answer to your inquiry of March 23d you are advised that under and pursuant to chapter 243, G. L. 1909, it is necessary that the notice of intention to redeem therein provided for is to be filed by the reister of deeds and recorded by him pusuant to said chapter. After the record of the notice of intention to redeem the instrument may be returned to the person entitled thereto.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 11, 1910.

604

REGISTER OF DEEDS—Sheriff's certificate on foreclosure may be recorded without payment of taxes.

Attorney General's Office.

L. J. Dostal, Esq., Register of Deeds.

Dear Sir: An assignment of a sheriff's certificate on foreclosure sale may be recorded prior to the expiration of the year for redemption, even if the taxes are not paid.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 18, 1909.

605

REGISTER OF DEEDS—Final receivers' receipts and patents may not be recorded without payment of taxes.

Attorney General's Office.

Edward Nelson, Esq.

Dear Sir: You ask whether receivers' receipts and United States patents are within the provisions of section 985, R. L. 1905, requiring treasurers' and auditors' certificates as to taxes being paid before the same are entitled to be recorded in your office. I am of the opinion that your inquiry should be answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 29, 1909.

606

REGISTER OF DEEDS—Requisites necessary to entitle an instrument to record.

Attorney General's Office.

Mr. R. G. Isherwood, Register of Deeds.

Dear Sir: In order to entitle a deed or other conveyance of real estate to record, the acknowledgment of its execution taken by a notary public within this state must have attached to such acknowledgment a statement of the date of the expiration of the notary's commission. A deed or other conveyance of real estate executed out of the state, and according to the laws of the state in which it is executed, is entitled to record in the county where the lands affected by said instruments are situate, even if the date of the expiration of the notary's commission does not appear, the laws of such foreign state not requiring such statement.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 9, 1909.

607

REQUISITIONS—Not granted for bastardy.

Attorney General's Office.

Mr. August G Erickson, County Attorney

Dear Sir: Under the law of this state and the rules adopted by the Extradition Congress, requisition will not issue for a return to this state for a man charged with bastardy.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 19, 1909.

608

ROADS—Establishment of in townships.

Attorney General's Office.

Mr. C. H. Blake.

Dear Sir: There is no law that prohibits, upon a proper petition, the laying out of a highway within one-half mile of one already established. The fact that there is a highway on the township line will not prevent the establishment of another road within one-half mile of it if the necessity for such road exists. The procedure for laying out a township road is found in sections 1171-1178, R. L. 1905.

The location on the petition of a man's name does not in any way affect his right to recover damages for laying out a highway.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Aug. 23, 1909.

609

ROADS AND BRIDGES—Validity of contract and appropriations.

Attorney General's Office.

E. J. Jones, County Attorney.

Dear Sir: This department is in receipt of your favor of recent date from which it appears that a contract has been entered into between Nobles county and a certain contractor for the construction of a county road, the consideration therefor being the sum of $2,350. The sum of $2,350 was to be obtained in part by private subscription, which has been paid in, in part by direct appropriation by the county out of the road and bridge fund, and in part under and by virtue of appropriations by the state pursuant to chapters 219 and 405, of the General Laws of 1907. The sum expected from the state is $900.

The contractor has completed his work and the same has been approved by the county board.

You inquire whether the $900 may be now lawfully disbursed by the state pursuant to chapters 219 and 405, G. L. 1907, supra.

In answer, I call your attention to the case of Cook vs. Iverson, as state auditor, decided July 9, 1909, by our supreme court, in which decision chapter 505, G. L. 1909, was held unconstitutional. It follows from said decision that chapters 219 and 405, G. L. 1907, are unconstitutional. It accordingly follows that no appropriation can be paid by the state under and by virtue of said acts.

In this connection, however, I call your attention to chapter 163, G. L. 1905, under and by virtue of which the state highway commission informed me that the sum of $700 will be available to your county on and after August 1, 1909.

I accordingly advise you that pursuant to chapter 163, supra, the said sum of $700 may be used in payment of the contract in question.

In the meantime your county is authorized to issue its warrant to the contracting party, drawn against the road and bridge fund in the sum of $900. In case the said warrant overdraws said fund, it may be carried in due course until the fund is replenished so that the same may be paid.

You are advised that in my opinion there should not be a transfer from the general revenue fund of your county of the sum of $900 to the road and bridge fund for the purposes in question.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 15, 1909.

610

ROADS AND BRIDGES—Over non-navigable streams—Flooding road by ditch.

Attorney General's Office.

J. J. Gildersleeve, Esq., Town Clerk.

Dear Sir: Your first question is whether or not a bridge across a small stream, down which logs are driven each year for a short time during high water, is legal when it has a span which can be removed for the accommodation of passing logs and wannegans.

In reply to this question, I have to say that the general rule in regard to this matter is stated in a Wisconsin case to be that "the erection of a bridge over a non-navigable stream is not unlawful provided a convenient and suitable

passageway up and down is left to the public, and navigation is not materially impeded or endangered." Houfe vs. Town of Fulton, 34 Wis. 616.

The same rule has been stated in the following words: "It (the bridge) must be so constructed as to cause no unnecessary injury to the rights of navigation."

Our own supreme court has said that the parties using a river of this kind are limited to a reasonable use with due regard to the rights and necessities of all others interested. What is a reasonable use depends upon the circumstances of each particular case. You are a better judge, living in a community in which the running of logs is a common occurrence, that any one here not familiar with logging operations would be, and if leaving a 20-foot span in such a condition that it may be removed, does not prevent the reasonable use of this stream by those in charge of the logs, then you are within the bounds of the law.

Your second question is: Can a railroad company build an "off-ditch" and leave the water from it to drain onto a public road and make no provision to carry it away. The answer to this is that a railroad has no right to do any such thing unless the water which it so drains away from its right of way, would naturally go in the direction which it has been left by the railroad to go. A very recent case in our supreme court says:

"Nature has provided certain natural water sheds and waterways, and lands are bought and improvements made with reference to them. Within reasonable limits, land owners are required to anticipate that natural creeks, coulees and waterways may be deepened or straightened in the course of time for the purpose of making permanent ditches for the accommodation of all lands located within that particular basin, but it would be unreasonable to require them to anticipate that any one may change the face of nature and turn waters out of their natural courses across a divide into an entirely different course."

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

May 15, 1909.

611

ROADS AND BRIDGES—Women may not sign road petitions.

Attorney General's Office.

A. H. Bennett, Esq.

Dear Sir: Replying to your letter of the 23d inquiring whether a woman who owns land across which a road is proposed to be laid out may sign the petition for such road, I have to say that she is not authorized by law to do so, and her signature would have no effect.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Dec. 28, 1909.

612

ROADS AND BRIDGES—Petition held good.

Attorney General's Office.

John J. Fahey, Esq., County Attorney.

Dear Sir: Replying to your letter of January 21st, inquiring whether the erroneous statement of the length of a road in the petition for its establishment will vitiate the petition when the termini are accurately stated, I have to say that it would not. The authorities have always sustained the use of a definite point in a road as a description of a point of terminus, and this state has expressly done so in the case of State vs. Rapp, 39 Minn. 65.

You will notice by section 1165, R. L. 1905, that it is not necessary to state in the petition the length of any road but only "the beginning, course and termination of the road." These three facts are accurately stated in the petition of which you write.

I see no reason why the specification of length of road should not be treated as surplusage, and if not, it would be determined an inferior description and therefor controlled by the description which referred to the place of intersection of the new road with the old Chaska and Excelsior road. The order of applying descriptions in this state is, "First, to natural objects; second, to artificial marks, and third, to courses and distances." Yanish vs. Tarbox, 49 Minn. 268.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 23, 1909.

613

ROADS AND BRIDGES—Person otherwise qualified to sign town road petition not disqualified by residence in another town.

Attorney General's Office.

Oliver Olson, Esq.

Dear Sir: Replying to your letter of January 16th, inquiring whether a legal voter of a township in which a road is to be laid out can sign a petition for such road when he only owns land in an adjoining town but within three miles of the road, I have to say that he can sign such petition legally.

Section 1171 of the Revised Laws of Minnesota, says that a petition for altering, vacating or establishing roads in town may be signed by voters of the town owning real estate within three miles of the road proposed to be established, altered or vacated.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 22, 1909.

614

ROADS AND BRIDGES—Road established by user can only be vacated as are other roads.

Attorney General's Office.

Mr. Wm. Montgomery.

Dear Sir: A road that has become a public highway by user under the statute cannot be vacated by the township board in any other manner than by petition, the same as a properly laid out highway is vacated.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 15, 1910.

615

ROADS AND BRIDGES—Township may expend money on highway designated as a state road.

Attorney General's Office.

C. H. MacKenzie, Esq.

Dear Sir: I am of the opinion that it is proper for a town board to expend township road money on a road within such town even though the same has been designated by the county commissioners as a state road.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1910.

616

ROADS AND BRIDGES—Town board must use county money upon road designated by county board.

Attorney General's Office.

Mr. Peter Hermanson.

Dear Sir: Where a county board appropriates money to a township with the designation as to what road such money shall be used upon, then it becomes the bounden duty of the town board to see to it that such money is expended on the road designated, and no others. If, however, such money is appropriated generally to the township for road purposes, and thus goes into the township treasury, it will be competent for the town board to use the money upon any highways which, under the law, it can spend other town road moneys on.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 7, 1910.

617

ROADS AND BRIDGES—Taxation for by township.

Attorney General's Office.

Mr. Andrew H. Randahl.

Dear Sir: You ask, first, for a construction of section 1241, R. L. 1905, which relates to the assessment and payment of road taxes. I have to say that this section has been partially superseded by chapter 350 of the Laws of 1909, which gives to towns the rights to vote money for the repair and construction of roads and bridges, and determine the amount thereof to be assessed as labor tax.

This office has held. since the passage of that law, that the town may levy road taxes up to the limit, but if the town does not do so at the town meeting, the town board can. Before the amount is collected, whether it is levied by the town or by the tow nboard, the credit of the town may be pledged by the board by issuing town orders not exceeding the taxes so set. Consequently the outstanding orders issued by the town board are valid to the extent of the tax assessed. Thes orders are payable according to section 666. This section is so plain that I do not see how it needs any interpretation. Each town order, legally issued, should be presented to the treasurer for payment, and are to be finally paid by him in the order in which they are registered at the time for presentation.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 8, 1910.

618

ROADS AND BRIDGES—Available township money may be used to purchase necessary road tools and machinery.

Attorney General's Office.

Hon. H. B. Vollmer.

Dear Sir: Replying to your letter to the attorney general, under date of July 4th, I have to say that this office has held that town supervisors have power to use the road and bridge fund in the purchase of such tools or machinery as are necessary for the purpose of keeping the roads in good condition. provided there is sufficient money on hand in such fund to pay for the same.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 8, 1910.

619

Attorney General's Office.

ROADS AND BRIDGES—Duty of overseer.

Mr. Alf. J. Olson.

Dear Sir: In reply to your letter of July 19th, inquiring further as to the powers of a road-overseer in the matter of collecting and expending road taxes, I have to say that the statutes are not clear as to the exact powers of the road-overseer. The law seems to be that the road-overseer shall collect, so far as possible, all the road taxes; that he shall expend the amount of such taxes upon the roads of his district under the general direction and under control of the town board; and that he shall return to the board at its meeting on the second Tuesday next preceding the annual town meeting the balance of road taxes remaining in his hands. The law requires the road-overseer to render to the town board at said time a report in writing showing "an itemized account of all moneys paid out by him." This itemized account should show the amounts paid to each person, the dates of payment, the persons to whom were paid the amounts, the quantity of work done, and the place where the work was done. Such a report would enable the town board to find where the money was expended, and to determine whether or note the money had been expended properly.

The delinquent road taxes (that is, the road taxes not collected by the road-overseer) are to be collected by the county and turned over to the town board for them to use according to law.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 22, 1910.

620

ROADS AND BRIDGES—Unpaid road taxes, when collected by county, must be applied in road district where levied.

Attorney General's Office.

Mr. A. T. Campion.

Dear Sir: I wish to call your attention to section 1, of chapter 285, of the Laws of 1907 ,and especially to that part of it which provides that unpaid road taxes, when collected by the county, shall be paid to the town treasurer upon the certificate of the county auditor, and applied to the construction and repair of roads and bridges in the road district in which such tax was levied, upon the order of the town board.

Any other use of this money than that which is provided by said law would be illegal, and the person making such other use would be liable to the penalties prescribed by statute for such act.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 9, 1910.

621

ROADS AND BRIDGES—Dimensions of in certain cases.

Attorney General's Office.

H. Wilson, Chairman.

Dear Sir: In reply to your inquiry of July 4th as to law in regard to birdges, I have to say that bridges must be 14 feet wide, and when as high above the stream as the bridge you mention, must be at least 16 feet wide.

I would say that if you are going to rebuild the bridges of which you speak, you must make them 16 feet wide at least. See section 1195, Revised Laws of Minnesota for 1905.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 6, 1910.

622

ROADS AND BRIDGES—Town's authority to compel railroad to build overhead bridges.

Attorney General's Office.

Hon. Ira B. Mills, Chairman Railroad and Warehouse Commission.

Dear Sir: Answering your letter of recent date, inquiring whether a county board may compel a railroad company to put an overhead crossing on a country road at a point not within the limits of a city or village, but at a place where the travel on the highway is considerable and the crossing exceedingly dangerous, I have to say that it is my opinion that the county board do not have that power.

The relations of a county board to highways are few and restricted. The various towns are given much larger powers and authority over highways than are the counties. I am of the opinion that a town may compel a railroad company to build a necessary bridge over its track as a part of a highway crossing at a dangerous place when there is considerable travel over such highway.

The supreme court of this state held in State vs. Railway Company, 98 Minn. 380, that the requirement that an overhead bridge necessary for the public safety should be built at the expense of the railroad company, was an exercise of the police power of the state, and did not amount to taking property without due process of law.

Upon appeal to the United States supreme court the decision in this case was affirmed. This conclusion was reached upon the strength of the opinion of the United States supreme court in Northern Pacific Railway Company vs. Duluth, 208 U. S. 583.

The unsettled question, therefore, is whether or not a town may compel this action on the part of the railroad company. Such overhead bridge has been determined to be a safety device. In the case of State vs. Shardlow, 43 Minn. 524, it was held that when the supervisors of a town have laid out a highway across a railroad, such railroad must construct all of the necessary means of protecting the crossing except the planking and grading. The later case includes the building of an overhead bridge with such means other than planking and grading; among the safety devices. 98 Minn. 380.

Consequently, I think that the powers given to towns in the matter of laying out, repairing and maintaining highways, by sections 1202 and 1221, R. L. 1905, are sufficient to give to such towns the right to compel a railroad company to put in an overhead bridge where such bridge is necessary for the safety of the public using such crossing.

LYNDON A. SMITH,
Assistant Attorney General.

Mar. 29, 1910.

623

SECRETARY OF STATE—Fees on filing amendment to articles of a manufacturing corporation not increasing capital stock.

Attorney General's Office.

Hon. Julius A. Schmahl, Secretary of State.

Dear Sir: The articles of incorporation of the Perfection Churn Company of Owatonna, Minnesota, were filed in the office of the secretary of state November 15, 1906, and recorded in book N3, of corporations, on page 14.

Said corporation is a manufacturing corporation and at the time of its organization no fee was required to be paid. Section 2873, R. L. 1905.

A certificate of amendment of said original articles of incorporation has been presented for filing and record. By the proposed amendment, as far as here material, article II reads as follows:

"The business of this corporation shall be the manufacturing, **by itself or under its oversight and supervision,** of combined churns * * *."

The underscored language is not found in the original articles.

You inquire whether, as a condition precedent to the filing of the certificate of amendment, a fee is required by law to be paid.

In answer I call your attention to chapter 329, G. L. 1907, which, as far as material, reads as follows:

Section 2873. **Fees**—Before filing any certificate of incorporation, renewal **or amendment increasing the capital stock,** there shall be paid to the state treasurer a fee of fifty dollars for the first fifty thousand dollars, or any fraction thereof, of the capital stock of an original or renewed corporation, and five dollars for each additional ten thousand dollars or fraction thereof."

The amended articles do not constitute an original certificate of incorporation, renewal, or amendment increasing the capital stock. There is nothing in the underscored language in article II, supra, which can require the payment of a filing fee. The power therein specified is, in my opinion, a lawful one and this provision might have been lawfully inserted in the original articles of incorporation. Said provision has no effect in respect of a filing fee or the recordability of said articles, nor do the other provisions of said articles.

In my opinion the amended articles are entitled to filing and record without the payment of the fee provided by chapter 329, supra.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 4, 1909.

624

SHERIFFS—Pay of assistant in charge of insane person.

Attorney General's Office.

G. A. Gatz, Esq., Sheriff.

Dear Sir: In reply to your letter of April 9th, inquiring about the payment of an assistant employed in aiding in the apprehension of an insane person, and taking care of such person pending examination, I have to say, that the law of this state seems to require that all such work, and persons employed in such capacity, shall be at your expense.

The statute says, that your salary shall be

"In lieu of all fees now provided by law for official services rendered by them, or their deputies, for their counties."

The law, taken as a whole, seems to contemplate that any such services as you mention will be performed by either you or by your deputies.

The expenses of yourself and deputies can be recovered from the county, except livery bills, but I do not think that the employment of persons to do such work as is expected of deputies, can be paid out of the county treasury.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 15, 1909.

625

SHERIFFS—Salary of.

Attorney General's Office.

Frank Murray, Esq., County Attorney.

Dear Sir: In reply to your letter of January 16th, inquiring as to whether chapter 245 of the General Laws of 1907, is in force in a county in which forty days, or more, of court were held during the previous year, this office would say that it is not. The test as to whether or not the district court has been in session for forty days, or more, during the year next prior to the year when the salary of the sheriff is to be fixed, is to be determined by the number of days for which the court has ordered a clerk to be paid for attendance upon court.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 19, 1909.

626

SHERIFF—Not entitled to compensation in bastardy proceedings, same is covered by salary.

Attorney General's Office.

Mr. Luke K. Sexton, County Attorney.

Dear Sir: You state that in your county the sheriff receives a salary under the general law, and you ask whether such sheriff is entitled to mileage and fees in serving a warrant in a bastardy proceeding. This question is answered in the negative.

You ask if, when the sheriff drives a few miles outside the county of his residence to the home of the defendant, accused of bastardy, and makes the arrest, is he (the sheriff) entitled to livery hire? Answering, I have to say that he is not entitled to any livery used in his home county, but I am inclined to think that such livery hire as is necessary outside of the confines of the county would be properly charged against the county as expenses.

You ask if, in a bastardy case, the defendant makes a settlement agreeable to the complaining female, and the county commissioners, whether sheriff's fees are properly taxable against the defendant in such a proceeding. This question is answered in the negative. The sheriff is entitled to no fees in such a proceeding, and at the most, he is only entitled to such expenses as are allowed by law in the light of the answer given to your second inquiry.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Note.—Law was changed by chapter 470, G. L. 1909, as to livery hire.

Mar. 2, 1909.

627

SHERIFF—Where sheriff is under a salary, compensation cannot be paid to him or his deputy for taking insane persons to hospitals.

Attorney General's Office.

Mr. Luke K. Sexton, County Attorney.

Dear Sir: A sheriff who is receiving a salary as now provided by law, or his deputy, is not entitled to a per diem for taking insane persons to state hospitals, and your first question is therefore answered in the negative.

As to your second question which has to do with an overseer who is receiving for his services a certain amount per diem from the township, I have to advise that in addition to such per diem, under the circumstances as set forth by you, such overseer is not entitled to compensation of $1.50 per day, or any other sum in addition to the per diem referred to, simply because he is doing, during the hours for which he is supposed to be working as overseer, some additional work in operating a grader.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 29, 1909.

628

SHERIFF—Fee for return of "not found."

Attorney General's Office.

Mr. Fred J. Reid, Sheriff.

Dear Sir: You inquire as to the fee you are entitled to for making a return of "not found" on a summons in which there are fifteen or twenty persons named as defendants.

I am obliged to hold that under section 2697, R. L. 1905, the fee you are entitled to for making such return is $1.00, irrespective of the number of defendants. Said section, in paragraph 18 thereof, reads as follows:

"Making diligent search and inquiry and returning summons when **defendants** cannot be found, $1.00."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 5, 1909.

629

SHERIFF—No compensation for services in insane cases.

Attorney General's Office.

John W. Clover, Esq., County Attorney.

Dear Sir: You ask:

1. If the judge of probate in his discretion appoint a sheriff to perform the duties provided for in section 3860, R. L. 1905, in the conveying of an insane person to a state hospital for the insane, would such sheriff be entitled to a per diem, as provided in chapter 57, G. L. 1905, the sheriff in your county being on a salary?

2. If under chapter 85, G. L. 1905, the judge of probate should issue his orders to the sheriff of his county commanding an alleged insane person to be brought before the said judge, would the sheriff be entitled to any compensation therefor, or would his salary cover this work?

In answer to the above inquiries I have to say that in neither instance would the sheriff be entitled to a per diem. His salary covers the performance of such services.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 1, 1909.

630

SHERIFFS—County may not furnish fuel for residence of, not connected with jail.

Attorney General's Office.

Mr. Luke K. Sexton, County Attorney.

Dear Sir: You make the following inquiry:

"Is a sheriff entitled to fuel from the funds of the county under section 5476, R. L. 1905, where the county furnishes no sheriff's residence; the fuel being used at his own private residence where no prisoners are kept, but where he lives with his family and at a distance of several blocks from the court house, jail and sheriff's office?"

Your inquiry is answered in the negative. Section 5462, R. L. 1905, provides:

"The county board of each county is authorized to construct and maintain, at the expense of its county, a jail for the safe keeping of prisoners, and also, **adjoining and connected therewith,** a residence for the use of the sheriff."

Section 5476, R. L. 1905, so far as here material, provides:

"The county board shall provide * * * fuel for the jail and sheriff's residence."

I am of the opinion that the county should only pay for fuel for a sheriff's residence when such residence is one constructed and maintained by the county adjoining and connected with the jail.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 25, 1910.

631

SHERIFFS—Fees for service of process by direction of governor to be paid by county.

Attorney General's Office.

A. B. Hazen, Esq., Sheriff.

Dear Sir: I have this day advised the county attorney in writing that in my opinion your claim for the service of process of the direction of the governor in connection with the election of commissioners to fill the vacancies occasioned by a removal of other persons from those offices should be paid by the county.

Yours truly,

GEORGE T. SIMPSON,
Attorney General.

May 9, 1910.

632

SHERIFF—Duties of.

Attorney General's Office.

Hon. A. O. Eberhart, Governor.

Sir: Replying to your favor of August 10th you ask what, in my opinion, constitute the powers, duties and obligations of a sheriff in this state, and what penalties a sheriff may be subjected to in case of default therein, I beg to advise that the office of sheriff is one of great antiquity, trust and authority. It has existed in the administration of affairs in England, at least since the days of Alfred the Great. It is said to have had its origin in the inability of the earls who under the king had the government of the respective shires of that nation, to be present in person therein. These earls were petty kings in their several provinces, and upon the delegation of their authority to the sheriff the latter became known as vice-kings, or one who acts in the stead and place of the king. Thus it is to be seen that from the earliest days the sheriffs have been representatives of the **sovereign** as distinguished from the **local** power.

Under the English law, then, the sheriff became and is, I believe, today, the central figure in the body of executive and ministerial officers who, deriving their power from the sovereign act in his stead and under his direction. At common law he was necessarily a person of great wealth because he was personally responsible for any wrong done by him or his deputies. This has now been obviated by the statutory bond. At common law he was likewise a petty magistrate, holding court and issuing process, but the office has been generally shorn of this power in the United States and certainly in this state. But above all, throughout the entire course of common law, the sheriff is known as the **conservator** of the peace of his county, and this power he possesses under the law today.

"As conservator of the peace of his county or bailiwick as the representative of the king or sovereign power of the state for that purpose, he has the care of the county, and though forbidden by Magna Charta to act as justice of the peace in the trial of criminal cases, he exercises all the authority of that office where the public peace was concerned. He may, upon view, without writ or process, commit to prison all persons who break the peace or attempt to break it. * * * He is bound ex-officio to pursue and take all traitors, murderers, felons, and other misdoers and commit them to jail for safe keeping. For these purposes he may command the posse commitatus, or power of the county, and this summons everyone over the age of fifteen years is bound to obey under pain of fine and imprisonment."

South vs. Maryland, 59 U. S. 402.

Such being his powers under the common law, I am of the opinion that under the law of this state, with the exception of such judicial powers, the office of sheriff possesses all the power with which the office was formerly endowed. Although not provided for in the constitution of this state, as in the case in some states, it is to be noted that the statutes of Minnesota with reference to the duties of the sheriff enjoin upon that officer in effect the powers which he possessed at common law.

"The sheriff shall keep and preserve the peace of his county, for which purpose he may call to his aid such persons or power of his county as he deems necessary. He shall also pursue and apprehend all felons, execute all processes, writs, precepts, and orders issued and made by the lawful authority and to him delivered; attend upon the terms of district court, and perform all the duties pertaining to his office."

Section 549, R. L. 1905.

In other words, under the satute the sheriff is not a mere server of process, but in addition to serving the process issued by the various courts of his county, he shall **"also"** "keep and preserve the peace of his county, for which purpose he may call to his aid such persons or power of his county as he deems necessary." Therefore under the statute as well as under the common law he is the conservator of the peace of his county, and an obligation rests upon the sheriff at all times not only to see to it that persons who have committed crime are apprehended and jailed, but that persons who are about to commit crimes are prevented from so doing.

Scougale vs. Sweet, 82 N. W. 1061.

Under the common law an obligation rested upon the king to enforce the law, and as I have pointed out, in the enforcement of the law the sheriff acted as the arm of the sovereign. For neglect to perform his duty the sheriff was personally answerable to the king, and might be removed at will. He was the conservator of the peace and in preserving the same might arrest without process, where the offense was committed in his presence, calling to his aid as many citizens as might be necessary. A parallel situation exists under the law of this state.

"The governor * * * shall take care that the laws be safely executed." * * *

Subdivision 4, article V, constitution.

and—

"A peace officer may, without warrant, arrest a person,

"(1) For a public offense committed or attempted in his presence."

Section 5229, R. L. 1905;

and—

"The governor may remove from office any * * * sheriff, whenever it appears to him by competent evidence that either has been guilty of malfeasance or nonfeasance in the performance of his official duties, first giving him an opportunity to be heard in his defense."

Section 2668, R. L. 1905.

I am strengthened in my belief that the sheriff is a state ministerial officer and holds the same relationship to the governor of this state under the law of this state as he did to the king under the common law, by the further provisions of law in this state that the sheriff shall give bond for the faithful performance of his duties to the state of Minnesota, and not to any county or other subdivision therein.

In other words, under the laws of this state as under the common law where the sheriff was the representative of the king, so is he the arm of the governor in each county in the state, whose duty it is to see that the laws of this state are enforced and for his neglect or failure he may be removed from office by the governor, upon proper cause being shown.

Bearing in mind, then, that as a conservator of the peace it is the duty of the sheriffs of the state not only to apprehend and jail those who have committed crime, and otherwise act as a server of process, but that it is likewise the duty of the sheriff to prevent the violation of law, whether as to the sale of intoxicating liquor or otherwise is of no moment, it follows that for a failure to either serve process that is delivered to him, or failure to preserve the peace is ground in a proper proceeding before you to remove such sheriff from office, in his hands for service. The duty of the sheriff is broader than this, for when complaint is made to him that a law is about to be violated, or when it is brought to his knowledge, or he has reason to believe that the peace of his county is about to be broken, a duty rests upon the sheriff to conserve the peace and enforce the law, and for that purpose he may call to his aid as many citizens of the county as are necessary.

I beg to advise that this view of the matter be given by you to the various sheriffs of this state, and have no doubt but that if the same be done and the powers possessed by them are clearly explained, the sheriffs of this state will see to it that the laws are enforced, and thus bring to an end the alleged lawlessness to which you refer.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 24, 1910.

633

SHERIFF'S FEES—Compensation of chairman of town boards—Police officers' fees.

Attorney General's Office.

Chester McKusick, Esq., County Attorney.

Dear Sir: In reply to your inquiries of last month, I have to say that the opinions of this office called for by your inquiries are as follows:

1st—Is the sheriff entitled to any compensation whatever for service of personal property tax citations?

The answer to this inquiry is that the sheriff is not entitled to compensation for the service of personal property tax citation, following the decision in the case of Miesen vs. Ramsey County, 101 Minn. 516.

2d—May a claim of a chief of police for services rendered in a state case be paid by the county?

To this second inquiry I have to say that this office sees no way of escaping the literal interpretation of section 2701, of R. L. 1905, which reads as follows:

"No police officer of any city shall receive any fee in a suit or prosecution brought in the name of the state, but any county may reimburse him for expenses actually incurred therein."

Yours truly,
LYNDON A. SMITH,

Jan. 3, 1910.

Assistant Attorney General.

634

SHERIFF—Salary of—order of court raising same not operative after expiration of term.

Attorney General's Office.

Mr. A. H. Vernon.

Dear Sir: In response to your request by telephone for a construction of section 4 of chapter 470, G. L. 1909, I have to inform you that I am of the opinion that an order of the district court made on appeal from the action of the county board relative to the salary of a sheriff, is only operative during the remainder of the term of office upon which the sheriff was serving at the time the order was made. In other words, the order of the court is in force until the new sheriff elect (whether it be the former incumbent of the office or a new man) qualifies for the office. The fact that the old sheriff who was in office at the time the order was made is re-elected would, in my judgment, make no difference. Upon the qualification next January of the sheriff who is elected at the November, 1910, election, such sheriff may make application to the county board as in section 4 provided, and if he is aggrieved by the action of such board, then an appeal will lie.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Nov. 1, 1910.

635

SHERIFF—Deputy sheriffs must be newly appointed at beginning of new term of sheriff.

Attorney General's Office.

R. J. Hawley, Esq., Sheriff.

Dear Sir: You state that you have been re-elected sheriff of your county for the ensuing two years and ask whether an appointment made by you of a deputy sheriff two years ago and duly recorded will still hold, or whether it will be necessary for you to make a new appointment of the same deputy at the beginning of the new term.

In reply thereto I have to advise you that it will be necessary for you to make a new appointment, and the person so appointed should qualify as such deputy sheriff in the manner provided by law.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 12, 1909.

636

SHERIFF—Deputy not entitled to pay for transporting insane.

Attorney General's Office.

Mr. Cyril M. Tifft.

Dear Sir: You inquire whether a deputy sheriff who is designated by the court to convey an insane person to a state hospital is entitled to any pay for the time necessarily employed, or whether he is entitled simply to his necessary disbursements for travel, etc. Presuming that in your county the sheriff receives a salary under the provisions of chapter 245, G. L. 1907, I have to inform you that the salary therein provided for is "in lieu of all fees now provided by law for official services rendered by them or **their deputies** for their counties." It has been held that the conveying of insane persons to state hospitals is a service for their counties.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 23, 1909.

637

SHERIFFS—No fees for certain services (March, 1909).

Attorney General's Office.

Mr. Fred J. Reid, Sheriff.

Dear Sir: You inquire whether a sheriff is entitled to any fees for taking children to the Owatonna state school, or taking insane persons to Fergus Falls who have been committed to that institution. Assuming that you are receiving a salary as sheriff of your county your question is answered in the negative. The taking of children to the state school, and the conveying of patients to the insane hospital is a part of the duties of your office, and section 1 of chapter 245, G. L. 1905, in fixing the salary, provides, that—

"The sheriffs thereof shall receive an annual salary and expenses as hereinafter provided in lieu of all **fees** now provided by law for official services rendered by them or their deputies for their counties."

The sheriff or his deputies would be entitled to expenses (except livery hire), but not to fees.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 12, 1909.

Note.—Livery hire now allowed, chapter 470, G. L. 1909.

638

SOCIAL CLUB—Licensing pool tables used in club.

Attorney General's Office.

George S. Smith, Esq., City Attorney.

Dear Sir: You state that an ordinance of the city of Breckenridge provides—

"It shall be unlawful for any person, firm or corporation, within the limits of the city of Breckenridge, to keep for **hire** or profit any billiard or pool table * * *, without first having obtained a license therefor."

You ask if it is unlawful for a bona fide social club duly incorporated to operate pool and billiard tables in its club rooms without first having first obtained a license therefor, the club charging a fee for the use of the tables.

In answer to this question I would say that it is the opinion of this office that such question should be answered in the affirmative. The letting of the tables for hire certainly falls within the language of the ordinance, and we assume that your charter authorizes the enactment of an ordinance applicable to public places as well as such places as are not public. The club rooms of a club operated in the manner that you state the Commercial Club of Breckenridge is operated. is not a public place. Hence if the charter of your city authorizes the enactment of ordinances licensing or regulating the keeping of pool and billiard tables in public places only, then the ordinance is without the delegated power of the council.

In the Minnesota Club case, recently decided by the supreme court, it was contended by the attorneys for the club that the laws of this state prohibiting the sale of intoxicating liquors only applied to that sold in public places. The majority opinion of the court did not discuss this question in such manner as to throw much light on the query propounded by you, but the court did hold that the law which in terms prohibited the sale both in public and private places should not be restricted in its application solely to public places. In that case, as in the one presented by you, the evils of the business, and which presumably it was the object of the statute to regulate, were greater and more obvious in the case of a public place, yet they held that the law applied to both. It is apparent that the evils which might arise out of the operation of a pool room to which young boys and the public generally are admitted would be greater than in the case of the operation of a pool room in a club such as the Commercial Club of your city, and that the necessity of police surveilance and supervision in one case would be greater than in the other. This consideration gives rise to an element which is not present in the case of a statute. That is, a statute need not be reasonable, while an ordinance must be. The only doubt we have had in the matter was whether your ordinance, as applied to the club, was a reasonable police regulation. A majority of the attorney general's staff are of the opinion that it is not so unreasonable as to be inoperative as to such club.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Feb. 23, 1909.

639

STATE FORESTRY BOARD—Appropriation for and expense of.

Attorney General's Office.

C. C. Andrews, Forestry Commissioner, Capitol.

Dear Sir: In answer to your favor of recent date you are advised that in the opinion of this department, the state auditor was justified, under chapter 272, G. L. 1907, in cancelling the unexpended portions of the several annual appropriations of $1,000 for the expenses of the forestry board, provided by section 2508, R. L. 1905.

While, by the provisions of section 2508, supra, the $1,000 appropriation is a part of the forest reserves fund, nevertheless the appropriation is segregable for the purposes of chapter 272, supra, and is not to be treated otherwise than other unexpended appropriations.

You are also advised that in the opinion of this department the limitation of $1,000 for the necessary expenses of the forestry board, provided by section 2508, supra, was not repealed by chapter 87, G. L. 1909.

Chapter 87, supra, transfers the sum of $1,000 appropriated by section 2513, R. L. 1905, for paying the expenses incurred in bringing actions respecting tax title lands to the forest reserves fund provided by section 2508, supra, and further provides that the proper and necessary expenses of the forestry board shall be paid out of said fund.

"Proper and necessary expenses of the forestry board" refers back to "expenses incurred in bringing actions" respecting tax titles.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

June 3, 1909.

640

STATE HIGHWAY COMMISSION—Funds alloted to counties not used.

Attorney General's Office.

Hon. George W. Cooley, Secretary State Highway Commission.

Dear Sir: You state—

"This office is in receipt of inquiries as to the probable future disposition of the allotments heretofore made by the highway commission and allowed to remain in the treasury on account of the counties not having designated state roads, or having so designated them have failed to comply with the requirements of the law by expending thereon under the rules and regulations of the highway commission the required two-thirds of the cost."

You ask—

"Whether such allotments can be legally paid to counties failing to comply with the requirements of chapter 163, laws 1905?"

In answer thereto I would say that it is the opinion of this office that your question should be answered in the negative. The constitutional provisions in force at the time of the enactment of chapter 163, Laws 1905 (constitution, article IX, section 16) require that the state road and bridge fund should be expended only on state roads. To determine the meaning and construction to be placed upon chapter 163, Laws 1905, it must be read in the light of the constitutional provisions in force at the time of its enactment. Section 10 of that act provides that—

"On or before the first Monday of December in each year every county auditor shall certify to said highway commission the amount of money expended for road purposes in his county during that year, and said commission shall forthwith certify to the state auditor the amount due such county from the state road and bridge fund, whereupon said auditor shall draw his warrant upon the state treasurer against said fund in favor of the treasurer of such county; but in no case shall said warrant exceed one-third the amount so expended in said county (on state roads). If any person or board in any county having charge of the construction or improvement of any (state) road shall willfully neglect or refuse to comply with the directions of said highway commission, state engineer or road expert as to the method of construction or improvement of any such road (state road), the amount expended thereon shall be deducted from the amount reported by the auditor of such county."

The matter included in the parenthesis in the above quotation is not found in the law but must be read into the law by construction because of the relation of this statute to the constitutional provisions then in force which required that the fund should be expended only on state roads. While the adoption of the present constitutional provision (amendment of constitution, article IX, section 16, as provided by chapter 212, Laws 1905) removes the restrictions placed upon the expenditure of this fund (limiting the expenditure thereof to state roads only) by the orignal constitutional provision, we are of the opinion that chapter 163, Laws 1905, continues in force and must be given the same meaning

now that it had at the time of its enactment, and hence that the highway commission and the officers of the state cannot, without further authority from the legislature, disburse such funds except as authorized by the provisions of chapter 163, Laws 1905. We are of the opinion, however, that the funds now in the state treasury to the credit of the state road and bridge fund may be allotted or disbursed by the legislature, subject only to the limitations of the present constitutional provisions (chapter 212, Laws 1905).

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

Mar. 27, 1909.

641

STATE LIVE STOCK AND SANITARY BOARD—Animals not paid for, when.

Attorney General's Office.

S. H. Ward, Secretary and Executive Officer Live Stock and Sanitary Board.

Dear Sir: Answering yours of the 17th instant, I beg to advise you that the sanitary board is not authorized to pay for animals which die subsequent to the time they were inspected but prior to the time that they were taken from the possession of the owner for slaughter.

C. LOUIS WEEKS,
Special Attorney.

Mar. 18, 1910.

642

STATE REFORMATORY—Discharge from, of non-resident, insane inmate.

Attorney General's Office.

Hon. S. W. Leavett, Chairman State Board of Control.

Dear Sir: In reply to your letter to this office of January 4th, asking whether there is any authority of law under which the board of control can discharge a non-resident insane inmate from the state reformatory in which he is serving a sentence for grand larceny in the second degree, in order that he may be returned to the state in which he resides, I have to say that there is such authority.

Imprisonment in the state reformatory—

"May be terminated by the board of control at any time after the expiration of the minimum term provided by law for the crime."

Revised Laws of Minnesota 1905, section 5454.

The offense for which this man is serving sentence in the state reformatory is larceny in the second degree. No minimum term is provided by law for this offense and, therefore, it is within your jurisdiction to discharge such an inmate and terminate his imprisonment at any time after he has been received at this institution.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 6, 1908.

643

STATE PRISON—Status, if federal prisoners.

Attorney General's Office.

Mr. Henry Wolfer, Warden State Penitentiary.

Dear Sir: In answer to your oral inquiry, you are advised that every convict committed to the Minnesota state prison at Stillwater by authority of the

United States, shall be received, maintained and disciplined in compliance with his sentene, **in the same manner as other prisoners therein.**

And you are further advised that the warden may enforce obedience and discipline in such manner as may appear necessary. Sections 5437, 5438, R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 6, 1909.

644

STATE PRISON—Supervision of paroled or discharged convicts.

Attorney General's Office.

Hon. P. M. Ringdal, Board of Control.

Dear Sir: This office answers the inquiries you make under date of January 21, 1909, relative to the interpretation of section 5461, R. L. 1905, as follows:

1. The board of control has the authority under the section cited to appoint a person other than the state agent for the purposes stated in said section, and such person may devote all of his time to the duties therein prescribed though it make him in fact an assistant to the state agent.

2. Such person would not be limited as to the time which he could lawfully devote to the work stated. The law contemplates that his territory shall be limited, but the limits would be within your discretion, and might be anything less than the entire state in the judgment of this office.

3. The board of control should compensate such person by the payment of his itemized bills showing every item of work performed, time expended and expense incurred.

The portion of the law which is considered above is older than the law for appointing state agents, and when the law for state agent was enacted the law as to the appointment of persons in parts of the state was not repealed. When the code was adopted the two laws were incorporated in one section, and should be so construed as to give force to both. Practically the state agent is the superior of the persons who are to be appointed in parts of the state for the purpose and work of which he has the general control. This makes such persons naturally and legitimately assistants to the state agent.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 22, 1909.

645

TAXATION—Statute of limitations.

Attorney General's Office.

Frank Goulding, Register of Deeds.

Dear Sir: It appears from your favor of November 15th that in 1893, presumably under chapter 150, Laws 1893, which was a forfeited tax sale, a judgment was rendered and sale held of certain real estate for the taxes of the years 1872 to 1887 inclusive. The lands in question at said sale were bid in for the state.

You inquire whether the lien of the state on account of said taxes is outlawed.

In answer you are advised that prior to chapter 2, Laws 1902 (section 82), outstanding taxes outlawed in six years.

State vs. Sage, 75 Minn. 448.

Prior to chapter 2, supra (section 83), a tax judgment outlawed in ten years.

Kipp vs. Elwell, 65 Minn. 525.
State vs. Bellin, 79 Minn. 131.

You are also advised that insofar as chapter 150, supra, authorized proceedings for the collection of taxes against which the statute of limitations had run, the same is unconstitutional and any judgment for such taxes is void and subject to collateral attack.

Pine County vs. Lambert, 57 Minn. 203.
Kipp vs. Elwell, 65 Minn. 525.
Cool vs. Kelly, 78 Minn. 102.

It is apparent from your statement that outlawed taxes were included in the judgment and forfeited sale in 1893. Such judgment was accordingly void.

It must follow that your query is to be answered in the affirmative.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Nov. 17, 1910

646

TAXATION—ABATEMENT—Power of county board to abate—Rights of applicant on loss by fire.

Attorney General's Office.

L. K. Sexton, Esq., County Attorney.

Dear Sir: It appears from your favor of recent date that certain property in the city of Litchfield was assessed in a certain sum as of date May 1, 1909; that in November 1908, the property in question, being structures upon real estate, had been partially destroyed by fire. An application for an abatement of the assessment in question has been made to the county board. The abatement in question has been refused by the county board of equalization. The interested party claims that he will resist payment of the taxes after the same have been extended upon the tax roll.

You inquire generally as to the legal rights of the applicant.

From your statement of facts I am not fully advised whether the assessment, which bears date May 1, 1909, being the current assessment, is the same as the assessment bearing date May 1, 1908. Generally speaking, real estate is assessed in even numbered years, and the assessment for the odd numbered years is the same. If this be true in the instant case it would appear that the assessment bearing date May 1, 1909, should be less than the assessment which bears date May 1, 1908. In case the assessment bearing date May 1, 1908, is of the full value of the property then clearly the assessment bearing date May 1, 1909, should be abated pro tanto. In case the assessment which bears date May 1, 1909, does not exceed the value of the property, then in my opinion the applicant is entitled to no relief in the premises. If the assessment exceeds the value of the property he is entitled to relief either by petition for an abatement addressed to the proper authorities, or by interposing an answer as against the collection of the taxes under the statute.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 27, 1909.

647

TAXATION—ABATEMENT—If application for abatement is granted, penalty does not attach.

Attorney General's Office.

Samuel Lord, Chairman Minnesota Tax Commission.

Dear Sir: I quote from your letter of recent date as follows:

"Where an application for the reduction of a personal property assessment is made to the county board under the provisions of chapter 96, Laws of 1909,

prior to the first day of March, and the application is not acted upon or the tax paid until on or after said date, does the penalty of ten per cent provided for in section 888, Revised Laws of 1905, attach?"

I think the same analogy obtains as in the case of answers filed in real estate and personal property tax proceedings. Thus, section 918, R. L. 1905, provides that in case the answer is not sustained in real estate tax proceedings, judgment shall be rendered for the taxes, penalty, costs and interest at one per cent per month unless the court otherwise directs. As far as interest is concerned, said section 918 is intended to avoid the rule in State vs. Baldwin, 62 Minn. 525, 526. See Jaggard on Taxation, page 419.

If the answer is sustained the judgment shall discharge such parcel from the taxes charged against it or from such portion of such taxes as to which the defense is sustained, and from all penalties. And sections 889 and 893, R. L. 1905, covering the collection of personal property taxes are to the same effect.

You are accordingly advised that in case the application for an abatement is not granted, the penalty provided by law attaches. In case the application is granted, the penalty in question does not attach.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 14, 1910.

648

TAXATION—DELINQUENT—Printers' fees for publishing delinquent tax list.

Attorney General's Office.

Mr. John W. Clover, County Attorney.

Dear Sir: I think the holding of the public examiner is correct, relative to the non-necessity of the repeating of the headings in the publication of a delinquent tax list for each township or village; and also that he is correct in taking the view that it is sufficient if such headings are placed at the beginning of the list, and at the top of each column. For the designation of each township, village, etc., the section, township, range, lot and block will, as the case may be, have to be changed to be a correct description of the location of such township or village. You will understand that it is not necessary to repeat "name of owner," "description," "subdivision of section," "section," "years for which taxes become delinquent," "total tax and penalty," after each designation of town, village or addition, but that it is sufficient to have these designations at the commencement of the list, and at the head of each column. There must, however, after the designation of each township, village or addition, be the designation or abbreviation thereof, showing the township, range, etc.

Although the foregoing is a correct statement of what is necessary, I must call your attention to the fact that the list as published must be an exact copy of the one furnished by the auditor. In other words, whatever the auditor's list shows in the way of designation, etc., must be published. See section 909, R. L. 1905, and authorities cited.

As to what the printer will be entitled to recover for publication, I have to say that he cannot receive more than fifteen cents per description for printing the list and notice. In regard to the fees for publishing the clerk of court's notice preceding the list, and the auditor's certificate at the end thereof, I am of the opinion that the printer is entitled to be paid therefor at folio rates. The headings are a part of the description, and should not be paid for separately at folio rates. The heading preceding the clerk of court's notice must be published without charge. By this I mean the heading, "Delinquent Tax List of Isanti County, Minnesota." Section 907, R. L. 1905, in the matter of holding that folio charges are permissible, I am following an opinion rendered by Attorney General W. B. Douglas, of date July 10, 1900.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 10, 1909.

649

TAXATION—DELINQUENT—Entry of judgment for delinquent taxes.

Attorney General's Office.

Clayton J. Dodge, Esq., County Attorney.

Dear Sir: I would say that when you make up the list of delinquent taxes for the clerk you should insert in that list the omitted delinquent taxes with interest thereon from the second Monday of the May after which they first became delinquent up to the date when entry of judgment will be made if no answer is interposed. This seems to be the most correct rule as the tax will be merged in the judgment and there is no provision for interest on tax judgments from the time of rendering the judgment until the day of sale under the judgment.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 21, 1909.

650

TAXATION—DELINQUENT—Delinquent tax list—judgment.

Attorney General's Office.

Henry J. Limperich, Esq., Clerk of District Court.

Dear Sir: From your favor of recent date it appears that the annual delinquent tax list in and for Stearns county is published upon February 16th, the time of the first insertion, and February 23d, the time of the second insertion.

You inquire upon what date you shall enter the real estate tax judgment.

In answer attention is called to section 909, R. L. 1905, which provides that the delinquent tax list shall be published once in each week for two successive weeks.

"The statutory week must commence upon the day of the first publication." Raunn vs. Leach, 53 Minn. 87.

The first week's publication in the instant case is completed on the expiration of February 22d. The second week's publication begins on February 23d and is completed on the expiration of March 1st. See subdivision 14, section 5514, R. L. 1905.

Attention is also called to section 906, R. L. 1905, which provides that an answer is required to be filed on or before the 20th day after the publication. The first day after the publication is March 2d; the 20th day is March 22d, which is the last day for answering.

Attention is also called to section 916 which provides that the clerk shall enter judgment on the expiration of twenty days from the publication of the list.

Judgment is to be entered in your case accordingly on March 23d.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 18, 1910.

651

TAX SALE—DELINQUENT—Delinquent taxes—Limitation.

Attorney General's Office.

M. G. Fossum, County Auditor.

Dear Sir: In answer to your favor of recent date, you are advised, stating a concrete case, that the holder of a tax certificate covering a sale in May, 1904, may properly pay the subsequent delinquent taxes accruing up to six

years from the date of the sale, that is, May, 1910, within which time he must have served the notice of expiration of redemption pursuant to chapter 271, G. L. 1905.

State ex rel vs. Krahmer, 105 Minn. 422.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 18, 1910.

652

TAXATION—DELINQUENT—Publication of delinquent list—errors therein—duty of county attorney and auditor.

Attorney General's Office.

P. F. Schroeder, Esq., County Attorney.

Dear Sir: From your favors of recent date it appears that the annual delinquent tax list for the year 1908, of Becker county, Minnesota, was published in the Frazee Free Press of date February 18th and February 25th, 1910. It appears that when the published list of delinquent taxes was carried from one column of the newspaper to the top of the next column, the headings showing the particular township and range or village, were not carried over to such succeeding column. It also appears that township 141, range 40, was by mistake published as township 141, range 41. The attention of the publisher was never called to the fact that the headings in question must be carried from one column to another and inserted at the beginning of such column.

The mistake as to the town and range above set forth was caused by the printer, but thereafter the attention of the printer was not called to the same by the county auditor or any one else. The printer, pursuant to section 910, R. L. 1905, had furnished to the county auditor a copy of the newspaper bearing date February 18th containing the first publication of the said list. Otherwise the printer has not complied with section 910, supra. It is claimed that the board of county commissioners, on March 26, 1910, allowed the bill of the printer for the publication of the tax list pursuant to the contract of the printer with the county. No appeal has been taken from the allowance of the claim in question. The publisher has asked you for a certificate pursuant to section 912, R. L. 1905, that the publication of the delinquent tax list in question was made according to law. You inquire whether it is your duty to give the certificate in question.

In answer you are advised that the failure to carry over the headings and insert the same at the top of the succeeding column is fatal to a valid publication. Olivier vs. Gurney, 43 Minn. 69.

You are also advised that the mistake as to the range, as above set forth, is fatal to a valid judgment, tax certificate, and tax title based thereon.

You are accordingly advised that you may properly give your certificate pursuant to section 912, supra, except as to the portions of the delinquent tax list in question covered by the failure to carry over the headings at the top of the columns, and except as to the descriptions following township 141, range 41, as published. I suggest that you give the certificate in this form and file it with the county auditor

You are however advised, that in the opinion of this department, it is the duty of the county auditor to draw his warrant pursuant to the allowance of the claim of the publisher of date March 26th, if such allowance was made. No appeal has been taken from such allowance and the claimant is entitled to his warrant. State ex rel vs. Peter, 107 Minn. 460.

In this connection I might state that section 912, supra, contemplates that the claim of the publisher in question is not required to be filed with the board of county commissioners, but that on presentation of the certificate provided for in said section, the county auditor is authorized to draw his warrant. The claim-

ant in question, however, saw fit to file his claim with the county board, they have allowed the bill, no appeal has been taken therefrom and the claimant is entitled to his money.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 19, 1910.

653

TAXATION—DELINQUENT—Publisher of delinquent tax list entitled to pay at folio rates for notice and affidavit.

Attorney General's Office.

F. A. Alexander, Esq., County Attorney.

Dear Sir: You inquire as to whether the newspaper publishing the delinquent tax list may be paid for publishing the clerk of court's notice at the beginning of the list and the auditor's affidavit at the end of such list, at folio rates, or whether the bid and contract at a specified sum per description covers the publication of such notice and affidavit.

You are advised that the publisher is entitled to payment at folio rates for such notice and affidavit. You will understand that the publisher is not entitled to compensation for publishing the display head preceding the notice in question and that no compensation at folio rates is to be made for the headings which precede the various columns, such as "name of owner, description, township, range, etc."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 2, 1910.

654

TAXATION—EXEMPTIONS—Exemption of property of district or county fair association.

Attorney General's Office.

Hon. Samuel Lord, Chairman Minnesota Tax Commission.

Dear Sir: Your favor of the 12th instant received in which you ask for our opinion as to whether subdivision 10 of section 795, R. L. 1905, is in conformity with the constitution of this state. That subdivision reads as follows:

"All property belonging to, and used exclusively for the purposes of any state, district or county agricultural society or industrial exposition under the laws of this state"

shall be exempt from taxation.

The constitution provides that public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property and houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation.

It is clear that the property owned by county agricultural societies does not fall within any of the classe of property above enumerated, unless it can be said that the same is public property used exclusively for a public purpose.

The enumeration in the constitution of the classes of property which shall be exempt is a restriction on the power of the legislature to exempt property other than that so enumerated in the constitution. Ledue vs. City of Hastings, 39 Minn. 110, 12 Am. & Eng. Encys. of Law (2d ed.) p. 279.

Section 3097, R. L. 1905, provides for the organization of county agricultural societies. It seems clear that the corporations organized under the provisions of that and following sections is not a **public corporation.** They are organized

by the voluntary action of the incorporators, they may in incorporating provide for a capital stock and the possession by the corporation of all the incidents of private ownership. We think it clear that such a corporation is a private and not a public corporation. Lane vs. Minnesota State Agricultural Society, 62 Minn. 175; Dunn vs. Brown County Agricultural Society, 46 Ohio St. 93, 15 Am. St. R. 556.

That property owned by a private corporation cannot in any sense be termed "public property" seems too clear to require any argument. The constitution exempts "public property used exclusively for any public purpose." The legislature cannot lawfully extend the exemption granted by the constitution so as to include private property through the same be used for a public purpose. Statutes granting exemption fro mtaxation are strictly construed and doubts are resolved in favor of non-exemption. State vs. Lakewood Cemetery, 93 Minn. 194; Ramsey County vs. College, 51 Minn. 443. The same rule would apply in the construction of constitutional provisions.

We are therefore of the opinion that property owned by county agricultural societies, organized under the provisions of sections 3097-3101, R. L. 1905, or similar statutory provisions, are not lawfully entitled to an exemption of their property from taxation.

To preclude, however, any possibility of misunderstanding as to the scope of this opinion, I wish to call your attention to the fact that under the provisions of subdivisions 8 and 9 of section 434, R. L. 1905, counties are authorized to purchase land for the purpose of holding their agricultural fairs and exhibitions, to improve the same and erect structures thereon, and apparently are also given implied authority to hold thereon such agricultural fairs and exhibitions. We are of the opinion that lands and property owned by a county for such purpose is public property used exclusively for a public purpose.

It has been held that the holding of a state fair is a function of the state government. "Institutions of this character have been recognized as an arm or agency of the state, organized for the promotion of the public interest." Berman vs. State Agricultural Society, 93 Minn. 125.

It seems clear that property when being used for the performance of a state or governmental function, is being used for a public purpose. The fact that the property was being used by a county rather than by the state would make no difference with reference to the character of the purpose for which it was being used.

C. LOUIS WEEKS,
Special Attorney.

Oct. 21, 1909.

655

TAXATION—EXEMPTION—Soldier's widow not exempt from.

Attorney General's Office.

Mrs. J. Bemis.

Dear Madam: There is no law in this state that exempts a soldier's widow from the payment of taxes.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1909.

656

TAXATION—EXEMPTIONS—Exemptions of National Guard.

Attorney General's Office.

Hon. O. M. Hall, Minnesota Tax Commission.

Dear Sir: In your favor of February 16th you call attention to subdivision 12 of section 795, R. L. 1905, which provides for the exemption from taxation of "the uniform, arms and equipment" of members of the National Guard, and in addition thereto "other personal property of each member of the National Guard to an amount not exceeding $200 in value." You ask whether the above statute is constitutional.

Replying thereto I beg to advise that in my opinion your inquiry is to be answered in the affirmative insofar as the same exempts from taxation such "uniform, arms and equipments," but is to be answered in the negative as to the provision therein exempting "personal property of each member of the National Guard to an amount not exceeding $200 in value."

Section 1 of article IX of the constitution of this state, so far as here material, provides as follows:

"The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds * * * and public property used exclusively for any public purpose shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value $200 for each household, individual or head of a family, as the legislature may determine."

In my opinion the uniform, arms and equipment of members of the National Guard are public property used exclusively for a public purpose, and are therefore exempt. However, when the legislature attempts to grant to each member of the National Guard an exemption from taxation upon his personal property amount to $200, the legislature exceeds the power conferred by the constitution, because such exemption may only apply to "each household, individual or head of a family,' 'and may not therefor apply to members of the National Guard as such. However, each member of the National Guard is entitled as an individual to the exemption of $100 otherwise provided by statute.

GEORGE T. SIMPSON,
Attorney General.

Feb. 24, 1910.

657

TAXATION—EXEMPTION—Horses used exclusively for breeding purposes cannot by law be exempted from taxation.

Attorney General's Office.

Hon. Iver J. Lee.

Dear Sir: You inquire as to whether it will be constitutional to exempt from taxation horses that are used exclusively for breeding purposes.

Replying, I have to inform you that your question must be answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 29, 1909.

658

TAXATION—EXEMPTION—Extent of exemption of municipal gravel pits.

Attorney General's Office.

Wm M. Erickson, Esq., County Attorney.

Dear Sir: In reply to your letter of September 27th inquiring whether a gravel pit owned by a city, but located outside the city limits is subject to taxation, I have to say that it is my opinion that the gravel pit itself is not subject to taxation unless the city sells gravel from it. If the city has bought a larger tract of land than is used for the purposes of a gravel pit, the excess would probably be taxable. The exemption from taxation extends only to properly used exclusively for a public purpose, and the city's use of the gravel pit from this must be confined to such purposes or the exemption is waived. See Sommerville vs. Waltham, 170 Mass. 160.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 29, 1909.

659

TAXATION—EXEMPTIONS—Parsonage is not exempt from taxation.

Attorney General's Office.

Dr. Geo. W. Morris.

Dear Sir: Under the constitution and laws of this state as the same now exist, a parsonage belonging to a church organization, though it be occupied free of rent by the pastor, is not exempt from taxation.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 29, 1909.

660

TAXATION—EXEMPTIONS—Use of land determines its exemption.

Attorney General's Office.

Hon. Samuel Lord, Chairman, Minnesota Tax Commission.

Dear Sir: In answer to your favor of recent date you are advised that, in my opinion, a lot owned in fee by Duluth Camp No. 2341, Modern Woodmen of America, but leased as church property for religious worship is exempt from taxation while so used, under section 1 of article IX of the state constitution.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 29, 1909.

661

TAXATION—EXEMPTIONS—Hospital not exempt from taxation under conditions referred to.

Attorney General's Office.

Mr. Luke K. Sexton, County Attorney.

Dear Sir: In your favor of recent date, you call to the attention of this department the articles of incorporation of the Litchfield Hospital Association, which provides, among other things, that:

"The general purposes of said corporation shall be the maintaining of a public hospital for the treatment of medical and surgical diseases."

It also appears from your letter that said hospital

"Admits patients of all classes for medical and surgical care and treatment for a weekly consideration, graduated according to the style of quarters desired and procured by the patients."

It also appears that:

"It is their aim to care for patients at the hospital whether the patients have any funds with which to pay for their care or treatment or not; however, as heretofore stated, those who are able to pay will be expected to do so. * * *"

It also appears that:

"It is problematical whether the hospital * * * will ever declare a dividend."

You inquire whether the property of the hospital association in question, necessarily used for hospital purposes, is exempt from taxation.

The query involves the question whether the hospital association is an "institution of purely public charity," within the meaning of section 1, article 9, of the state constitution.

In the case of County of Hennepin vs. Brotherhood of the Church of Gethsemane, 27 Minn. 460, Judge Berry defined the word "charity," and then said:

"If, in addition to this, the institution is one the benefits of which the public generally are entitled to enjoy, it is then a purely public charity—public because, although not owned by the public, its uses and objects are public; purely public because its uses and objects are wholly public and for the benefit of the public generally, and in no sense private as being limited to particular individuals. A thing may be said to be public when owned by the public, and also when its uses are public."

This definition was followed in 1903, in the case of State vs. Bishop Seabury Mission, 90 Minn. 92, wherein there is this statement:

"'A purely charitable institution,' within the meaning of this constitutional provision, may be said to be an institution organized for the purpose of rendering aid, comfort and assistance to the indigent and defective, open to the public generally, conducted without a view of profit, and supported and maintained by benevolent contributions."

In my opinion the hospital association in question is not an institution of purely public charity, and therefore is not exempt from taxation. Exemption from taxation, of course, is strictly construed.

In this connection I have to say, that this opinion is not final, and the interested parties may apply to the tax commission for relief, and, of course, upon answer in tax proceedings may contest the taxability of the property in question.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 9, 1910.

662

TAXATION—EXEMPTIONS—Parsonage is not exempt from taxation.

Attorney General's Office.

Mr. James Reagan, Assessor.

Dear Sir: You are advised that a parsonage belonging to a church organization is not exempt from taxation. The statutes of this state provide, among other things, that there shall be exempt from taxation "all houses used exclusively for public worship, and the lot or parts of lots upon which such houses are erected."

Our courts have held that "a parsonage or rectory belonging to a church, although used in part for religious services, is not exempt from taxation."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 4, 1910.

663

TAXATION—EQUALIZATION—County board of equalization may equalize assessments in cities having home rule charters.

Attorney General's Office.

Hon. Samuel Lord, State Tax Commission.

Dear Sir: You state, orally, that under the provisions of section 36 of article 4 of the constitution of this state authorizing cities and villages to adopt home rule charters, certain cities and villages therein adopting the same have provided for local boards of equalization, and that the return of such board be made at a time other than that prescribed by the general law, and too late to be submitted to the county board of equalization for review; you also call attention to the provisions contained in the charters of certain cities and villages organized under special law, and to chapter 248, laws 1907, relating to boroughs —all to the same effect. You further ask me to note the provisions of sections

207 and 208 of chapter 8, Laws 1895, creating a board of equalization in cities that may organize thereunder, and providing, so far as here material, that such board shall meet on the second Monday of July in each year; finally you ask me to note the provisions of sections 847 and 848, R. L. 1905, establishing a general rule to the effect that boards of equalization in towns, cities and villages shall meet on the fourth Monday of June. In relation to this conflict which thus appears to exist, you ask what effect, if any, is to be given to the provisions of such special, home rule and borough charters, and to the provisions of said chapter 8 where the same conflict with the provisions of the revised laws fixing the time of the meeting of such boards.

Replying thereto, I am of the opinion that the provisions of the charters of any such city or village contained in a special act of the legislature, unrepealed, constitute the rule to be followed therein, that the provisions of such so-called "home rule charters" where the same conflict with the general law, are unconstitutional, in that they are not "in harmony with and subject to the constitution and laws" of this state. Section 36, article 4, constitution. Grant vs. Berrisford, 94 Minn. 45, is not in point. Opinion No. 25 to George W. Beise, city attorney, Morris, Minnesota, in the published opinions of this office for the month of June, 1910, is accordingly reversed—that the provisions of chapter 248, Laws 1907, constitute the law as to boroughs, and that insofar as the provisions of chapter 8, Laws 1895, conflict with the provisions of sections 847 and 848, R. L. 1905, as above indicated, the latter control, being subsequent general legislation upon the same subject. The power of taxation is a sovereign power, and unless a contrary intention clearly appears, it is to be presumed that the legislature intended, particularly where the income of the state is involved, that the same rule should apply with equal force to all parts of the state.

Evans vs. Redwood Falls, 103 Minn. 314.
Nicol vs. St. Paul, 80 Minn. 415.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Aug. 11, 1910.

664

TAXATION—GRAIN TAX—Grain in elevators, double taxation.

Attorney General's Office.

Hon. O. M. Hall, Tax Commissioner.

Dear Sir: From your favor of recent date it appears that a certain amount of wheat has become subject to the provisons of chapter 466, G. L. 1909, entitled "An act defining the method of taxation of grain elevators and warehouses, and grain therein."

The grain in question has passed through a terminal elevator in the city of Minneapolis. The grain in question, after becoming subject to the provisions of chapter 466, supra, was shipped to the flour mills at Waseca, and was in the warehouse of the flour mills at Waseca on May 1, 1910.

You inquire whether the grain in question is subject to assessment at Waseca.

Your query is answered in the negative.

The grain in question has paid the bushel tax, so-called, under and pursuant to the provisions of chapter 466, supra, and this is "in lieu of all other taxes upon such grain."

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 28, 1910.

665

TAXATION—Grain tax.

Attorney General's Office.

Chas. H. Shaver, Esq.

Dear Sir: It appears from your favor of recent date that you are engaged in the business of buying corn and oats, some of which you grind into feed and sell at retail, and some of which you resell in carload lots; and that you run an elevator in connection with your business.

You inquire as to the manner of your tax assessment.

In my opinion your feed business so-called, is taxable upon general lists; that is, you should make a return as in the case of personal property taxes generally.

In my opinion the oats and corn and other small grain which are received and shipped out from your elevator are taxable under and pursuant to provisions of chapter 466, G. L. 1909.

GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 24, 1910.

666

TAXATION—GRAIN TAX—Grain in elevators, miscellaneous.

Attorney General's Office.

Hon. Samuel Lord, Chairman Minnesota Tax Commission.

Dear Sir: This office is in receipt of your favor of recent date, in which you ask the construction of this department of the provisions of chapter 466, G. L. 1909, entitled "An act defining the method of taxation of grain elevators and warehouses, and grain therein."

I quote from your letter as follows:

"The case can best be stated by following the progress of grain from the field where it is produced to the parties by whom it is ultimately consumed, viz.:

"1st—It is delivered by the producer to the country or local elevator 'A.'

"2d—By 'A' it is shipped to the terminal elevator 'B.'

3d—By 'B' it is transferred to the elevator or receiving house 'C' used in connection with the mill 'D.'

"4th—By 'D' it is ground and shipped to the consumers' markets.

The questions are asked, viz.:

"1st—Is the grain thus handled subject to taxation under section 2 of said chapter 466 in each of these elevators or warehouses? If it is so taxable in 'A' is it also taxable in 'B,' in 'C,' and also in 'D'?

"2d—If it is taxed in 'A,' is not such taxation "in lieu of all other taxes on such grain as provided by section 2? And can the same grain be again taxed in 'B,' 'C' or 'D' in the same year?

"In other words, does not the fact that it is taxed in one elevator relieve such grain from taxation in any other elevator, warehouse, mill, etc.?

"3d—Does the fact that 'C' is connected or used in connection with the mill 'D,' being in fact a receiving house for the mill, relieve all such grain therein from this grain tax?

"4th—If such grain is manufactured into flour by the mill 'D' and is on its hands on May 1st, should it be assessed for taxation as other personal property is assessed, or does the fact that it has already paid the 'grain tax' relieve it from taxation as flour?"

In answer, I call your attention to section 1 of the act, which reads as follows:

"Section 1. Every person, firm or corporation operating a grain elevator or warehouse in this state shall at the time by law provided for the listing of personal property for taxation furnish to the assessor of the assessment district wherein such elevator or warehouse is situate a full and true list or statement

of all grain, specifying the respective amounts and different kinds thereof received in or handled by such elevator or warehouse for and during the year immediately preceding March 1st of such year in which such list or statement is so to be made."

I also call your attention to section 2 of the act which reads as follows:

"Section 2. Every such person, firm or corporation shall in lieu of all other taxes upon such grain, pay thereon one-fourth of one mill per bushel upon all wheat and flax and one-eighth of one mill per bushel upon all other grain received in or handled by such elevator or warehouse during such preceding year."

The act purports to be and is a form of taxation of grain in elevators and warehouses.

As taxing a class of property, it is analogous to chapter 328, G. L. 1907, known as the mortgage registry tax act, which has been held valid in Mutual Benefit Life Insurance Co. against County of Martin, 104 Minn. 179.

A fair construction of the act leads to the inference that it is a tax upon grain, measured by the annual business of the person, firm or corporation, operating the elevator or warehouse.

The fact that the same grain may go through more than one warehouse during the same year, is merely a circumstance. Such condition was, in my opinion, in contemplation of the law-making body. In the aggregate, it was in the contemplation of the legislature, that a fair tax upon grain would be realized by measuring the same upon the business of the elevators and warehouses coming within the purview of the act.

The legal effect of section 2 is that the "elevator tax," so called, is in lieu of all other taxes upon such grain, for example, the usual ad valorem tax.

Section 2 does not mean that grain which has gone through elevator "A" is relieved from the elevator tax to be paid by the operator of elevator "B."

In answer to your first query, you are accordingly advised that the person, firm or corporation operating elevators "A" and "B" severally pay the tax provided for by chapter 466, supra, covering the annual business in said several elevators.

In view of the above answer to query number 1, an answer to query number 2 becomes unnecessary.

In answer to your third query, you are advised that in my opinion a receiving house for a mill, wherin grain is stored preparatory to being ground into flour, is not an elevator or warehouse within the purview of the act in question, and, accordingly, grain passing through the same is not subject to the tax provided for by this act. If grain therein has in fact become subject to the tax provided for by this act, it is exempt from the general ad valorem tax, otherwise not.

On answer to your fourth query, it follows that if the grain is manufactured into flour by mill "D," and is on its hands on May 1st, the tax upon the flour in specie, as so much personal property.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 7, 1909.

667

TAXATION—GRAIN TAX—Grain in elevators, how tax is measured.

Attorney General's Office.

A. L. Brice, Esq.

Dear Sir: This department is in receipt of your favor of June 23d in which you inquire generally the construction of this department placed upon chapter 466, G. L. 1909, providing for the method of taxation of grain in elevators.

This department has held generally that said statute provides for a tax upon grain in elevators covering a current year, which tax is measured upon the number of bushels received and handled by the elevator for the year pre-

ceding March 1st of the particular year when the statement is furnished for taxation.

In short, the personal property tax upon grain in elevators for the year 1909 is measured by the number of bushels handled in said elevator from March 1, 1908, to March 1, 1909.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 25, 1909.

668

TAXATION—GROSS EARNINGS—Interest accrues on delinquent telephone taxes.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: It appears that an examination has been made into the unreported gross earnings of the Northwestern Telephone Exchange Company and that by reason thereof taxes are due by said company to the state of Minnesota covering a number of years. You inquire whether the said taxes bear interest.

In answer, I call your attention to chapter 82, of the General Laws of 1907, which provides that whenever any sum becomes due to the state as a tax and remains unpaid for a period of thirty days, it draws interest at the rate of one per cent a month from the expiration of said period of thirty days. Said chapter also provides that any and all sums now due the state as taxes and remaining unpaid for thirty days after the passage of said chapter shall draw interest accordingly. Said chapter was approved and became a law April 3, 1907. Interest upon unpaid taxes at the time of the passage of said chapter accordingly accrues as of date May 3, 1907.

You are accordingly advised that interest shall be computed upon the unpaid taxes of said company covering the year 1906 and prior years, from and after May 3, 1907, at the rate of one per cent a month until paid.

Under and pursuant to section 1035, R. L. 1905, the taxes of telephone companies are due and payable on January 1st of each current year. Interest accrues thirty days thereafter under chapter 82, supra. It accordingly follows that interest shall be computed upon the unpaid taxes of said company for the year 1907 from February 1, 1908; and for the year 1908 interest shall be computed upon the taxes due from February 1, 1909.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 9, 1909.

669

TAXATION—GROSS EARNINGS—Interstate earnings not pro rated to Minnesota in taxing express companies.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: This office is in receipt of your favor of March 31st, in which you inquire generally whether the rule of taxation as laid down by our supreme court in State vs. Northwestern Telephone Exchange Company, decided March 26, 1909, to the effect that the per centum of gross earnings tax upon the earnings of telephone companies shall be based upon all intra-state earnings, and Minnesota's proportion upon interstate earnings figured upon a mileage basis, analogous to the rule against railroad companies, should obtain in taxing express companies.

A comparison of the statutes taxing telephone companies (chapter 314, G. L. 1897, and section 1035, R. L. 1905) with the statutes taxing express companies

(section 1012, et seq., R. L. 1905) shows a clear distinction in the premises.

As was contended by the state, and as determined by the supreme court in the above entitled case, clearly the tax upon telephone companies is a proportionate earnings tax and covers all earnings on intra-state messages and Minnesota's proportion of interstate messages.

The tax upon express companies is levied upon all the property of the express company within the state, as in the case of the preporty of telephone companies, and the tax is computed, not as in the case of telephone companies, but as is pointed out in the statutes taxing express companies.

A reference to subdivision 6 of section 1013, R. L. 1905, makes it apparent that—

"The entire receipts * * * for business done **within this state** * * * *"

is in contemplation. What receipts within the state mean is farther elucidated by reference to section 1019, R. L. 1905, which, so far as material, reads as follows:

"On or before March 15th, annually, the auditor shall assess upon each company a tax of six per cent upon its gross receipts for business done between **points within this** state for the preceding calendar year * * *."

It follows that the tax in the case of express companies is to be computed as pointed out in the statute, upon the receipts derived from business done between points within the state of Minnesota, and that Minnesota's proportion, so-called, of receipts arising out of interstate business is not to be taken into consideration in the taxation of express companies.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 6, 1909.

670

TAXATION—GROSS EARNINGS—Statute of limitations respecting railroad gross earnings taxes.

Attorney General's Office.

Alfred H. Bright, General Counsel.

Dear Sir: This department is in receipt of your letter of July 12th covering generally the question of the statute of limitations as to the taxability of unreported items of gross earnings of railway companies. You refer generally to the contention of the public examiner in the premises.

In answer, let me call your attention to chapter 2 of the Laws of 1902. This is an act relating to the taxation of real estate. Section 82 of said act provides generally that the right to assess omitted property under said act shall not be barred by the lapse of time. However, the title of said act limits the operation of the act to real estate taxes. A serious question accordingly is raised, whether in any event section 82 can possibly apply as to omitted gross earnings taxes.

Section 82, as far as the language thereof is concerned, is carried into the Revised Code of 1905 and appears as section 980. Section 980, however, in the code, is not subject to any constitutional limitation respecting title. It is part and parcel of the chapter relating to taxes. The revised code went into effect March 1, 1906, and accordingly section 980 saved from becoming outlawed the taxes of 1899.

It accordingly follows, in any event, that omitted taxes for the year 1899 and subsequent years are not outlawed.

State vs. U. S. Express Co., District Court, Ramsey County, filed Oct. 3, 1910.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 17, 1909.

671

TAXATION—GROSS EARNINGS—Dining and buffet car gross receipts taxable less cost of supplies.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: You inquire orally upon what basis the gross earnings tax shall be computed against railroad companies on account of dining and buffet car earnings. The facts are peculiar in this, that before earnings or receipts of dining and buffet cars operated by railroad companies accrue, certain expenditures must be made on account of the supplies used upon said dining and buffet cars.

The situation is analagous to the facts which appear in the following case: People vs. Morgan, 99 N. Y. Sup. 711, was certiorari by the people on relation of the Brooklyn Union Gas Company against the comptroller of the state of New York requiring respondent to certify and return to the office of the clerk of Albany county all his proceedings relative to a gross earnings tax imposed on relator for the year ending October 31, 1898, as required by tax laws of New York. The opinion of the court is as follows:

"The relator is required by section 186 of the tax law (Laws 1896, p. 858, c. 908) to 'pay to the state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state an annual tax which shall be five-tenths of one per centum upon its gross earnings from all sources within this state.' The gross receipts of the relator for the year ending October 31, 1898, were $3,805,626.15, and on this amount the comptroller fixed the tax under the statute above referred to at five-tenths of one per cent, amounting to $19,028.13. The relator is engaged in the business of manufacturing and selling gas. **For the production of such gas it purchases from time to time raw material consisting principally of coal and oil which is transformed into the manufactured product. It appeared before the comptroller that at all times during the year ending October 31, 1898, a portion of the capital of the company was invested in such raw material, which from time to time was converted into the manufactured product and came back to the relator as cash, being part of the price of gas sold to the consumers.** During the year in question the relator thus expended for raw material $947,546.28, which material was made into gas and sold to the consumers and is included in the gross receipts of the company of $3,805,626.15 as above stated.

"The comptroller has thus fixed the tax not on the 'gross earnings' of the relator, as required by the statute, but on its gross receipts. Capital of a corporation which must first be invested before it begins to earn anything cannot be said to be a part of the earnings of such corporation merely because it is turned into cash, and thus in one sense becomes a receipt of the corporation. Earnings do not include capital, but are the productions or outgrowth of capital. * * * * * * **In fixing the 'gross earnings' of the relator there should therefore have been deducted from the gross receipts the cost of the raw material, which amounted to the said sum of $947,546.28."**

You are accordingly advised to first deduct from the gross receipts of the dining and buffet cars the cost of the supplies and to calculate four per cent upon the balance remaining, which constitutes the gross earnings of such railroad companies on account of said dining and buffet cars.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 23, 1909.

672

TAXATION—GROSS EARNINGS—Penalty, not interest, obtains as against unpaid gross earnings taxes of freight line companies.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: This office is in receipt of your favor of August 16th, in which you call attention to chapter 82, G. L. 1907, relating to the subject of interest

upon delinquent taxes and inquire whether freight line companies which are taxed pursuant to the provisions of chapter 250, G. L. 1907, as amended by chapter 504, G. L. 1909, are subject to the interest charge provided by chapter 82, supra.

Your query is answered in the negative. Chapter 82, supra, provides by section 3 thereof that the act shall not apply to any sum or sums due as taxes upon which interest or penalties are imposed after they become due or delinquent by any law of the state.

In this connection I have to state that section 5 of chapter 250 provides a penalty of ten per cent a month for each subsequent month in which the tax provided by chapter 250 remains unpaid; section 3 of chapter 504, supra, also provides a penalty for failure to make report of earnings.

It accordingly follows that penalties obtain upon delinquent gross earnings taxes of freight line companies which brings the case within section 3 of chapter 82, supra, and accordingly interest does not obtain.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 23, 1909.

673

TAXATION—GROSS EARNINGS—Telephone companies taxable on Minnesota's proportion of interstate earnings.

Attorney General's Office.

Hon. W. A. Nolan.

Dear Sir: In answer to your oral inquiry you are advised that a proportionate part of the earnings of the property of telephone companies within this stats resulting from its use in interstate commerce, constitutes a part of its gross earnings upon which it must pay the three per cent tax provided for by chapter 314, G. L. 1897.

State vs. Northwestern Telephone Exchange Co., 107 Minn. 390.

Minnesota's proportion of the gross earnings of the Northwestern Telephone Exchange Company, the defendant in the above entitled action, represents a proportion of the earnings based upon the proportion of the mileage within the state of Minnesota over which the interstate business was done, to the entire mileage of the defendant over which such business was done, of earnings on all interstate business for the particular year passing through, into or out of the state of Minnesota.

In other words, so far as interstate business as concerned, the earnings are to be apportioned on a mileage basis the same as the earnings of railroads arising out of interstate business, are apportioned to Minnesota.

It accordingly becomes unnecessary to particularly define by statute the method of apportionment for the supreme court decision above referred to has accomplished the same purpose.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 12, 1909.

674

TAXATION—GROSS EARNINGS—Rentals collected by union depot companies not taxable gross earnings.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In your favor of recent date you inquire whether amounts collected by union depot companies in Minnesota from companies, corporations or individuals other than tenant railway companies of said union depots, representing "rentals received" for the use of space are taxable as a part of the gross earnings of the railway companies who are owners in common of said union depot companies.

In answer I call your attention to the case of State vs. Minnesota & International Railway Co., 106 Minn. 176, in which the supreme court of this state decided that "rentals received from properties located on the right of way" were not taxable items of gross earnings.

Taxable gross earnings are those which arise from the transportation and transmission business, and earnings which arise from business which is incidental to the transportation and transmission business. Under the rule respecting rentals received from properties located on the right of way, supra, I am inclined to the opinion that the rentails received for the use of space as above noted are not taxable gross earnings and you are so advised.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Dec. 1, 1909.

675

TAXATION—GROSS EARNINGS—Payments by railroads to private car companies not an offset to credit balance in car mileage account.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: In answer to your favor of December 13th, you are advised that railroad companies taxable under and pursuant to chapter 253, G. L. 1905, may not deduct from their "car mileage account" for the purpose of arriving at a taxable balance under said item the amounts paid to freight and private car line companies, and also to the Pullman and other sleeping car companies for the use of equipment owned by the latter concerns.

The rule as to the taxation of the credit balance of "car mileage account" obtains only between railroad companies taxable as aforesaid. State vs. M. & I. Ry. Co., 106 Minn. 176.

The rule does not apply as between a railroad company and a freight or private car line company which is taxable under and pursuant to chapter 250, G .L. 1907, or betwen said railroad companies and a sleeping car company, which is taxable pursuant to section 1028 et seq., R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Dec. 15, 1909.

676

TAXATION—GROSS EARNINGS—Telephone taxes, how apportioned in inter-company service; commissions paid to agents other than telephone companies not deductable from gross earnings.

Attorney General's Office.

Hon. Anton Schaefer, Public Examiner.

Dear Sir: This department is in receipt of your favor of November 23d, in which you submit the following queries covering the taxability of gross earnings of telephone companies:

"First—When a telephone company which pays to the state a tax on its gross earnings turns over a part of these earnings in the form of originating commissions, terminal fees or various so-called 'pro-rates' to other telephone companies associated with it in the transmission of inter-company tolls, may that company deduct said commissions, terminal fees, and pro-rates thus paid, from its own taxable earnings; it being understood that all commissions, fees and pro-rates received shall be included in the taxable earnings of the company receiving the same?

"Second—When the commissions or other fees are paid to agents, other than telephone companies taxable on their earnings, shall the same rule apply, or shall

a different rule apply, namely, that the commissions in this latter case shall be considered like other operating expenses without deduction?

"Third—Is the proper rule to apply to questions as to the taxability of the various forms of commisisons, fees and pro-rates, paid or received, the following, to-wit: That all forms of operating earnings in the telephone business are taxable once, and only once, and that the company receiving, and not the company paying, shall pay the tax on a given commission, terminal fee, pro-rate, or other form of the division of earnings on inter-company business?"

A conference held this date upon the matter of the above queries develops the fact that telephone companies have various contracts with each other on the subject matter of a division of earnings arising out of an inter-company service, that is, a service in which more than one company participates in the transmission of a telephone message; that a division of the fee for said joint service is contemplated in said contracts, and the division is called variously a pro-rate, a commission, a terminal or originating fee.

In answer to your first query you are advised that a total charge for a particular service is taxable against the several companies participating in the earning thereof on the basis of the amount earned, and received by the several companies. To hold otherwise results in double taxation.

State vs. Northwestern Telephone Exchange Co., 107 Minn. 390.

In answer to your second query you are advised that commissions or other fees which are paid to agents other than telephone companies are not to be deducted from the gross earnings of said telephone companies.

Your third query is answered in the affirmative.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

Dec. 15, 1909.

677

TAXATION—GROSS EARNINGS—Capital stock of railroad companies paying gross earnings tax in this state need not be listed for taxations—Bonds of railroad companies must be listed.

Attorney General's Office.

E. W. Decker, Esq.

Dear Sir: I am in receipt of your favor of the 2d inst., in which you ask in effect, "if the owner of shares in the capital stock and bonds of a railroad company is required by law to pay a personal property tax thereon to the state of Minnesota, where such owner is a resident in the state of Minnesota."

In answer to this query I would say that the owner of shares of the capital stock of a railroad corporation which corporation operates a line of railroads in the state of Minnesota, and hence pays a gross earnings tax to the state is not required to list for purposes of taxation the shares of stock of such corporation. If, on the other hand, the shares of stock are shares in a railroad corporation which does not pay a gross earnings tax to the state of Minnesota, then and in such case the shares of stock are required by law to be listed by the owner thereof and a personal property tax thereon paid.

Bonds issued by a railroad corporation and owned by a resident of this state are required by law to be listed by him and a personal property tax thereon paid, irrespective of whether the railroad issuing such bonds operates a railroad in the state of Minnesota or elsewhere.

Yours truly,

C. LOUIS WEEKS,
Special Attorney.

July 8, 1910.

678

TAXATION—PERSONAL PROPERTY—Personal property warrants, when dated.

Attorney General's Office.

John E. Flynn, Clerk District Court.

Dear Sir: You inquire on what date the personal property tax warrants should be dated.

In answer, I call your attention to section 889, R. L. 1905, which, so far as material, provides as follows:

"On the fifth secular day of April of each year the county treasurer shall make a list of all personal property taxes remaining delinquent April 1st, and shall immediately certify to and file the same with the clerk of the district court of his county * * *."

This means that the delinquent list is to be made up bearing date April 5th unless April 5th is a Sunday, in which case the list bears date April 6th. The word **immediately** in said statute means "that the treasurer must certify the list within a reasonable time after the fifth secular day of April."

State vs. Trust Co., 76 Minn. 423.

Jaggard on Taxation, page 300.

With this meaning given said language it follows that the list will not necessarily be filed with the clerk on April 5th of a given year, or in case that day is Sunday, then on April 6th. It should be filed of course within a few days thereafter.

Attention is now called to section 890, R. L. 1905, which, as far as material, provides as follows:

"Upon the fifteenth secular day of April next after the filing of such list, the said clerk shall issue his warrants to the sheriff of the county * * *."

In case the fifteenth day after the filing of the list is on Sunday, then the warrants are to be issued on the next day, otherwise they are to be issued on the fifteenth day.

To use a concrete example, in case the list is filed April 5th of this year, the warrants are issued April 20th.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

April 21, 1910.

679

TAXATION—PERSONAL PROPERTY—Place of taxing personal property.

Attorney General's Office.

Chas. F. Schroeder, Esq.

Dear Sir: In answer to your letter of May 17th, you are advised that the personal property consisting of machinery and live stock which is kept on your farm and used in connection with said farm, is taxable in the town where the farm is situated, under and pursuant to section 823, R. L. 1905, whereas your household goods and other personal property is taxable where you reside in the city of Bemidji, under and pursuant to section 820, R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 21, 1910.

680

TAXATION—PERSONAL PROPERTY—Enforcement of personal property taxes against a corporation.

Attorney General's Office.

P. F. Schroeder, Esq., County Attorney.

Dear Sir: It appears from your letter of May 9th that certain personal property taxes of the Detroit Brick & Tile Manufacturing Company, a corporation, are delinquent; that a distress warrant has been issued under and pur-

suant to sections 889 and 890, R. L. 1905, and placed in the hands of the sheriff for collection. At the presnt time the said manufacturing company has no property which can be levied on under the distress warrant.

You inquire whether the sheriff may enforce collection under the distress warrant by a levy upon the individual property of the stockholders of said manufacturing company.

Your query is answered in the negative. In case the sheriff is unable to find any property subject to levy under the distress warrant, it is his duty to return the distress warrant as uncollectible pursuant to section 892, R. L. 1905. In case the county board do not cancel the taxes in question, a citation will issue as a matter of course under and pursuant to section 893, R. L. 1905, directed against the corporation in question. This citation will be served upon the officers of the corporation in the same manner as the service is made upon corporations generally. In case the taxes in question are valid taxes a judgment will be obtained as a matter of course, against the corporation. This judgment will be a lien against any real property of said corporation, and may be enforced upon execution sale against the property of the corporation. If there be no property of the corporation a suit will not lie to enforce the liability against the stockholders for the reason that the double liability of stockholders does not obtain in the case of manufacturing corporations.

The taxes in question are only collectible accordingly, subject to the limitations aforesaid.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 17, 1910.

681

TAXATION—PERSONAL PROPERTY—Bees personal property.

Attorney General's Office.

A. T. Dockham, Esq.

Dear Sir: In answer to your favor of March 3d you are advised that all real and personal property in this state is taxable, except such as is by law exempt from taxation. See section 794, R. L. 1905. Bees are property.

Section 795, Revised Laws of 1905, specifies the property which is exempt from taxation. Bees are not included in the list or exempt property.

GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 7, 1910.

682

TAXATION—PERSONAL PROPERTY—Colts and cattle under one year old are taxable.

Attorney General's Office.

Mr. P. B. Wolsfeld.

Dear Sir: Colts and cattle not one year old on May 1st are not properly assessable in the one-year class. Colts and cattle not two years old on May 1st are not properly assessable in the two-year class.

All personal property not expressly exempted by the constitution must be assessed for taxation. Any colts or cattle under one year old on May 1st of any year can properly be included under item 30 of the assessor's list "all other articles of personal property."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 18, 1909.

683

TAXATION—PERSONAL PROPERTY—Personal property assessed as of its situs on May 1st.

Attorney General's Office.

Hon. Charles L. Alexander.

Dear Sir: I have your favor of the 24th instant, in which you inquire relative to the assessment of personal property, particular reference being had to automobiles which have been ordered for delivery ranging from May 2d to the 15th of May, this year.

Section 802, R. L. 1905, provides:

"Personal property shall be listed and assessed annually with reference to its value on May 1st, and, if acquired on that day, shall be listed by or for the person acquiring it."

It has been the genral rule throughout the state that personal property should be listed and assessed as of its situs and valuation as of May 1st in each year. Under the state of acts as submitted by you, the automobiles in question will not be owned by residents of your village on May 1st, and for that reason I am of the opinion that they cannot then be assessed to the persons who acquired ownership thereof on or after May 2d.

I am familiar with section 833, R. L. 1905, but the same does not seem to be herein applicable.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 26, 1909.

684

TAXATION—REDEMPTION—Notice of expiration of redemption must be given within six years.

Attorney General's Office.

Louis Hallum, Esq., County Attorney.

Dear Sir: You inquire:

"Is a state assignment cretificate (dated May 26, 1900) void under chapter 271, Laws of 1905, unless notice of expiration of redemption is given within six years of the date of the judgment on which such assignment is based?"

It would seem that your question should be answered in the affirmative. Your attention is called to the case of State ex rel National Bank and Security Company vs. Krahmer, 117 N. W. Rep. 780.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 31, 1909.

685

TAXATION—REDEMPTION—Notice of expiration of time of redemption from tax sale.

Attorney General's Office.

Anton Thompson, Esq., County Attorney

Dear Sir: In reply to your inquiry of March 17th as to what kind of notice is to be given for expiration of redemption of tax sales, I have to say that it is the opinion of this office that the notice to be given is that prescribed by section 47, chapter 2, Laws 1902, as referred to by chapter 270 of the General Laws of Minnesota 1905.

Dunnell on his Tax Law says:

"The right to a notice as provided by statute at the time of the sale is a vested property right which cannot be impaired by subsequent legislation. The law of the date of the sale governs."

Sections 497-498 and cases cited.

The law of 1902 with reference to giving notice of expiration of redemption must govern unless the law stated in R. L. 1905 is superior in effect. We do not think that it is. Section 5504 says that the laws of 1905, so far as they differ from the revised laws, shall be construed as amendatory thereof or supplementary thereto. This practically gives the session laws of 1905 the right of way over the Revised Laws 1905. This being the case the only question is as to whether or not chapter 270 of the General Laws 1905, so adopts the law of 1902 as to make it a law of 1905 in effect.

The prevailing law on this subject is well stated in Lewis Sutherland's Statutory Constitution, at section 405, as follows:

"Where one statute adopts the particular provision of another by a specific and descriptive reference to the statute or provisions adopted, the effect is the same as though the statute or provisions adopted had been incorporated bodily into the adopting statute. When so adopted only such portion is in force as relates to the particular subject of the adopting act and as is applicable and appropriate thereto."

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 23, 1909.

686

TAXATION—REDEMPTION—Selection of paper for publication of notice of expiration of redemption.

Attorney General's Office.

Hon. C. E. Vasaly, Capitol.

Dear Sir: In answer to your inquiry whether or not it is the duty of the auditor to select the paper which shall publish the notice of expiration of the time for redemption of land from a tax sale, I have to say that I am unable to find anything in the statutes of this state which gives to the auditor any duty or authority in the matter. The notice is to be delivered by the auditor of the party applying therefor, and it is my opinion that the person receiving the notice is the only person responsible for its proper service except that the sheriff has such responsibility while it is in his hands and until he has made due return thereof.

The printer's fees for publishing such notice are to be paid by the holder of the tax certificate. It would seem as though the person holding the certificate of tax sale, redemption from which sale was being cut off, had control of the publication of the notice of expiration of redemption, unless he directly or by implication authorizes the auditor to cause such notice to be served.

LYNDON A. SMITH,
Assistant Attorney General.

Feb. 11, 1910.

687

TAXATION—REDEMPTION—Assignment of certificates, limitation.

Attorney General's Office.

O. M. Hall, Esq., Tax Commissioner.

Dear Sir: In your favor of February 4th you submit the following statement:

"The tax upon a tract of land for 1901 being delinquent, the land was bid in for the state at the annual delinquent sale for such taxes, in 1903.

"More than three years have elapsed since the date of the sale. The same has not been assigned (per section 935, R. L. 1905), nor has any redemption from the sale been made.

"The tract was listed and offered for sale in November, 1907 and 1908 (per sections 936-937, R. L. 1905), but was not sold. It was not listed nor sold in November, 1909 (chapter 430, G. L. 1907)."

Upon the above statement you submit the following queries:

1. "Can a redemption of property bid in by the state at an annual delinquent sale be made after the expiration of three years from the date of such sale, the land not having been sold at any subsequent forfeited sale (chapter 430, G. L. 1907)?

2. "Has a county auditor authority to issue an assignment of the certificate (section 935, R. L. 1905) of sale of such tract, after the three-year period has expired, the land not having been sold at the forfeited sale (chapter 430, G. L. 1907), but having been listed for such sale as above stated?"

Your first query is answered in the affirmative. The right of redemption exists in the case of land forfeited to the state, until eliminated by the service of a notice and the expiration of the period of redemption.

Your second query in the instant case must be answered in the negative for the reason that more than six years have elapsed since the tax judgment sale in 1903.

There could be no efficacy in a state assignment certificate, for pursuant to the provisions of chapter 271, G. L. 1905, no notice of expiration of redemption could issue.

See State ex rel vs. Krahmer, 105 Minn. 422.

In view of the above no opinion is given covering a case where chapter 271, supra, was inapplicable.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 17, 1910.

688

TAXATION—REDEMPTION—Redemption from sale.

Attorney General's Office.

William Erickson, Esq., County Attorney.

Dear Sir: You have transmitted to this department a letter from the county auditor of your county addressed to yourself, together with a statement of taxes and outstanding tax certificates covering said premises. It appears therefrom that the taxes on the premises in question for the years 1882 to 1904, both inclusive, except the year 1903, were delinquent and at the annual tax sale, the premises in question were sold for taxes to an actual purchaser, and the usual tax certificate was issued and delivered. It further appears that no notice of expiration of redemption has been issued on any of the said tax sales. The owner of the land in question offers to redeem and you submit two queries:

"1. What are the rights of the holder of the tax certificates?

"2. May the land owner redeem from the outstanding tax sales?"

In answer to your first query you are advised that under and pursuant to chapter 271, G. L. 1905, all outstanding tax certificates must be presented to the county auditor for the purpose of having issued the notice of expiration of redemption within six years from the entry of the tax judgment on which the tax sale is based and the certificate issued.

State ex rel. Krahmer, 105 Minn. 422.

In answer to your second query, you are advised that the owner may redeem. In case of voluntary redemption the sum due should be paid the certificate holder as in other cases. You are advised, however, that the land owner is not required to redeem, for the taxes against his land which have been paid by the holder of the certificate, and the lien of said certificate is lost by being outlawed.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 16, 1910.

689

TAXATION—Tax sales on division of counties.

Attorney General's Office.

Frank F. Price, County Attorney.

Dear Sir: It appears from your favor of recent date that Itasca county was, at the general election held in 1906, divided and that Koochiching county was formed out of a part of what was theretofore Itasca county, that the necessary proclamation was made and the county of Koochiching was duly organized. The taxes for 1906 and subsequent years on territory embraced in Koochiching county are payable in Koochiching county, but all taxes prior to the year 1906 are payable in Itasca county. While you do not make reference to the pertinent statute, I take it that section 13 of chapter 143 of the General Laws of 1893 obtains.

You submit the following questions:

"1. If a judgment is entered in Itasca county against lands which are now included within Koochiching county, should the tax sale be held in Itasca or Koochiching county?

"2. If these lands have been bid in for the state in Itasca county, should state assignment certificates be issued by the auditor of Itasca or Koochiching county?

"2. Should notice of expiration of redemption be issued and served in Itasca or Koochiching county?

"4. If redemption is made, to which auditor should the person redeeming apply to, and which auditor should issue the redemption certificates?

"5. If the tax certificate is issued in Itasca county and notice of expiration of redemption is issued in Koochiching county, by what method can the auditor of Itasca county tell whether or not the redemption period has expired; and if the certificate of redemption is to be issued in Itasca county, by what means can the auditor tell how much to include for such redemption, he having no record of the amount paid for serving notice, or the amount of subsequent delinquent taxes paid by the person giving notice.

"6. Should not the entire proceedings be completed in either one or the other county; and if to be completed in one county, then which county is the proper one to complete same?"

In answer to your first query you are advised that the tax sale shall be held in Itasca county.

In answer to your second query you are advised that the state assignment certificate should be issued by the auditor of Itasca county.

In answer to your third query you are advised that the notice of expiration of redemption should be issued in Itasca county.

In answer to your fourth query you are advised that redemptions should be made at the office of the county auditor of Itasca county who shall issue the redemption certificate.

The answer to your fifth query becomes self-evident from the foregoing answer; in short, all proceedings covering the collection of taxes prior to the year 1906 are had in Itasca county. Unpaid taxes for the year 1906 and subsequent years covering lands in the new county of Koochiching will form the basis of a new tax title in Koochiching county.

The answer to your sixth query is self-evident from the foregoing.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

Dec. 2, 1909.

690

TAXATION—TAX SALE—State assignment certificate, November forfeited sale.

Attorney General's Office.

Korns & Johnson, Esqs.

Dear Sir: From your favor of recent date it appears that a parcel of land was offered for sale at the annual tax sale in the year 1904 and was bid in for the state; that said land has subsequently been offered at the November for-

feited sales held in 1907, 1908 and 1909, pursuant to chapter 430, G. L. 1907, but has not been sold to an actual purchaser.

You inquire whether a state assignment certificate may lawfully be issued.

In answer I call your attention to the following syllabus:

"A county auditor has authority, under section 935, R. L. 1905, to execute a state assignment certificate for lands sold at regular delinquent tax sale, after more than three years have elapsed from the date of the tax sale, and before proceedings to sell under section 936 and 937, R. L. 1905, **have been initiated in any one year.**"

State ex rel vs. Scott, 105 Minn. 69.

In my opinion the underscored language refers to a particular year; that is no assignment may be issued after proceedings are initiated in August and until the sale in November. In case, however, there is no sale in November to an actual purchaser, then the proceedings for the particular year may be considered abortive and a state assignment certificate may issue, subject to the statutory limitations set forth in chapter 271, G. L. 1905.

In the instant case such limitation expires in May, 1910.

GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 18, 1910.

691

TAXATION—TAX SALES—Distribution of proceeds from forfeited tax sale.

Attorney General's Office.

Patrick J. Ryan, Esq., Assistant County Attorney.

Dear Sir: I hereby acknowledge receipt of a letter from Edward G. Krahmer relative to the distribution of moneys received in forfeited tax sales.

This question has been before this office and an effort made to evade the literal terms of the statute by some fair means of construing the same to mean that the moneys received at such sales should be distributed pro rata to the various funds originally affected by the taxes, for the nonpayment of which the sale was made. After considering the matter for a considerable time, it has seemed to be impossible to avoid the conclusion that the statute in question must be literally followed. That portion of the statute which has been deemed conclusive of the question asked is the last paragraph of section 939, R. L. of 1905, which is as follows:

"If any parcel be sold for less than the amount charged thereon, the state taxes shall first be paid and the remainder, if any, distributed pro rata to the several funds for which the taxes were levied."

The auditor's conclusion that when a tract of land is sold for more than the amount of taxes against it, the excess belongs to the owner if he sees fit to redeem, is correct under the recent decision in the case of Minnesota Debenture Co. vs. Scott, 106 Minn. 32.

It might be advisable for the next legislature to have its attention called to the fact that the state taxes are paid to the exclusion of the full payment of the county taxes in some cases, and such legislature may see fit to correct the difficulty.

LYNDON A. SMITH,
Assistant Attorney General.

Feb. 1, 1910.

692

TAXATION—TAX SALES—Sale invalid, not for premature entry of judgment, but for insufficient amount.

Attorney General's Office.

W. W. Woolley, Esq., County Attorney.

Dear Sir: In reply to your letter of September 28th, which has been referred to me for answer, I have to say to your first question, which is whether or not a premature entry of a tax judgment renders it void, that such defect does not render the judgment void. See Chouteau vs. Hunt, 44 Minn. 178.

Your second question is as to whether or not a tax sale under section 937 of Revised Laws 1905, is void when it does not include in the amount for which the tract is sold, penalties, interest and costs charged against it. As the statute says that no parcel shall be sold for a less sum than the aggregate taxes, penalties, interest and costs charged against it, I am of the opinion that a sale for any less than the aggregate sum so indicated would be void. The decisions of our supreme court in reference to forfeited tax sales assume that they must conform to the statute applicable thereto.

In view of this opinion relative to the invalidity of this sale, further answer does not seem to be required to your letter.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Oct. 1, 1909.

693

TAXATION—TAX SALES—Forfeited sale certificates issued under chapter 322, laws 1899, subject to chapter 271, laws 1905.

Attorney General's Office.

Andrew O. Houglum, County Auditor.

Dear Sir: In answer to your favor of recent date, you are advised that a certificate of forfeited real estate tax judgment sale issued under and pursuant to chapter 322, G. L. 1899, is subject to the provisions of chapter 271, G. L. 1905.

A certificate issued under and pursuant to chapter 322, supra, is not different or otherwise as far as the necessity of the service of a notice of expiration of redemption is concerned, than any other tax certificate. I am clearly of the opinion that chapter 2721, supra, includes within its purview a certificate issued under and pursuant to chapter 322, supra.

Cole vs. Lamm, 81 Minn. 463.
State vs. Peltier, 86 Minn. 181.
State ex rel. National Band and Security Co. vs. Krahmer, 105 Minn. 422.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 12, 1909.

694

TAXATION—TAX SALE (FORFEITED)—Distribution of receipts.

Attorney General's Office.

Elmer W. Gray, Esq., Assistant County Attorney.

Dear Sir: In reply to your letter of December 15 inquiring whether or not section 939 is applicable to the distribution of the money derived from sales of lands acquired by the state tax sale, when such lands are sold at a forfeited tax sale for less than the full amount due, I have to say that the language of the last clause of said section 949 seems to be too clear and positive to admit of any other construction than that which is apparent upon the casual reading of this paragraph. The paragraph is as follows:

"If any parcel be sold for less than the amount charged thereon, the state tax shall first be paid and the remainder, if any, distributed pro rata to the several funds to which the taxes were levied."

This means plainly that the taxes to the state are to be paid in full and only the remainder, if any, distributed to the other funds for which the taxes were levied.

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 3, 1910.

695

TAXATION—TAX SALE—No relief as against assessment at full value.

Attorney General's Office.

Elias Rachie, Esq.

Dear Sir: In answer to your favor of recent date you are advised that an estate, the personal property of which may be assessed at on ehundred cents on the dollar while other personal property may be assessed at only fifty cents on the dollar, is not aggrieved by reason thereof for the constitution of the state contemplates that property shall be assessed at its full value.

State vs. Cudahy Packing Co., 103 Minn. 419.

It accordingly follows that an administrator under the circumstances above referred to would not be entitled to relief as against the assessment in question.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 24, 1909.

696

TAXATION—TAX SALE—Statutes of limitation.

Attorney General's Office.

J. E. Phillips, Esq., County Attorney.

Dear Sir: From your oral statement it appears that a certificate of absolute property sale was issued by the county auditor of your county at the forfeited tax sale held on the 11th of November, 1908. Said sale was made pursuant to sections 936 and 937, R. L. 1905, as amended. Said sale was to enforce the payment of taxes delinquent on real estate for the year 1896, which original sale was held at the auditor's office on May 2, 1898.

You inquire whether the county auditor may lawfully issue the notice of expiration of redemption upon said sale. Your inquiry is answered in the affirmative.

You are also advised that the statute of limitations does not obtain as against proceedings by the state to enforce the payment of taxes.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 2, 1909.

697

TAXATION—TAX SALE—Sale record may not be changed.

Attorney General's Office.

T. L. Phelps, Esq., County Auditor.

Dear Sir: In answer to your favor of recent date, you are advised that in case a parcel of land has been sold at a tax sale to an actual purchaser and a tax certificate issued, it is not lawful to have the certificate surrendered and have the land marked upon the real estate tax judgment book "sold to the state."

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 31, 1909.

698

TAXATION—TAX SALES—Annual forfeited sale; amount required to redeem.

Attorney General's Office.

T. L. Phelps, Esq., County Auditor.

Dear Sir: In answer to your favor of recent date you are advised that chapter 430, G. L. 1907, provides that all parcels of land bid in for the state for taxes for the year 1901, or prior years, may be disposed of for one-half of the total

taxes as originally assessed. The amount to be paid on redemption is regulated by section 946, R. L. 1905. The redemption is from the sale and the amount of the sale determines rather than the total taxes as originally assessd for the year 1901, or prior years. The taxes are merged in the sale.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 13, 1909.

699

TAXATION—Stock of foreign corporation.

Attorney General's Office.

Mr. Claud Bingham.

Dear Sir: You state—

"The Interstate Ginseng Company is a corporation created under the laws of the state of South Dakota, with its principal place of business in that state. That it is engaged in the raising of ginseng and the land on which the ginseng is raised is situated in Minnesota. Its land is taxed as other lands in Minnesota is taxed. Some of the stockholders live in South Dakota and some in Minnesota and some in other states."

You ask whether you should pay the tax on your stock in Minnesota, or whether it should be paid by the corporation.

In answer to this I would say that the taxes on the stock owned by you must be paid by you.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Feb. 1, 1909.

700

TAXATION—Compensation of assessors—Not entitled to expenses.

Attorney General's Office.

Mr. W E. Hull.

Dear Sir: In answer to your inquiry of recent date, you are advised that under and pursuant to chapter 402, G. L. 1907, the compensation of town assessors of Carlton county is $2 per day. It is the duty of the town to pay the town assessor at the rate of $2 per day for the number of days necessarily engaged in the performance of his duties in the assessment of the property of the town.

The assessor is not entitled to his expenses incurred in making the assessment.

You are also advised that the voters at any town meeting, before balloting for officers begins, may, by resolution, increase the compensation of town officers not to exceed fifty per cent.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 13, 1910.

701

TAXATION—Manner of taxing building associations.

Attorney General's Office.

Mr. J. W. Schmitt, City Attorney.

Dear Sir: In answer to your favor of recent date, you are advised that in my opinion the Mankato Savings & Building Association is assessable and taxable under and pursuant to section 838, R. L. 1905.

The valuation for the proposed assessment is based upon the aggregate amount of the fifth and sixth items deducted from the total amount of the fourth item.

Mortgages of building associations which are represented in their stock, and assessed as stock, shall not be assessed as mortgages.

See Op. Atty. Genl. 1900, Nos. 5, 14;
State vs. Redwood Falls B. I. Assn., 45 Minn. 154;
State vs. Duluth Gas & Water Co., 76 Minn. 96;
State vs. St. Paul Trust Co., 76 Minn. 423.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 5, 1910.

702

TAXATION—After final proof and before issuance of patent lands are taxable.

Attorney General's Office.

George W Smith, Esq.

Dear Sir: In reply to your letter of June 27th to the attorney general relative to the taxation of lands upon which final proof was made before May 1st of a specified year and for which patent did not issue until the succeeding January, I have to say that this state has held that the equitable title to lands where final proof has been made and patent has not been issued, has ceased to belong to the United States and that therefore such lands are subject to taxation upon the completion of final proof.

. . . See State vs. Itasca Lumber Co., 100 Minn. 355.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 28, 1910.

703

TAXATION—Refundment not permitted under conditions stated.

Attorney General's Office.

Julius O. Grove, Esq., County Attorney.

Dear Sir: Your letter of April 16th, relative to tax refundment, has been referred to me for consideration.

The facts in the case are not stated in full detail, but are substantially as follows:

A railroad company contracted for the sale of a tract of land, and it was put upon the tax list at least to the extent of the value of the interest of the vendee therein. The taxes were not paid and the land was eventually sold at tax sale in 1905 to an actual purchaser, who paid subsequent taxes for the years 1904 and 1905. In August, 1906, the railway company cancelled the contract with said vendee. The question then is whether or not the purchaser at the tax sale is entitled to be paid back the amount paid for the tax certificate, together with the subsequent taxes paid by him.

The statutes of this state provide that railroad land, after it is contracted, shall become taxable to the amount of the interest, right, title or estate of the vendee of such land. If such taxes are not paid, the land goes to sale. The purchaser, at such tax sale acquires and is subrogated to all the right, title, estate or interest of the person holding the said land under or from such railroad company.

It seems to me that this law makes the person who buys at such tax sale, an assign of the original vendee. If so, then the railroad company could not have cancelled the contract without notice to the person buying at tax sale, pursuant to the provisions of section 4442, R. L. 1905. This section of the statute

provides that notice must be given to the purchaser or his assigns, of the termination of such contract. Now, if the railway company has given such notice and has served the same properly upon the holder of the tax certificate, and he has not performed the terms of the contract as to which the original vendee was in default, then the purchaser at the tax sale has neglected to preserve the rights which he bought at such tax sale, and has no one to blame but himself.

I do not find any law which would justify a person who has bought at a tax sale under such circumstances in refusing or neglecting to perform the terms of the contract in place of the vendee, and then asking the county to reimburse him for the amount paid by him with interest at 7 per cent.

On the other hand, if the railway company nas not given to this purchaser at the tax sale, notice of the termination of the contract by reason of which an interest on this land was taxed, then it seems to me that the purchaser at tax sale may still avail himself of all the rights which he acquired at such sale, and therefore has no occasion to ask for a refundment of his money so invested.

Therefore, your question as to whether or not under the circumstances stated in your letter, the county auditor has a right to refund the money paid by the actual purchaser at tax sale of the interest of the vendee in the land in question is answered in the negative.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 18, 1910.

704

TAXATION—Lands of minors are treated for taxation the same as other lands.

Attorney General's Office.

Alfred Aamoth, Esq., County Auditor.

Dear Sir: You inquire is to what to do in cases where lands owned by minors are assessed and now advertised as delinquent.

I know of no different procedure to take than that ordinarily pursued in case of delinquent land taxes. Proceed in the same manner as you do in other cases where lands were properly included in the lists.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 2, 1909.

705

TAXATION—Equity of bank in land after foreclosure, not an investment in real estate within meaning of chapter 60, G. L. 1905.

Attorney General's Office.

O. M. Hall, Esq., Tax Commissioner.

Dear Sir: In answer to your favor of recent date you are advised that the interest which a bank acquires by reason of the purchase of real estate at a mortgage foreclosure sale, in the foreclosure of one of its mortgages, is not an "investment of real estate, which is authorized to be deducted from the general assets of the bank for the purpose of determining the taxable valuation of the bank stock, under and pursuant to the provisions of chapter 60, G. L. 1905.

By investments in real estate is meant ownership of real estate in fee.

For the purposes of taxation the situation is not different after foreclosure and before the expiration of the period of redemption, than before foreclosure.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 30, 1909.

706

TAXATION—Mortgages of building associations, when separately assessed.

Attorney General's Office.

Fay Smith, Assessor.

Dear Sir: From your oral statement it appears that the Austin Building & Loan Association, of Austin, Minnesota, has certain real estate mortgages of record in the office of the register of deeds of Mower county.

You inquire whether you may separately assess the real estate mortgages in question against the Austin Building & Loan Association.

In answer, I call your attention to section 838, R. L. 1905, covering statements by corporations for the purposes of taxation.

For the purposes of taxation of building and loan associations the aggregate amount of the fifth and sixth items of said section shall be deducted from the total amount of the fourth item, and the remainder, if any, shall be listed as "bonds or stocks," under section 835, subdivision 23, R. L. 1905. Mortgages of building associations, which are represented in their stock and assessed as stock, shall not be assessed as mortgages.

State vs. St. Paul Trust Co., 76 Minn. 423.

In case the officers of building and loan associations do not disclose the amount and value of the capital stock of the corporation, then an assessment against such a company for the value of its mortgages would be sustained by the court.

State vs. Redwood Falls Building & Loan Association, 45 Minn. 154.

From the above propositions you will be able to determine whether or not to list separately the mortgages in question.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 22, 1909.

707

TAXATION—Mortgages of insurance company when taxable on general lists.

Attorney General's Office.

Fay Smith, Assessor.

Dear Sir: From your oral statement it appears that the County Alliance Fire Insurance Company, a Minnesota corporation, has certain real estate mortgages which appear of record in the office of the register of deeds of Mower county, Minnesota. The mortgages in question antedate several years and were all placed of record before the going into effect of chapter 328, G. L. 1907, commonly called the mortgage registry tax act.

The said insurance company has ceased to write insurance, and all the outstanding risks of said company have been reinsured by another company. The securities in question, however, remain of record in the name of, and are, confessedly, the property of the said insurance company.

You inquire whether you may lawfully list the mortgages in question for taxation.

In answer I call your attention to section 1625, R. L. 1905, having to do with the taxation of insurance companies, which, as far as material, reads as follows:

"Section 1625. Every domestic and foreign company, except town and farmers' mutual insurance companies, shall pay to the state treasurer on or before March 1st, annually, a sum equal to two per cent of all the premiums received by it in this state, or by its agents for it, in cash or otherwise * * * * during the preceding calendar year. In the case of every domestic company such sums shall be in lieu of all other taxes, except those upon real property owned by it in this state, which shall be taxed the same as like property of individuals * * * *."

The gross earnings tax is a commuted form of taxation. The tax still remains a tax upon the property of the corporation paying the same, but the tax

is measured by the per centum provided by law upon the gross earnings. The theory of a gross earnings tax further appears by the following excerpt:

"We have had for many years a gross earnings system of taxation as to railroad companies, and it has proved on the whole satisfactory, equitable, and just, both to the state and to the corporations thus taxed. The system has always been well known and well understood by the people. It is in practical effect the substitution of a tax upon the earnings for a tax upon the property producing it. Under it all property owned, held and used by the railroad company in the conduct of its business is and always has been exempt from general taxation. In fact, the law imposing the tax expressly so provides. As remarked by the court in County of Ramsey vs. Chicago, M. & St. P. Ry. Co., 33 Minn. 527, 24 N. W. 313: 'This theory, however, necessarily rests upon the assumption that the property of the corporation will be held and used by it for those purposes for which the corporation exists, and that by such use an income will be derived, the percentage of which is received by the state in place of a tax upon the property.'" State vs. Twin City Telephone Co., 104 Minn. 286.

Personal and real taxes levied in specie against several personal and real property, as the case may be, pay the taxes upon such property on a yearly basis. When a gross earnings tax is paid for a particular year, it pays the tax upon the property of the corporation for the particular year. Accordingly it would seem that the gross earnings tax of the insurance company in question, covering the years when the mortgages in question were taken, can hardly be said to be the payment of the taxes upon the mortgages in question for the year 1909. If there were earnings of the insurance company covering the year 1909, arising out of the conduct of the insurance business, for which the corporation was organized, it is clear that the payment of the gross earnings tax would be in lieu of other taxes upon the mortgages in question. But there are no earnings.

Accordingly, I am of the opinion that you shall list the mortgages in question for taxation, as the personal property of the said corporation.

The question is not without doubt, but in case of doubt, it seems proper that administrative officers shall construe the doubt in favor of the state. The placing of the mortgages in question upon the tax lists will probably result in an adjudication by your court, which will be altogether desirable.

Yours truly,

GEORGE W. PETERSON,
Assistant Attorney General.

June 22, 1909.

708

TAXATION—Indian allotments, when taxable.

Attorney General's Office.

Hon. J. G. Armson, Tax Commission.

Dear Sir: This department is in receipt of your favor of May 5th.

You enclose an application for the cancellation of assessment and extended taxes, made by Lillie Sargent in behalf of George Sargent, a minor, against the following described lands situate in Mahnomen county, Minnesota, to-wit: Northwest one-quarter (NW¼) of northeast one-quarter (NE¼)) lot three (3), and east one-half (E½) of northeast one-quarter (NE¼), all in section 24, township 144, range 40, said lands being Indian allotment lands, so-called, within the White Earth Indian reservation. It appears that the allottee, George Sargent, is a minor mixed blood Indian.

You inquire whether the application, which has the favorable recommendation of the county board and county auditor of Mahnomen county, should be granted by your commission, which involves the question of the taxability of said lands.

In answer, I call your attention to 34 U. S. Statutes at Large, page 1034, which, as far as material, reads as follows:

"That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth reservation in the state of Minnesota, heretofore

or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the secretary of the interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the secretary of the interior shall issue to such Indian allottee a patent in fee simple upon application." Idem, page 353.

It thus appears that patents conveying title in fee simple as to allotments to **adult mixed-bloods** may lawfully issue under said statute, and restrictions upon taxation are by said statute removed, but as to adult mixed-bloods only.

Except for such statute, all Indian allotments are merely trust deeds, with the fee in the government, and not taxable.

The restriction as to taxation still remains upon all allotments to **minor mixed-bloods** and the lands in the application are accordingly not taxable. It likewise remains as to all full-bloods, minor and adult, except as noted in the statute.

It follows that the application should be granted.

Yours truly,

GEORGE W. PETERSON,

Assistant Attorney General.

May 11, 1909.

709

TAXATION—Mineral reservations taxable.

Attorney General's Office.

Geo. C. Rogers, Esq.

Dear Sir: You inquired orally a few days ago whether in the opinion of this department it is competent for the state to tax as a part of the realty, minerals in place and a reservation of minerals and the right to explore upon specific land where such minerals, reservations and rights of exploration were in one party and the title in fee in the specific land in another party.

In answer, I call your attention to chapter 235, G. L. 1899, which specifically provides for the taxation of mineral lands and minerals in place as real estate. It is clearly competent for the state to provide for the taxation of minerals in place, reservations of title in the same and the right to explore lands as real estate. In my opinion chapter 235 is a valid enactment.

It has been held that a conveyance of minerals in the ground conveys a special interest in realty, taxable as such. The Con. Coal Co. vs. Baker, 135 Ill. 545. See Smith vs. Mayor, etc., 68 N. Y. 552; Catlin Coal Co. vs. Lloyd, 176 Ill. 275; Jaggard on Taxation, 25. Such minerals on being severed from the land become personalty.

It is the custom in the conveyance of lands in the northern counties of the state, for the grantor to make what is commonly termed a "mineral reservation" with a right to explore the lands for minerals. I am satisfied that these reservations are property and are taxable as such. If there be ore in a specific case the matter becomes very clear. If in fact there is no ore in the specific tract, nevertheless I think the reservation would be termed a "property right." It is clear that the holder of the same so deems it. In the absence of a showing of ore it is true that the value of the reservation might be nominal, but it is there and in my opinion it is competent for the state and taxing officials to place such reservation upon general lists as real property.

Your query is accordingly answered in the affirmative.

Yours truly,

GEORGE W. PETERSON,

Assistant Attorney General.

Aug. 26, 1909.

710

TAXATION—Banks subject to mortgage registry tax.

Attorney General's Office.

E. L. Stone, Esq.

Dear Sir: In answer to your favor of recent date you are advised that the mortgage registry taxes paid by the Swift County Bank as mortgagee under and pursuant to chapter 328, G. L. 1907, are not to be deducted from the other taxes assessed under the general laws of the state against said bank.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 25, 1909.

711

TAXATION—Subsequent payment of registry tax legalizes record.

Attorney General's Office.

Sam G. Anderson, Jr.

Dear Sir: In answer to your favor of recent date, you are advised that in my opinion, where a real estate mortgage has been recorded without the payment of the tax provided by chapter 328, G. L. 1907, the payment of such tax, nunc pro tunc, legalizes the original record of the mortgage.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 31, 1909.

712

TAXATION—Road tax not assessable in instances stated.

Attorney General's Office.

Mr. J. A. Mansfield, County Attorney.

Dear Sir: You enclose a letter addressed to yourself from the county auditor in which he requests an opinion relative to the payment of road taxes. The inquiry is substantially as follows:

'Should a person who has disposed of his personal property previous to March 1st be assessed for road tax for that year? Should a person who has disposed of his personal property previous to January 1st, and who also left the state previous to January 1st be assessed for road tax on this same personal property, based of course on the assesment of the previous year?"

I am of the opinon that both of these questions should be answered in the negative.

In the specific case before you, a merchant disposed of his stock and all personal property in the fall of 1907, paid the current tax for that year and left the state prior to 1908; in March, 1908, the village board levied a road tax against this party based on the 1907 assessment.

I am of the opinion that the party was not justly liable for the road tax levied against him after he had left the state.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 29, 1909.

713

TAXATION—Alien is subject to.

Attorney General's Office.

Mr. Robert Hamilton.

Dear Sir: You inquire as to whether an alien is subject to the payment of taxes in this state, including poll taxes, the same as are citizens of the state.

I have to inform you that your question is to be answered in the affirmative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 27, 1909.

714

TAXATION—Change of assessment by town board.

Attorney General's Office.

John C. Nethaway, Esq., County Attorney.

Dear Sir: You inquire whether a town board of review should give notice of their intention to add omitted property to the assessment roll, showing the amount of personal property owned by and taxable against any person within such town.

It is the opinion of this office that such notice should be given. This opinion is based wholly upon the wording of section 847, R. L. 1905, and the particular clause therin which says that—

"No assessment of the property of any person shall be raised until he has been duly notified of the intent of the board to do so."

The proper construction of this clause seems to be that when the aggregate amount, shown by an original assessment to be the assessed valuation of the personal property of any person, is in any manner increased so that the taxes to be paid by such person are to be levied on a greater sum than the amount of his original assessment, he is entitled to notice of such increase if made by the town board of review. This construction of the law makes it harmonize with the rule prescribed in paragraph 3 of section 859, R. L. 1905, which regulates the powers of the county board of equalization in a similar matter.

The construction thus given to section 847 is somewhat technical, but it seems to us to be the true meaning of the statute so far as it throws any light upon the question of giving notice of any raising in any manner of the amount of the total assessment of the personal property of any individual.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 5, 1909.

715

TAXATION—County not liable for loss to person buying tax certificate on exempt lands.

Attorney General's Office.

Louis Hallum, Esq., County Attorney.

Dear Sir: Replying to your letter of September 11th relative to refundment to the holder of a tax certificate of 1900 voi dbecause the land was not subject to taxation at the time the tax was levied which became the basis of the tax certificate in question, I have to say that it does not seem to me, under the decision in the case of State vs. Krahmer, 105 Minn. 422 (117 N. W. R. 780) that the county is liable to the holder of this certificate under the statute of limitations applicable to such refundment. I refer to section 966, R. L. 1905.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 24, 1909.

716

TAXATION—Public land, when taxable.

Attorney General's Office.

W. V. Kane, Esq., County Attorney.

Dear Sir: In answer to your favor of recent date you are advised that public land entered under script is subject to taxation from the time of the location and approval of the entry.

Section 933, R. L. 1905.

Wheeler vs. Merriman, 30 Minn. 372.

State vs. Hunter, 42 Minn. 312.

GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 24, 1910.

717

TAXATION—Improvements on U. S. land occupied as a homestead are taxable as personal property.

Attorney General's Office.

H. G. Kranz, Esq.

Dear Sir: You inquire generally as to whether or not improvements upon a homestead shall be taxed as personal property or as real estate. Assuming that you refer to land occupied by virtue of an application under the United States homestead laws, I have to advise you that section 797, R. L. 1905, so far as herein applicable, reads as follows:

"797. **Personal Property Defined**—Personal property for the purposes of taxation shall be construed to include * * *

"3. All improvements made by others upon lands, the fee of which is still vested in the United States."

Mar. 2, 1910.

CLIFFORD L. HILTON,
Assistant Attorney General.

718

TAXATION—Must be paid before assignment of mineral lease can be recorded.

Attorney General's Office.

Mr. S. C. Eckenbeck.

Dear Sir: You state that the register of deeds of Lake county insists on having the taxes for 1908 paid on a certain piece of land in which you hold an assignment of mineral rights prior to his recording such assignment. I am of the opinion that the position taken by the register of deeds in this matter is correct.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 28, 1909.

719

TAXATION—Machinery, boilers and engines, how listed.

Attorney General's Office.

Hon. Ed. Weaver, County Auditor.

Dear Sir: This department is in receipt of your letter of March 17th. You inquire generally as to the method of assessing manufacturers' tools, implements and machinery, including engines and boilers.

Attention is caled to section 835, R. L. 1905, which, as far as material, reads as follows:

"835. **Assessor to Value**—Items of list—The assessor shall determine and fix the true and full value of all items of personal property included in such statement, and enter the same opposite such items, respectively, so that, when completed, such statement shall truly and distinctly set forth: * * *

"18. The value of manufacturers' tools, implements and machinery, including engines and boilers. * * *"

Attention is also called to section 818, R. L. 1905, which, as far as material, reads as follows:

"818. **Manufacturer to List**—* * * Every manufacturer, any person owning a manufacturing establishment of any kind shall list, as part of his manufacturer's stock, the value of all engines, machinery, tools and implements used or designed to be used in any process, **except such fixtures as have been considered real property.**"

Attention is called to section 796, R. L. 1905, which, as far as material, reads as follows:

"796. **Real Property Defined**—Real property, for the purposes of taxation, shall be construed to include the land itself, and all buildings, structures and improvements or other **fixtures** of whatsoever kind thereon * * *."

The above statutes must be construed together.

The instant question turns upon the definition of fixtures for the purposes of taxation. It is clear that those fixtures which are assessed as part of the real property should not be returned for assessment as personal property.

The guide for a proper construction of the above statutes is found in section 818, supra, from which it appears that in determining what fixtures are to be assessed as personal property we are to **exclude such fixtures as have been considered real property.** Thus if the assessing officers have considered engines, boilers and machinery, as a part of the real property at the time of the assessment of such real property, such engines, boilers and machinery constitute fixtures within the meaning of section 796, supra, defining real property, otherwise they constitute personal property.

I think the following definition is a fair guide in determining what constitutes fixtures:

"As a general rule, machinery, to become part of the realty, must be physically attached to it, or be in ordinary understanding part of a building upon it, as where the building is constructed wholly or in part for the machinery, or the machinery is constructed for the building, or some part of it, and is fitted into it; * * *"

Farmers' Loan & Trust Co. vs. Minneapolis Engine & Machine Works, 35 Minn. 543.

The same general definition applies to boilers and engines.

The rule stated, however, is not an absolute one for the purposes of taxation, and if in fact in a specific assessment, machinery, boilers and engines have been considered, assessed and valued as a part of the real property, the same could not be assessed as personal property; otherwise such property must be listed as personal property.

It follows that if machinery, boilers and engines have not been considered a part of the real property by the assessment officers, such property, including tools and implements are to be listed as personal property.

I think the rule to be adopted by the assessing officers should conform as nearly as possible to the foregoing.

Under an answer to the collection of personal property taxes, where machinery, boilers and engines have been listed as personal property, the burden would be on the defendant to prove that such property had been considered by the assessing officers as real property.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 26, 1910.

720

TAXATION—Residence of assessor.

Attorney General's Office.

Hon. O. M. Hall, Tax Commission.

Dear Sir: You inquire whether or not a town assessor elected or appointed to fill a vacancy must necessarily be a resident of the town to be assessed.

In answer I call your attention to section 1 of chapter 316, G. L. 1909, which reads as follows:

"Town and village assessors in all towns and villages, except those operating under special laws, shall be elected in odd numbered years and shall hold their office for two years and until their successors qualify. All assessors in towns or villages affected by this act, elected at the annual town meeting or village election in 1909, or who are appointed to fill a vacancy, shall hold office until their successors are elected and qualified in 1911."

I thin kthis contemplates that an assessor shall be a resident and elector of the particular town or village.

I also call your attention to section 680, R. L. 1905, which reads as follows:

"Whenever a vacancy in the office of assessor is not filled by the town board before June 1st of the year in which it occurs, the county auditor shall appoint some resident of the county as assessor of such town."

Assuming that this section is not in violation of section 7 of article 7 of the state constitution, I am of the opinion that the county auditor, on or after June 1st of the year in which a vacancy occurs in the office of assessor, may appoint a non-resident of a particular town or village, provided he be a resident of the county.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 13, 1910.

721

TAXATION—Status of forfeited lands.

Attorney General's Office.

E. J. Jones, Esq., County Attorney.

Dear Sir: In your favor of recent date you submit the following query:

"When lands or lots are forfeited to the state and become its absolute property by reason of unpaid taxes, does the law require the county auditor to carry them on his tax list from year to year, thus increasing the amount of tax against the property, or can they be exempt from taxation the same as other state lands?"

In answer you are advised that the lands in question are to be continued on the tax lists. Such lands have become the forfeited lands of the state only in a limited sense; that is, the state has the right to resell such lands pursuant to the provisions of section 937 et seq., Revised Laws 1905, as amended.

State ex rel. Shaw v. Scott, 105 Minn. 69, 71.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 23, 1910.

722

TAXATION—Product of manufacturer, how listed.

Attorney General's Office.

M. Kuhn, Esq.

Dear Sir: In your favor of June 18th you inquire whether the product of a manufacturer, in the hands of the manufacturer, is taxable as property of a manufacturer or as property of a merchant.

In this connection attention is called to subdivisions 7 and 8 of section 798, R. L. 1905, defining merchants and manufacturers, respectively; likewise to subdivisions 16 and 17 of section 835 idem.

There is some ambiguity in said statutes, but subdivision 17, supra, contemplates, in my opinion, that manufactured products are to be listed by the manufacturer as such, and you are so advised.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 23, 1910.

723

TAXATION—Amount due state on contract not an offset.

Attorney General's Office.

H. C. Bruflodt, Esq.

Dear Sir: In answer to your favor of June 10th you are advised that the amount due the state on a land contract is not a proper offset under section 836, R. L. 1905, against cash on hand. Cash on hand is not a credit within the meaning of subdivision 22, section 835, G. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 16, 1910.

724

TAXATION—Manner of taxing co-operative creamery associations.

Attorney General's Office.

A. Syverson, Esq.

Dear Sir: In answer to your favor of recent date, you are advised that a co-operative creamery association returns for taxation a statement pursuant to section 838, Revised Laws 1905. The aggregate amount of the fifth and sixth items referred to in said section 838 is deducted from the total amount of the fourth item, and the remainder, if any, is listed as bonds or stocks and this is in lieu of a separate assessment of the shares of stock in the hands of the individual shareholders.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 21, 1910.

725

TAXATION—Standing timber on government land, owned by private persons, is taxable as real estate.

Attorney General's Office.

August R. Norman, Esq., County Auditor.

Dear Sir: It appears from your letter of recent date that certain lumber companies have contract rights with the United States government to cut and remove and reduce to possession within the time stipulated in the contracts, the standing timber upon government land. Such contracts provide for the payment of a sum certain per thousand feet, based upon timber estimates, a certain percentage of the purchase price being paid at the date of the contract, and the balance of the purchase price to be paid when the timber is cut and scaled.

You inquire generally whether such rights are taxable against the holders of such contracts, and if so, whether the same are taxable as real estate or personal property?

In answer you are advised that such contract rights convey an interest in land, which is taxable as real estate.

Pine County vs. Tozier, 56 Minn. 288;
Boland vs. O'Neal, 81 Minn. 15;
See chapter 161, G. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

May 17, 1910.

726

TAXATION—ROAD TAXES—Payment of in villages.

Attorney General's Office.

Earl Simpson, Esq., County Attorney.

Dear Sir: You ask whether in my opinion a village may abolish poll tax therein, and take advantage of the statute providing in effect that road taxes should be paid in money.

Replying thereto, I beg to advise that in my opinion your inquiry should be answered in the affirmative. A village is to most intents and purposes a town with amplified power, and while the statute, section 1241, R. L. 1905, applies in terms to towns only, yet the statute also provides that the word "town" may include cities, villages and borough, unless such construction would be repugnant to the provisions of any act relating thereto. Subdivision 22, section 5514, R. L. 1905. In this case I am of the opinion that the statute last cited controls.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Jan. 29, 1910.

727

TAXATION—Chapter 271, G. L. 1907, applies to prior sales.

Attorney General's Office.

T. L. Phelps, Esq., County Auditor.

Dear Sir: In answer to your favor of recent date you are advised that tax sales made prior to the passage and going into effect of chapter 271, G. L. 1905, are within the purview of said chapter, which has been held constitutional in State vs. Krahmer, 117 N. W. Rep. 780. Notices of expiration of redemption must be served within the six-year limitation provided by said chapter.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Jan. 13, 1909.

728

TRADING STAMP LAW—Certain acts held not in violation of.

Attorney General's Office.

Mr. L. Klaith.

Dear Sir: You make inquiry relative to the recent law passed by the legislature forbidding the use of trading stamps, and ask if such law would prevent you from issuing tickets to your customers, by use of your National cash register, each customer receiving a ticket showing the amount of his purchase, and when $20 worth have been secured then the holder of such tickets is entitled to $1 worth of goods from your store.

An examination of the law would seem to indicate that such course of procedure on your part is not prohibited. I understand that you do not advertise the scheme as an inducement to secure trade, and that the redemption of such tickets is made by yourself, and not by outside parties.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 13, 1909.

729

TOWNS—OFFICERS—Compensation of town clerks.

Attorney General's Office.

Mr. A. L. Ellquist, Town Clerk.

Dear Sir: In reply to your inquiry of August 6th to the attorney general, as to town clerk's fees, I have to say that town clerks are paid by the day for attendance upon meetings of the town board, and are not entitled to charge

for recording the proceedings of such meetings. Town clerks may charge for swearing claimants to their accounts, but he cannot collect such charges from the town; he must collect from the claimants, or no one.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 15, 1910.

730

TOWNS—OFFICERS—Officer may be a resident of village which is not separate election district.

Attorney General's Office.

Mr. C. P. McDonald.

Dear Sir: In reply to your letter of August 10th inquiring whether a township treasurer loses his position by reason of his having become a resident of a village which is not a separate election or assessment district from the township of which he is treasurer, I have to say that, in my opinion, he does not lose his office as treasurer, and is responsible for the safekeeping of the moneys of the town the same as though he lived in that part of the town not within the village limits.

I do not see that there are any reasons why you may not be village clerk and township treasurer under the circumstances noted above.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 12, 1910.

731

TOWNS—OFFICERS—When vacancy in office of supervisor may be declared.

Attorney General's Office.

Mr. J. H. Shelton, Town Clerk.

Dear Sir: Your town board, under the circumstances stated by you, has no authority to declare the office of supervisor vacant, it appearing from your communication that the absence from the township of such supervisor is temporary and not permanent. An office becomes vacant by the incumbent thereof ceasing to be an inhabitant of the district for which he was elected and in which the duties of his office are to be discharged. The removal from, or ceasing to be, an inhabitant of a town must be an actual removal, accompanied by an intention of abandoning the old and acquiring a new residence.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Aug. 30, 1909.

732

TOWNS—OFFICERS—United States mail carrier may hold township office.

Attorney General's Office.

Mr. Peter Schafer.

Dear Sir: You inquire as to whether or not a man who has accepted the job of carrying mail for the United States government may also legally serve as a supervisor of a township or judge of election.

Your inquiry is answerd in the affirmative. There is nothing in the state law so prohibting.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 20, 1910.

733

TOWNS—OFFICERS—Vacancies in office, how filled in certain cases.

Attorney General's Office.

Mr. W. A. Fleming, County Attorney.

Dear Sir: You state that the village of Cayuna has been incorporated from territory within the limits of the township of Rabbit Lake, and that two of the supervisors and town clerk of the township of Rabbit Lake will live within the limits of the newly incorporated village, and you inquire as to whether the situation thus presented causes a vacancy in the offices of town clerk and such two supervisors, and, further, if such vacancies do exist, how the same are to be filled

Replying I have to advise you that assuming that the village of Cayuna thus incorporated is a separate election and assessment district, then the vacancies referred to do exist.

Section 2667, R. L. 1905, provides, among other things, as follows:

"Every office shall become vacant on the happening of either of the following events and before the expiration of the term of such office:

"* * * 4. His ceasing to be an inhabitant of the state, or, if the office is local, of this district, county, city or village for which he was elected or appointed, or within which the duties of his office are required to be discharged."

In my opinion, the vacancies thus existing must be filled at a special town meeting called for that purpose.

Section 634, R. L. 1905, provides as follows:

"Special town meetings may be held for the purpose of electing officers to fill vacancies or transacting any other lawful business whenever the supervisors, town clerk, and justices of the peace, or any two of them, together with at least twelve other freeholders of the town, file in the office of the town clerk a written statement that the interests of the town require that such meeting be held."

It will be noted that by section 679, R. L. 1905, in case of vacancy in the office of supervisor, such vacancy shall be filled by the remaining supervisors and town clerk. But in the instance that you cite, only one member of such appointing board, to-wit, one supervisor remains, and the situation is not covered by the provisions of this section, and, in my opinion, there must be a special town meeting held to fill the vacancies.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 7, 1910.

734

TOWNS—OFFICERS—Supervisor cannot be employed by overseer for work on highways.

Attorney General's Office.

Mr. C. E. Nelson.

Dear Sir: A road overseer has no authority whatever to hire a member of the town board to work on the roads, and any such contract of employment is invalid and of no force and effect. Not being permitted by law to do such hiring, then such overseer should not attempt to do so, nor should the member of the town board make any attempt to be so employed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 25, 1910.

735

TOWNS—OFFICERS—Inclusion in city of territory in which town officers reside vacates their offices.

Attorney General's Office.

Mr. W. P. Chinn.

Dear Sir: You state that: "Early in April, by vote of the citizens of Eveleth, the city limits were extended, and in a part of the territory taken in

by the city there resided several officers of Mesaba Mountain township, some holding over and others elected at the last annual town meeting."

You inquire as to whether or not the above mentioned township officers by virtue of the extension of the city limits of Eveleth, lost their rights to the offices to which they were elected, or if they will hold over until the next annual town meeting.

You are advised that in my opinion the offices became vacant. Your attention is called to section 2667, R. L. 1905, which, insofar as applicable, reads as follows:

"2667. Vacancies—Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office * * *

"4. His ceasing to be an inhabitant of the state, or if the office is local, of the district, county, city or village for which he was elected or appointed, or within which the duties of his office are required to be discharged."

By the inclusion of the territory where the officials lived within the city of Eveleth (this assuming that such inclusion was lawfully made), such officials ceased to be inhabitants of the district for which they were elected and within which the duties of their offices are required to be performed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 25, 1910.

736

TOWNS—OFFICERS—Newly organized to elect three supervisors at first annual town meeting.

Attorney General's Office.

Mr. John Turnquist, Town Clerk.

Dear Sir: You state that your town was organized in August, 1909, and that the first town meeting was held on the 21st of that month. You now inquire as to whether you should elect three supervisors at the coming annual town meeting.

Your inquiry is answered in the affirmative. Chapter 103, G. L. 1907, provides that "where a new town has been or may be organized, and supervisors have been or may be elected for such town at a town meeting prior to the annual town meeting, such supervisors shall serve only until the next annual town meeting, at which meeting three supervisors shall be elected, one for three years, one for two years and one for one year, so that one shall go out each year."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 1, 1910.

737

TOWNS—OFFICERS—Treasurer not entitled to 2 per cent on money in the treasury at time he assumed the office.

Attorney General's Office.

H. M. Dalholen, Esq.

Dear Sir: You inquire generally as to the fees of a township treasurer, and I have to advise you that section 667, R. L. 1905, reads as follows:

"Each town treasurer shall be allowed to retain two per cent of all moneys **paid into the town treasury,** for receiving, safekeeping, and paying over the same according to law, providing that his compensation shall in no case exceed $100 in any one year."

Moneys that were in the town treasury and turned over to a town treasurer by his predecessor in office are not to be considered as **"paid into the town treasury."** Such funds were already in the treasury and the town treasurer is not entitled to retain two per cent thereof.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 5, 1910.

738

TOWNS—OFFICERS—Limitation on compensation of supervisors.

Attorney General's Office.

Mr. John Brummer, Supervisor.

Dear Sir: You inquire as to the amount that a supervisor may draw in any one year for services, and I have to inform you that chapter 302, G. L. 1907, provides that the maximum that can be drawn is $40. If any supervisor has drawn more than this amount it is his duty to turn the same back into the township treasury. A town clerk should not countersign an order, nor should the treasurer pay one which will make any supervisor's compensation exceed the above stated amount in any one year.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 23, 1909.

739

TOWNS—OFFICERS—Clerk of, may not be resident of separate village.

Attorney General's Office.

M. S. Stevens, Esq.

Dear Sir: You state that the township and village of Graceville voted to become separate election and assessment districts, and you inquire whether a town clerk who lives in the village may continue to hold that office, or whether in order to be qualified to hold that office a town clerk must reside in the township.

A man must be a resident of the township in order to be qualified to be town clerk thereof. It is true that the law permits the office of a town clerk to be in a village situated within the limits of a town, but that does not mean that he need not be a resident of the township.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

740

TOWNS—OFFICERS—Supervisor may be judge of election even though a candidate for office—Australian ballot system not to be used.

Attorney General's Office.

Mr. Nels C. Nelson.

Dear Sir: You state that it your annual town meeting one of the supervisors was a candidate for re-election and had opposition; this opposition claimed that he had no right to be a judge of election and at the same time a candidate.

The law of this state makes the supervisors the judges of election at the annual town meeting, and in the absence of any provision forbidding them to

act as such when they are candidates for office, they would have a right so to do.

You inquire relative to the right of electioneering within 90 feet from the hall, and I have to inform you that there is no provision of law forbidding such acts at an annual town meeting. The rules applicable to general elections do not apply to such meetings.

Your further inquire as to whether the ballots at the annual town meetings should be prepared under the provisions of the so-called Australian ballot system, and I have to inform you that your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

741

TOWNS—OFFICERS—Town board cannot transfer moneys from one fund to another.

Attorney General's Office.

Mr. Allen D. Peck, Town Clerk.

Dear Sir: You state that your township is out of revenue funds to pay orders issuing against such funds, and that the town board has ordered the treasurer to borrow money from the road and bridge fund so as to keep the same paid to avoid paying interest. You inquire whether the treasurer would be authorized to make such transfer, and pay orders on the revenue fund therefrom. I am of the opinion that your question should be answered in the negative. One reason that suggests this holding is that under the law a limitation is placed upon the power of the township authorities in levying taxes for the respective funds, and it will manifestly be against the purpose and spirit of the law to permit a transfer either by borrowing, or otherwise, from one fund to another.

In the absence of my attention being called to any statute so permitting such transfer my opinion is as above set forth.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

742

TOWNS—OFFICERS—Deputy town clerk must be resident of the town.

Attorney General's Office.

Mr. Nels Olson, Chairman.

Dear Sir: You inquire whether a town clerk can appoint his assistant from any outside town. Your question is answered in the negative. The assistant or deputy town clerk should be a resident of the township for which he purposes to act.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 17, 1909.

743

TOWNS—OFFICERS—Vacancy in board of supervisors, how filled.

Attorney General's Office.

Mr. E. J. Rice.

Dear Sir: You make inquiry relative to the manner of filling the vacancy in the board of supervisors occasioned by the resignation of one member of the board.

Replying to your inquiry I have to advise you that section 679, R. L. 1905, reads as follows:

"Whenever a vacancy occurs in any town office, the town board shall fill the same by appointment. The person so appointed shall hold his office until

the next annual town meeting and until his successor qualifies: Provided, that vacancies in the office of supervisor shall be filled by the remaining supervisors and town clerk until **the next annual town meeting when his successors shall be elected to hold for the unexpired term."**

The portion of the law above underscored answers your question as to the length of time that a man appointed to fill the vacancy would hold the office, and also the length of time for which the person elected at the annual town meeting to fill such vacancy will hold.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 23, 1909.

744

TOWNS—OFFICERS—Compensation of officers—Commutation of road taxes.

Attorney General's Office.

Mr. Christian Andreason.

Dear Sir: The compensation of township officers is that as fixed by chapter 402, G. L. 1907, being for each day's service as follows: Assessors, $2.00; supervisors and clerks, $1.50, when the service is rendered within the town and $2.00 when rendered without the town, but no supervisors shall receive more than $40.00 as compensation in any one year. In addition to this the clerk receives fees and not a per diem for certain services.

This chapter further provides as follows:

"The voters at any town meeting, before balloting for officers begins, may by resolution increase the compensation of town officers, not to exceed fifty per cent."

No action being taken by your last annual town meeting for such increase, it necessarily follows that the compensation of township officials is limited to the amount first above indicated.

There is no authority in law for allowing the person who wishes to commute his road tax to do so at a rate higher than that prescribed in section 1228, R. L. 1905, which fixes the amount to be paid at the rate of $1.50 per day for each able-bodied man, and a like amount for the use of a team and a wagon, plow or scraper. When a man is assessed a designated amount of road work he cannot be required to pay in cash in commutation of such road work, a sum in excess of that prescribed in said section 1228.

Where the township has to employ men and teams to work on the roads, the same to be paid from moneys on hand available for that purpose, the authorities would be justified in paying such reasonable price for such labor as in the judgment of the town board is necessary.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 13, 1909.

745

TOWNS—OFFICERS—Treasurer must deposit town moneys in designated depository.

Attorney General's Office.

David Carlson, Esq., Town Clerk.

Dear Sir: You inquire relative to the law as to depositaries for township funds, and I have to inform you that section 651, R. L. 1905, in defining the powers of a town board, insofar as applicable, is as follows:

"They may select and designate a bank as the depositary of town moneys for a time not extending beyond their official term, on the execution by such bank of a sufficient bond to the town, in double the sum deposited, to be ap-

proved by the board and filed in the office of the town clerk, **and thereupon may require the treasurer to deposit all or any part of the town moneys in such bank.** Such designation shall be in writing, and shall set forth all the terms and conditions upon which the deposits are made, be signed by the chairman and clerk, and filed with the clerk. The town treasurer shall not be liable for the loss of moneys while so deposited, and all interest thereon shall belong to the town."

You will note that it is made absolutely the duty of the town treasurer to deposit the township money in a depositary properly designated by the town board. It is violation of his official duty if he does not do so.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 6, 1909.

746

TOWNS—Sufficiency of notice determined.

Attorney General's Office.

Louis Hallum, Esq., County Attorney.

Dear Sir: You enclose copy of a notice given for a special election in the township of Salo in your county, for the purpose of voting on the proposition of issuing bonds for road and bridge purposes, and ask if the designation of the place for holding the meeting is sufficient. The notice states that the meeting will be held "in the school house," and you further state that there is only one school house in the township. The object of stating the place of the meeting is primarily to give the electors of the township notice of the place of holding such meeting; and if it is made to appear that there is but one school house in the township, then I am of the opinion that the designation is sufficient, for it is manifest that the place of holding the meeting is thus made definite and certain to all persons interested who may desire to take part in the election. I presume that the meeting was proposed to be held under the provisions of chapters 11 and 64, G. L. 1905. The only point raised by you is as to the designation of place of meeting, and I therefore refrain from passing any opinion further as to the notice.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Jan. 29, 1909.

747

TOWNS—Not liable for veterinary expenses on conditions stated.

Attorney General's Office.

Anton Thompson, Esq., County Attorney.

Dear Sir: This office is in receipt of your favor of the 14th instant in which you ask for our opinion on the hereinafter stated questions.

The owner of certain cattle requested the town clerk to call a veterinary to examine his cattle. The local board of health was not in any way notified, nor had they any knowledge that the live stock was infected with a contagious disease or that it was being examined and knew nothing about the matter until the bill was presented to the town board. The state live stock sanitary board likewise knew nothing of the examination by the veterinary. You ask if, under the facts stated, the veterinary has a lawful claim against the town for his services in examining the herd.

In answer to this I would say that it is our opinion that the same should be answered in the negative; that the town is not liable for the claim.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

July 20, 1909.

748

TOWNS—No addition can be made to town order because funds are not in treasury to pay same.

Attorney General's Office.

Mr. Christ A. Larson, Town Treasurer.

Dear Sir: You inquire as to whether it is lawful for a town board to add ten per cent to a town order and then allow the whole sum to draw six per cent interest, the ten per cent being added for the reason that that amount is charged as a discount by people cashing the orders.

Your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 7, 1909.

749

TOWNS—Power of annual town meeting to adopt by-laws.

Attorney General's Office.

Mr. E. O. Franks.

Dear Sir: You make inquiry relative to the adoption of by-laws at the annual town meeting, and I have to inform you, that section 625, R. L. 1905, in defining the powers of town meetings, insofar as applicable, reads as follows:

"625. The electors of each town have power at their annual town meeting * * * *

"4. To make such lawful orders and by-laws as they deem proper for restraining horse, cattle, sheep, swine and other domestic animals from going at large on the highways, and provide for impounding such animals so going at large."

Section 633 provides for the annual towning meeting and for 10 days notice thereof to be posted by the clerk, specifying the time and place of such meeting, and also provides that all town officers required by law to be elected shall be chosen thereat, and such other business done as is by law required or permitted.

Section 648 provides that every proposition to be voted upon by ballot at a town meeting, other than the election of officers, shall be specified in the notice of such meeting.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 15, 1909.

750

TOWNS—Clerk's records are subject to inspection at all proper times.

Attorney General's Office.

Mr. W. R. Mackenzie.

Dear Sir: The township books in the custody of the town clerk are public records and should be open to the inspection of any taxpayer at proper and reasonable times.

The question as to what highways township money should be spent upon rests almost exclusively within the sound judgment and discretion of the town

board, such board presumably having in mind the public welfare.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 17, 1909.

751

TOWNS—Bills against must be itemized and verified.

Attorney General's Office.

Mr. John A. McCormack, Town Clerk.

Dear Sir: You present a copy of a bill rendered to the township of Two Harbors, in which the items are sufficiently dated and the amounts of each sufficiently stated, but the same are described as "to township business." I do not deem this a sufficient description of items for which a charge is made, and the board should not allow the bills in the form above described. The bill should definitely describe the service rendered in order that the board, before allowing the same, may be fully advised as to the exact nature of the service for which compensation is claimed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 13, 1909.

752

TOWNS—Town orders must be signed by chairman of supervisors.

Attorney General's Office.

Mr. N. A. Narum.

Dear Sir: You state that the chairman of your town board has resigned and the vacancy has not been filled, and you inquire whether orders drawn and signed by one of the supervisors, without the approval of the other supervisor, constitutes a legal order.

Your question is answered in the negative. A vacancy having occurred in the office of chairman, such vacancy should be forthwith filled, in order that the business of the town may expeditiously and properly be carried on.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 12, 1909.

753

TOWNS—Regulation of pool and billiard tables in.

Attorney General's Office.

Mr. H. A. Ellis.

Dear Sir: You inquire as to the law governing pool and billiard halls in various townships and villages. Section 651, R. L. 1905, in defining the duties of a town board, among other things, provides that—

"They may prohibit or license and regulate the keeping of billiard, pool and pigeonhole tables and bowling alleys, fix the price and time of continuance of such license, and, whenever in their opinion the public interest requires it, revoke the same."

Section 652, R. L. 1905, provides—

"Any person who shall keep a billiard, pool or pigeonhole table, or a bowling alley in any town, without first obtaining a license therefor as provided in section 651, shall be guilty of a misdemeanor, and be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail for not more than thirty days."

Subdivision 12, of section 727, R. L. 1905, in defining the powers of a village council provides that such council may license and regulate the keeping of billiard tables, pigeonhole tables and bowling alleys. This last quoted law is amended by chapter 138, G. L. 1905.

The regulation of pool and billiard tables in cities would depend upon what the provisions of their charters are in that regard.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 12, 1909.

754

TOWNS—No discrimination can be made against non-residents.

Attorney General's Office.

Mr. August L. Ahlbrecht, Town Clerk.

Dear Sir: You inquire in effect whether the electors at the annual town meeting can vote on and adopt a by-law which could be enforced, providing that all taxpayers who are not residents of the township must pay for road taxes into the town treasury as soon as the same become due. You idea is to make a different provision for non-residents from that which obtains for residents and to prohibit non-residents from allowing their road taxes to become delinquent and afterwards make payment therefor, as provided by law, to the county treasurer.

Your question is answered in the negative. The electors at the annual town meeting cannot pass any by-law to that effect which would be legal and enforcible.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 25, 1909.

755

TOWNS—May exercise right of condemnation under section 1213, R. L. 1905.

Attorney General's Office.

Mr. Warren Miller, County Attorney.

Dear Sir: You refer to sections 1213 and 2520, R. L. 1905, and call attention to their apparent inconsistency and ask as to whether the town board may proceed to exercise the right of condemnation under the provisions of 1213.

I have to advise you that I am of the opinion that your question should be answered in the affirmative. I understand that for years it has been the practice in this state for townships to proceed in the regular way under the mode prescribed in chapter 41, R. L. 1905, to condemn property for purposes such as are referred to in your communication. It is likely that the limitation referred to in section 2520 has reference simply to the taking of land necessary in the laying out of a public highway, that is, to the acquiring of an easement for highway purposes.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 22, 1909.

756

TOWNS—Limitation of authorized levy may not be exceeded.

Attorney General's Office.

Mr. Louis Hallum, County Attorney.

Dear Sir: You call attention to chapter 404, Laws of 1907, which limits the levy for township purposes in townships having a less valuation than $100,000 to the sum of $150, and inquire whether more than that amount may be expended by the township.

I am aware of the fact that another provision of the law fixes the compensation of the supervisors and other township officers and limits the compensation of supervisors to not exceeding $40 each in any one year. However, I am of the opinion that it is not competent for the town board to exceed the sum of $150, the amount of the levy, for township purposes in any one year, notwithstanding that this would preclude the various township officers from drawing the maximum limit authorized for their services. The legislature in fixing this amount must have had in contemplation the fact that the amount of the levy, in their judgment, would be a sufficient burden upon townships containing such a small valuation. It may be conceded that this will work a hardship in certain cases, but that is a matter for determination by the legisalture and one that we canot take into consideration in construing the law as we find it.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 23, 1909.

757

TOWNS—Bank may be designated as township depository—non-liability of treasurer and town board for loss.

Attorney General's Office.

Mr. S. Gust Peterson, Chairman.

Dear Sir: You inquire whether the board of supervisors of a township have the legal power to designate a bank as a depository for township money.

Your inquiry is answered in the affirmative. Section 651, R. L. 1905, in defining the powers of a town board, states among other things:

"They may select and designate a bank as the depository of town moneys for a time not extending beyond their official term, on the execution by such bank of a sufficient bond to the town, in double the sum deposited, to be approved by the board and filed in the office of the town clerk, and thereupon may require the treasurer to deposit all or any part of the town moneys in such bank. Such designation shall be in writing, and shall set forth all the terms and conditions upon which the deposits are made, be signed by the chairman and clerk, and filed with the clerk. The town treasurer shall not be liable for the loss of moneys while so deposited, and all interest thereon shall belong to the town."

The foregoing quotation answers your inquiry as to the liability of the town treasurer, and his bondsmen in case the bank should fail. The power to designate a depository is vested in the town board and it is not necessary to have the same voted upon at an annual meeting. No particular harm could be done by having such vote for the purpose of securing an expression of the electors in regard to the matter, though the vote, however, would not be necessarily binding upon the town board.

If the town board, in the exercise of a sound discretion should designate a bank as a depository, taking the required bond, and the bank should fail, there would be no liability upon the town board on account of such failure.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 4, 1910.

758

TOWNS—Power of town boards to levy road taxes.

Attorney General's Office.

August R. Norman, Esq., County Auditor.

Dear Sir: Your letter of April 19th to the attorney general submitting certain questions as to road taxes has been referred to me for answer. Your first question is: "What is the limitation of the rate for road and bridge tax in townships, including the land road tax?"

I have to say in answer to this that the rate of taxation in any town for road and bridge purposes cannot exceed ten mills per dollar. Chapter 404, G. L. 1907.

Your second question is: "Must all levies for road and bridge purposes be voted by the electors at the annual town meeting, including the land road tax?"

This is to be answered in the negative. This office has held that under chapter 324 of the Laws of 1905, the supervisors are to levy and assess the road and bridge tax. The latest legislation bearing on this question is chapter 350 of the General Laws 1909, which empowers the town meeting to vote money for the repair and construction of roads and bridges. To the extent that the town meeting does vote money for this purpose the town board must abide by their action. If the amounts voted by the town meeting do not equal ten mills on the dollar, then the town board may levy enough tax for general road and bridge purposes to make up a total of ten mills on the dollar of assessed valuation.

Your third question is: "Can the board of supervisors levy and assess a land road tax without a definite amount being first voted by the electors of the town at the annual town meeting?"

This is answered in the affirmative, subject however to the qualifications stated in the answer to your second question.

Your fourth question is in substance answered by the answer to question number two.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

April 25, 1910.

759

TOWNS—Old herd law not in force—Limitations on power of annual town meeting.

Attorney General's Office.

W. H. Ellwood, Esq., Justice of the Peace.

Dear Sir: In reply to your letter to the attorney general inquiring with regard to the laws relating to stock running at large, I have to say that the code which went into effect March 1, 1906, repealed the old laws permitting a town to regulate the running at large of domestic animals. When the code went into effect all the towns were bound by its provisions in this respect and the regulations which they had adopted and the votes which they had taken upon the question of cattle running at large were at an end. Consequently the old common law with regard to cattle running at large is in effect. This law has been stated as follows:

"Every man is bound to keep his animals on his own land."

The only thing that can be regulated by town meetings now in this matter is the restraining horses, cattle, sheep, swine and other domestic animals from going at large on the highways.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 8, 1910.

760

TOWNS—Wht constitutes "repairs of bridges," construing section 1195, R. L. 1905.

Attorney General's Office.

J. W. Raveill, Esq.

Dear Sir: You ask for the proper construction of section 1195, of the Revised Laws 1905, with respect to the meaning of the word "repaired" as used in that section. I am of the opinion that ordinary repairs are not meant by that

expression, but only such repairs as affect the width of the bridge. In the last part the word "repair" refers to such repairs as affect the height of the bridge and approaches.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

June 8, 1910.

761

TOWNS—Minutes of board not invalid though not signed by chairman.

Attorney General's Office.

Mr. Edward Holmgren, Mayor.

Dear Sir: In reply to your inquiry of July 13th as to the validity of unapproved minutes of the action of town boards, I have to say that such minutes are not void in the absence of law requring them to be approved by the chairman. I do not think there is any law in this state requiring the chairman of the board of supervisors to approve the minutes of a meeting of the board or of a town meeting. It is very proper that they should be so approved, but I do not think that the records are made less effective for want of the approval of the chairman of the board.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

July 25, 1910.

762

TOWNS—Depository—Interest on deposits.

Attorney General's Office.

D. M. Vennilyer, Esq., Treasurer of the Town of Iron Range.

Dear Sir. This office is in receipt of your favor of the 30th ultimo. In answer thereto I would say that we are of the opinion that while the statute evidently contemplates that a bank offering itself as a depositary of town moneys should agree to pay interest on deposits, it is not indispensable to a legal designation of a bank as a depositary that it should agree to pay interest on the deposit of town funds.

Yours truly,
C. LOUIS WEEKS,
Special Attorney.

Sept. 9, 1909.

763

TOWNS—May subscribe to stock of railroad.

Attorney General's Office.

H. E. Cook, Esq.

Dear Sir: This office is in receipt of your favor of May 24th and in answer thereto you are advised that it is competent, under section 2771, G. S. 1894, for the town of Wasioja to make a subscription to the stock of the Minneapolis, St. Paul, Rochester and Dubuque Traction Company.

In this connection I call your attention particularly to section 2783, G. S. 1894.

The above statutes were originally enacted as chapter 106, G. L. 1877, and have not been repealed by the Revised Laws of 1905. See section 5530, R. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

June 4, 1909.

764

TOWNS—Cannot pay bonus for sale of bonds.

Attorney General's Office.

Mr. N. J. Bray.

Dear Sir: You inquire generally as to the right of your township to pay a bonus in the matter of the sale of your road and bridge bonds, and I have to inform you that the payment of such bonus is not warranted or permissible.

Section 781, R. L. 1905, relating to bonds for public indebtedness provides:

"Such bonds shall express the amount and terms of of payment, and have coupons attached for the several interest payments to be made, which interest shall in no case exceed the annual rate of six per cent, payable half-yearly. The bonds of cities of the first, second and third classes shall be payable not more than thirty years after their issue, and those of all other municipal corporations not more than twenty years thereafter, and no bonds of either class shall be disposed of for less than their face value, with accrued interest."

There is no authority of law for the allowance by your town board to the company purchasing the bonds of any attorney or printing fees. Such an allowance would be in effect the paying of a bonus.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 23, 1909.

765

TOWNS—Aid to railroads.

Attorney General's Office.

Olaf C Johnson, Esq., Justice of the Peace.

Dear Sir: In reply to your letter of January 8th, inquiring if a township has authority to raise funds for a railway survey, I have to say that it has not. The only authority that a town has to aid a railroad is given by chapter 106 of the General Laws of 1877, and amendments thereto. This law provides in substance that the aid to be contributed to the construction of any railroad by any town must be by its bonds, issued according to the terms of that law, and in consideration of the issuance to it of the amount of stock equal in par value to the bonds.

Section 623 of the Revised Laws 1905, says—

"No town shall posses or exercise any corporate powers except such as are expressly given by law, or are necessary to the exercise of the powers so given."

I find no authority for appropriating money for the mere survey of a line for the possible construction of a railroad.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Jan. 15, 1909.

766

TOWNS—Levying taxes for town hall.

Attorney General's Office.

Mr. Fred S. Syverson.

Dear Sir: In reply to your letter of March 3d, I have to say that the citizens of Hill River can in town meeting assembled authorize the town board to build a town hall and determine by ballot the amount of money to be used for that purpose. When this is done the levying of the tax is committed by section 628 R. L. 1905, to the town board. The town board would then have the power to levy a tax for the amount determined to be raised for building a town hall. I think it would be competent for the town meeting to recommend that the amount so determined be raised by successive annual tax levies by the town board, and

that if the board conform to such recommendation the tax levied for the first year, at least, would be legal, and probably those levied by other town boards would also be legal, but any subsequent town meeting could put an end to the project of building a town hall, and it is possible that town boards in later years could refuse to levy further taxes for the building of such hall, although I am inclined to the opinion that unless the town changed its action, the town board would be under obligation to raise the money for building the town hall by successive levies, until the total amount was raised.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Mar. 6, 1909.

767

VILLAGES—OFFICERS—President or trustee not entitled to extra compensation while serving on board of equalization.

Attorney General's Office.

Mr. O. B. Dahlgren.

Dear Sir: In answer to your favor of July 8th, you are advised that in my opinion a trustee or president of the village of Walnut Grove sitting as a member of the board of equalization under and pursuant to section 847, R. L. 1905, is not entitled to extra compensation therefor in the nature of a per diem allowance, or otherwise.

The compensation of the president and trustees of the village is fixed by section 728, R. L. 1905, and is limited to not exceeding $10.00 in any one year. See section 1272, G. S. 1894.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

July 13, 1910.

768

VILLAGES—OFFICERS—Bond of village treasurer is to be approved by council.

Attorney General's Office.

Mr. Oscar T. Stenvick.

Dear Sir: In reply to your letter of August 10th inquiring as to the proper person or body to approve the bond of a village treasurer, I have to say that the village council is the proper body to approve such bond. This seems to be required by the terms of sections 717 and 4529 of Revised Laws of 1905, and I do not think any other statute governs in the matter.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Aug. 15, 1910.

769

VILLAGE MARSHAL—Duties of.

Attorney General's Office.

Mr. K. L. Anderson.

Dear Sir: In reply to your letter of August 30th inquiring as to the passing of ordinances relative to the duties of the village marshal, I have to say that this inquiry can best be answered by discussing, somewhat at length, the duties of a village marshal when none are prescribed by ordinance or resolution of the council.

A village marshal has such duties as are usually delegated to and discharged by a police officer or a village constable. He is a peace officer, and possesses the ordinary functions, duties and powers of a constable. The principal duty of a constable, and, consequently, of a marshal, is to preserve the peace of the community, and to arrest all persons committing or attempting to commit public offenses in his presence. It is no doubt his duty to be present at any place whenever he has reasonable notice that his presence at such place would tend to prevent a breach of the peace or the commission of a crime.

A marshal or constable may, without a warrant, break open an outer or inner door or window in order to arrest a person for a public offense committed or attempted in his presence if, after notice of his office and purpose, he is not permitted to enter. He must have been in continuous pursuit of the offender, or have a warrant for him when he demands admittance to a dwelling house for the purpose of arresting a person therein. An offense is committed "in his presence" when it is plainly known to him, by sight or hearing, and he may, by following up this knowledge himself, identify the person committing the offense without other information than that gained by his own senses.

A marshal or constable cannot break and enter a dwelling house for the purpose of arresting a person for a violation of an ordinance or the commission of a misdemeanor, nor for the purpose of securing evidence of such offenses, where there is no disturbance of the peace and no felony is being committed. Other buildings than dwelling houses may be broken into in order to make necessary arrests, but the officer so doing, should have reasonable cause to believe that the offender is within such building.

A marshal or constable may, and should, enter any building—private or public—in which the peace is being disturbed in an unlawful manner, and arrest the persons committing the offense, first stating his office, and purpose and demanding admission, if it be a dwelling house.

The term "dwelling house" in law, means not only the abode of a person, but also the buildings immediately connected therewith, and which practically form a part of a residence. A recognized authority on criminal law says:

"Returning to the right of arrest for a crime in the arresting person's presence,—if it is an affray or other offense less than felony, there is not generally occasion to inquire into the right of breaking outer doors, for, ordinarily, what is done in a barred and bolted house, is not in the presence of a man outside, still 'when an affray,' says Chitty, 'is made in a house in the view or hearing of a constable, he may break open the outer door in order to suppress it.' * * * But not even an officer can, without a warrant, break an outer door to arrest persons within who are merely engaged in unlawful gaming or the selling of intoxicating liquor without a license."

1 Bishop New Criminal Procedure, Sec. 197.

An ordinance is not needed to give a village marshal the powers of a constable, as hereinbefore indicated, and it is doubtful if an ordinance could take away from the marshal the powers incident to the office which he holds. He would still have "his standing as an officer of the village."

When an arrest has been made by a marshal or constable, he must proceed according to law with his prisoner. "The safest and best course is said to be, in all cases, to carry the offender before a justice of the peace as soon as circumstances will permit." If a person is arrested on a warrant, he should always be brought before the magistrate who issued the warrant. If arrest has been made without a warrant, and the person arrested is clearly not guilty of the offense for which he was arrested, he may be discharged by the officer. If a marshal arrested a person guilty of any offense under either a law or an ordinance, and releases him without bringing him before a magistrate, he thereby does an unlawful act. He should be disciplined by the council, as the circumstances require, and if he does not then follow the requirements of the law, he should be discharged.

I have recently given an opinion as to the duties of sheriffs. This opinion will be published in the decisions of this office relative to county matters some time this month, and I will send you a copy. What is therein said about sheriffs,

applies, largely, to marshals, except that a marshal who fails to do his duty, is to be removed by the village council, while a sheriff who does not do his duty, is to be removed by the governor.

Yours truly,
GEORGE T. SIMPSON,
Attorney General.

Sept. 2, 1910.

770

VILLAGES—OFFICERS—Vacancies in council, how filled.

Attorney General's Office.

Mr. Arthur Bernier..

Dear Sir: You state that at the recent village election three councilmen were elected and thereafter duly qualified, but that at the first regular meeting one of them resigned. You inquire whether anybody can be selected to fill the vacancy, or must the one who received the greatest number of votes at the election next to the ones elected be chosen.

The vacancy may be filled by the council by appointment of any qualified person therefor. Such appointee need not be a person who was also a candidate at such election.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 20, 1909.

771

VILLAGES—OFFICERS—Members of board of equalization not entitled to extra compensation.

Attorney General's Office.

Mr. Thomas Little, Village Recorder.

Dear Sir: You inquire:

1. What members of the village council constitute the board of equalization?

2. Does the board of equalization receive any compensation for their labor over and above their annual salary?

In the absence of any special provision of law effecting your village, and presuming that your village is operating under the general law, I call your attention to section 847, R. L. 1905, in which is provided that the president of the village council, village assessor and village clerk shall constitute a board of equalization.

I have been unable to find any law allowing a village board of equalization any extra compensation for their labor as such. The compensation fixed by law for each individual officer would control, and no extra compensation could be allowed.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

772

VILLAGES—OFFICERS—Salary of treasurer, how determined.

Attorney General's Office.

Mr. H. A. Ebert.

Dear Sir: You inquire as to what per cent the village treasurer can charge on money paid out, and I have to inform you that there is no law fixing a percentage of the amounts disbursed that a village treasurer shall receive for his services. You do not state under what law your village is incorporated, but if it has not been reincorporated under the provisions of chapter 9, R. L.

1905, and is under title 3 of chapter 10, Statutes of Minnesota 1894, then I have to inform you that in section 1224 thereof it is provided that fixing of the compensation of village officers is vested in your village council. The general practice in vogue throughout the state is to allow village treasurers the same percentage as is paid town treasurers for like services, but as stated above, under the law referred to this is a matter to be determined by the village council.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 7, 1909.

773

VILLAGES--OFFICERS—Member of council cannot furnish surety bonds to village.

Attorney General's Office.

Mr. Michael Marx, Village Attorney.

Dear Sir: You inquire at to right of an alderman who represents a surety company to furnish the council with a bond, in the premium of which he is interested, and upon the question of the approval of which bond he is required to vote.

I am of the opinion that such action by an alderman is improper, although if a bond were furnished by a company that he represents and was accepted by the council it would not invalidate the bond or relieve the surety.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 19, 1909.

774

VILLAGES—OFFICERS—Failure of officer to qualify within specified time does not ipso facto create vacancy.

Attorney General's Office.

Mr. W. J. Kuntz.

Dear Sir: You state that on March 9th, the date of your annual village election, a certain man was elected as a village trustee, but that he did not sign his oath of office or qualify until March 20th, and you inquire whether he is a legal member of the village council.

In the case of State ex rel Webb vs. Stratte, 83 Minn. 194, our supreme court says:

"As a general rule, it is held that a failure to take the oath of office within the time specified by law does not ipso facto create a vacancy which will prevent an officer from qualifying thereafter, if it is done before any steps are taken to declare a vacancy, although the statute declares that the office shall become vacant on refusal or neglect to take the oath within the time prescribed."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 1, 1909.

775

VILLAGES—OFFICERS—Member of council should not act as election officer—Contracts of.

Attorney General's Office.

Mr. Fred L. Schmidt.

Dear Sir: You inquire if a member of a council of a village acts as a judge of election, has he the right to judge the same as one who does not belong to the council.

I am inclined to the opinion that it is not permissible for a member of a village council to act as a judge of election. Section 712, R. L. 1905, among other things, provides:

"The council shall also, within twenty days of the election, appoint two judges and one clerk for each voting district of the village; all to be resident voters, but not candidates for any village office."

It would hardly seem it was the intention of the legislature to allow members of a council to appoint themselves for these positions.

You further inquire whether a member of a village council has a right to sell anything to the village. In the case of Stone vs. Bevans, 88 Minn. 127, the court held:

"A member of the common council of a village in this state cannot lawfully enter into a contract with the municipality for his own benefit, depending upon authority derived from a vote of such council."

"Where an illegal contract has been entered into between the common council of a village and one of its members, upon which such member has received money, as in this case, it may be recovered for the village in a suit by a taxpayer."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 5; 1909.

776

VILLAGES—OFFICERS—Old officers hold over on failure of newly elected officers to qualify—EXCEPTION in case of one vacancy with two entitled to fill it.

Attorney General's Office.

Mr. B. H. Whitney, Village Recorder.

Dear Sir: The information submitted by you discloses that: the village of Slayton was incorporated under the provisions of chapter 145 of the laws of 1885, and has never been reincorporated; the present incumbent of the office of president was elected in March, 1908; in March, 1909, a successor was elected but refused to qualify, the incumbent holding over, and at the last election, this month, another man was elected to succeed him and he also refused to qualify; at the same election Mr. Klingler, one of the old trustees, and two new trustees were elected; Mr. Klingler and one of the new trustees elected have qualified; the other trustee elect refusing to qualify.

In light of the foregoing statement of the situation you inquire:

1. Will the present incumbent of the office of president still continue to hold over or is there a vacancy to be filled by appointment?

2. What course must be taken to fill the office of trustee for which the one newly elected refuses to qualify?

Answering your first inquiry I have to advise you that in my opinion the present incumbent of the office of president will continue to hold that office until his successor is elected and qualified.

Answering your second inquiry I have to inform you that one vacancy exists in the office of village trustee, which vacancy is to be filled by appointment. The three village trustees will consist of Mr. Klingler, the newly elected trustee who qualified and the third trustee to be appointed.

Section 19 of said chapter 145 provides for the election, among other officers, of three trustees "who shall hold their respective offices for one year or until their successors are elected and qualify."

Section 42 of said chapter as amended by chapter 100, G. L. 1891, provides:

"Should a vacancy at any time occur in any of the offices provided for in this act, the village council, or the remaining members thereof, may fill the same by appointment, and the person so appointed may hold his office until his successor is elected and qualified."

As a vacancy exists in the office of one village trustee and there are two old trustees, each equally entitled to the right to hold that office, owing to the

fact that they are to hold office until their successors are elected and qualified, I am of the opinion that neither one of such old trustees can hold over. Your attention is called to 23 Am. & Eng. Encyc. of Law, second edition, 414, in which are cited the cases of Kilburn vs. Conlan, 56 N. J. L. 349, and People vs. Jones, 17 Wend. (N. Y.) 81, in support of the proposition that in case of a single vacancy where two are entitled to hold over, neither one of the two can fill the vacancy

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 28, 1910.

777

VILLAGES—OFFICERS—Street commissioner is appointive, not elective officer.

Attorney General's Office.

Mr. J. D. Pederson, Village Recorder.

Dear Sir: You ask if in the annual village election notice that is no mention made of the fact that a street commissioner is to be elected, and one or more votes should be cast for a certain individual therefor, whether such person should be declared elected, or whether it would still be the duty of the village council to appoint a street commissioner. You do not state under what law your village is incorporated, but assuming that it is under chapter 9, R. L. 1905, I have to advise you that the fact that some person received votes at the village election for street commissioner when that office was not properly to be filled at such election would have no force or effect, and the person receiving such vote should not be declared elected. The position of street commissioner should be filled by the village council.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 1, 1909.

778

VILLAGES—OFFICERS—Postmaster may hold village office.

Attorney General's Office.

Mr. Robert Gadola.

Dear Sir: There is no provision of law in this state that precludes a postmaster from holding a village office.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 11, 1910.

779

VILLAGES—OFFICERS—Vacancies in office to be filled by council—President and clerk have right to vote at council meetings.

Attorney General's Office.

F. E. Giebenhain, Esq., President, Village Council.

Dear Sir: You state that a vacancy occurred in the office of one of the justices of the peace of your village, and that the village council filed the vacancy by appointment. You inquire as to whether such authority is vested in the village council, and you are advised that if your village is incorported or reincorporated under chapter 9, R. L. 1905, then the provisions of section 711 thereof govern. That section provides as follows:

"The village election shall occur annually on the second Tuesday of March, when the resident electors shall choose the following named officers for terms beginning the first Tuesday in April next preceding, to-wit: A treasurer, and a village council, composed of a president, a clerk and three trustees, and if said village is a separate election district an assessor, all for the term of one year. Also two constables and, if there be no municipal court established in the village, two justices of the peace, all for the term of two years. All officers chosen, having qualified as such, shall hold until their successors qualify. Vacancies in office may be filled for the remainder of the year by the village council."

Authority is thus vested in the village council to fill the vacancy in question. It will also be noted by this section that the village council is composed of a president, a clerk and three trustees. It therefore follows that the clerk is a member of the council, has a right to vote, make or second motions, and take action the same as other individual mebers of the council. The president of the village acts as the presiding officer of the council, and is entitled to vote, he being a member thereof. If your village is not incorporated or reincorporated under said chapter 9, then the provisions of law applicable to the questions that you submit, are found in sections 1216, 1219 and 1260, G. S. 1894, which are practically the same as section 711 hereinbefore referred to.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 19, 1910.

780

VILLAGES—OFFICERS—President of its entitled to vote at council meetings.

Attorney General's Office.

Chas. A. Moody, Esq., President Village Council.

Dear Sir: You state that you are president of the village council of Warroad and that your right to vote at meetings of the council has been questioned, it being claimed that you only have the right to vote in case of a tie.

This contention is not correct. Presuming that your village is incorporated under the Revised Laws of 1905, or under some law containing similar provisions to those found in section 711, R. L. 1905, then there can be no question about the matter. The law referred to, among other things, provides for "a village council composed of a president, a clerk and three trustees." This makes the president of the village a member of the council, and as such he is entitled to vote the same as any other member.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 14, 1910.

781

VILLAGES—Residents of can vote at township election if village is not separated therefrom.

Attorney General's Office.

Mr. George T. Olsen, County Attorney.

Dear Sir: You inquire whether in the village of Courtland, in your county, which has never been separated from the township in which it is located so as to constitute a separate election or assessment district, the elector residents of said village can vote at the township election for the election of town officers. Your question is answered in the affirmative. The electors residing in such village can properly vote at such town meeting.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 2, 1909.

782

VILLAGES—Chapter 8, R. L. 1905, does not apply to villages not organized or reincorporated thereunder.

Attorney General's Office.

Mr. T. C. Anderson, Village Clerk.

Dear Sir: You state that the village of Herman has not been reincorporated under the provisons of the revised laws, and inquire as to whether section 711 of said laws apply to your village, with reference to the term of officers.

I am of the opinion that the section in question does not apply to your village, you not being reincorporated thereunder. You state that the law under which you were incorporated was repealed by the code, but you will observe that section 698, R. L. 1905, expressly provides that until reorganized, as provided in section 699, villages existing as such shall continue thereunder and in all things continue to be governed by such general or special laws as they may have been incorporated under.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

783

VILLAGES—Examination of by public examiner.

Attorney General's Office.

Mr. F. A. Culver.

Dear Sir: You inquire as to the law providing for an examination by the public examiner of your village affairs, and I have to inform you that the law in question is found in chapter 344, G. L. 1907. This law provides that it shall be the duty of the public examiner at least once in each year to examine and audit, **at the request of the county commissioners of any county,** the books of account and other records required to be kept by law by village officers in townships and villages throughout the state. There is no provision for this examination other than upon the request of the county commissioners. Provison is also made as to the payment for such examination and a prosecution of offenders by the county attorney if the report shows a violation of law.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 5, 1909.

784

VILLAGES—Council cannot donate village funds for county fair.

Attorney General's Office.

Mr. P. F. Schmidt.

Dear Sir: You state that the village of Pillager is now about $1,000.00 in debt, some of which is a bonded indebtedness, while the balance is a floating indebtedness; that such village is located in Cass county, and that the county fair is being held in your village.

You inquire as to whether the council of the village has the power to appropriate some of the village funds for the benefit of such agricultural association.

In my opinion your inquiry is to be answered in the negative. Without a provision of law authorizing such expenditure of village funds, they cannot lawfully be diverted for such a purpose.

From the examination that I have made I do not find that there is any law so providing.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

June 22, 1910.

785

VILLAGES—Detaching territory from—chapters 138 and 460, G. L. 1909, are both in force.

Attorney General's Office.

Mr. Anton Thompson, County Attorney.

Dear Sir: In reply to your letter of July 16th relative to the conflict between chapters 138 and 460 of the General Laws of 1909, I have to say that it has seemed to members of this office that the second law was not so completely repugnant as to repeal the first by implication. A leading case bearing upon this question is State vs. Bailer, 91 Minn. 186. This case cites leading cases on both sides of the question. My first impression was that the facts brought the conflict between these laws within the law contained in Nichol vs. the City of St. Paul, 80 Minn. 415, but a further examination led me to finally think that the two laws should both be allowed to stand. They are different in several material particulars. Chapter 138 is very much more limited in its scope than chapter 460, and yet chapter 460 is so worded as to practically prevent any one, under any ordinary circumstances, from getting agricultural land out of a village. Chapter 460 was introduced before chapter 138 was finally passed, and the member introducing chapter 460 voted for chapter 138. This, of course, has some bearing upon the question of intent.

Our court has heretofore taken into consideration the fact that a former law was pending for some time after a later law was introduced, and concluded that this tended to show that the legislature intended both laws to stand.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

July 25, 1910.

786

VILLAGES—Offenses against ordinances.

Attorney General's Office.

E. Tankersley, Esq.

Dear Sir: In reply to your letter of December 20th, relative to the passage of ordinances by villages covering the same ground as state laws, I have to say that such ordinances can be passed; that prosecutions under them can be and must be had in justice court; that such prosecutions should run in the name of the village and fines in such cases are payable into the village treasury.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Dec. 23, 1909.

787

VILLAGES—Marshal—Ordinances may be like state laws.

Attorney General's Office.

John B. Vicker, Esq.

Dear Sir: In reply to your letter of December 27th, inquiring whether a village marshal is executive officer within the meaning of section 4810 of the Revised Laws of Minnesota 1905, I have to say that he is.

You further inquire whether a village ordinance may be passed covering the same grounds as a state law and in reply to this inquiry I have to say that it may.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

Dec. 28, 1909.

788

VILLAGES—Limitations on paying for municipal buildings by warrants.

Attorney General's Office.

K. L. Anderson, Esq.

Dear Sir: In reply to your inquiry of December 1st, as to whether or not the village council of your village may lawfully issue warrants to pay for a proposed lockup and firehouse, I have to say that the village council cannot issue warrants for that purpose under the circumstances which you specify in your letter, to-wit: that here is no money in the treasury; that the village indebtedness is $11,000, and that the last assessed valuation is $164,000.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Dec. 2, 1909.

789

VILLAGES—Ordinances must fix license fees on reasonable basis

Attorney General's Office.

Mr. J. D. Pederson, Village Recorder.

Dear Sir: In reply to your letter of January 14th, I have to say that the village ordinances, a copy of which you enclose, would not be valid. The objection is this, the village law says that the village council shall in all cases of the licensing of hawkers and peddlers "fix the price of said license." The settled rule of law is that when a power has been conferred upon a village council that council must itself execute that power. Consequently the village council and not the recorder must fix the price of each license and for this purpose should classify hawkers and peddlers and fix a license according to such classification. This must be based upon some characteristic or conditions of their business which would make a natural and not an arbitrary classification.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Jan. 19, 1909.

790

VILLAGES—Lands separated from village not released from village indebtedness.

Attorney General's Office.

Hon. Charles L. Alexander.

Dear Sir: I agree with you in the conclusion arrived at relative to the proper construction to be placed upon the last section of chapter 138, G. L. 1909. It was manifestly the intention of the legislature that the separation of agricultural lands from a village incorporation should not release such tract from liabilty on outstanding bonds of such village. Section 2 of the act in question reads as follows:

'Such separation of said village shall not release any such tract of land from liabilty on account of any outstanding indebtedness of such village existing at the time of its separation therefrom."

Yours truly,
CLIFFORD L. HILTON.
Assistant Attorney General.

May 14, 1909.

791

VILLAGES—Vote of electors necessary to authorize erection of electric light plant.

Attorney General's Office.

Mr. L. A. Phillips, Village Clerk.

Dear Sir: A village cannot erect an electric light plan even though it have sufficient funds in the treasury for that purpose, without being so authorized to do by a vote of the people.

Section 744, R. L. 1905, insofar as applicable, reads as follows:

"But no such erection, purchase or lease (of water works and lighting plants) shall be made without approval by the voters of the village, such as is required by law for the issuing of village bonds for like objects."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 29, 1909.

792

VILLAGES—Limitation of penalty for violation of ordinance.

Attorney General's Office.

Carl Erlandson, Esq.

Dear Sir: You quote from an ordinance of your village which prohibits the sale without license of "spirituous, vinous, fermented or malt liquors," and provides the penalty for violation, the maximum of which may be $100 and the costs of prosecution, **and** by imprisonment in the county jail not more than ninety days.

You inquire as to whether the word "malt" used in that connection would be construed as having reference to intoxicating or non-intoxicating liquors.

I do not think the ordinance in question is a valid exercise of the authority conferred upon the village council. I presume that your village is incorporated or reincorporated under chapter 9, R. L. 1905. Subdivision 13 of section 727, empowers a village council "to license and regulate or prohibit the selling, bartering, disposing of, or dealing in spirituous, malt, fermented, vinous, or mixed intoxicating liquors of any kind." It has been construed that the word "malt" as used in this subdivision has reference to intoxicating malt.

Subdivision 22 of said section 727, in prescribing the penalty for the violation of an ordinance, states "that no such penalty shall exceed a fine of $100, **or** imprisonment in a village or county jail for a period of three months." The village council can prescribe no greater penalty than is provided for in subdivision 22, supra.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 18, 1909.

793

VILLAGES—Power of council to pass ordinances.

Attorney General's Office.

Mr. Franklin Grimm, Village Clerk.

Dear Sir: You inquire whether the village council has the power to adopt an amendment to village ordinances without the voice of the people. This question is answered in the affirmative. A village council is empowered to enact any ordinance that comes within the scope of the powers vested in them by law or the village charter.

You further inquire whether the village council can, without a vote of the people, regulate the amount of fee that is required to be paid for saloon licenses. Your question is answered in the affirmative, providing of course, that the village is license territory, and the fee fixed is not less than $500.

You further inquire whether the village council has power to raise $320 for general purposes and $200 for road and bridge purposes without a vote of the people. If the amounts specified come within the taxation limitations authorized by law, this question is answered in the affirmative.

It may be said that this opinion is based upon the supposition that your village is incorporated or reincorporated under the provisions of chapter 9, R. L. 1905, or some law containing similar provisions.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 20, 1909.

794

VILLAGES—Majority of village council cannot install water works system.

Attorney General's Office.

Mr. William Turner.

Dear Sir: You inquire as to whether a majority of a village council has authority to put down a well and install a water works system by a majority vote of the council. Your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 28, 1909.

795

VILLAGES—Petitions for sidewalks.

Attorney General's Office.

Charles E. Houston, Esq.

Dear Sir: You quote from chapter 167, G. L. 1901, under which your village is governed, as follows:

"Whenever * * * a majority of the owners of property, fronting on the street or streets where it is proposed to contruct or build such walk * * * shall petition the village council * * * therefor, they shall adopt a resolution to that effect, etc."

You inquire as to whether the quoted provision permits owners of property fronting on the opposite side of the street from that on which the sidewalk is proposed to be laid to sign a petition for the construction of such walk. I am of the opinion that your question should be answered in the affirmative.

In connection with the powers of village councils in sidewalk matters, Bradley vs. Village of West Duluth, 45 Minn. 4, may be read with interest.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 28, 1909.

796

VILLAGES—Detailed financial statement to be published.

Attorney General's Office.

Mr. W. C. Dally.

Dear Sir: In answer to your favor of recent date you are advised that the publication of the financial statement of a village, pursuant to chapter 74, G. L. 1905, contemplates a detailed statement in writing of the moneys received, the sources thereof and the respective amounts, and the amounts paid out and the purpose for which the same were paid.

I find no provision in the law for a village board of audit.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 4, 1909.

797

VILLAGES—Publication of financial statement.

Attorney General's Office.

Mr. L. A. Dare.

Dear Sir: In answer to your favor of recent date you are advised that the village treasurer shall, two weeks previous to the annual election of village officers, make a detailed financial statement and have the same published at least one week prior to such election in a newspaper published in the village, to be selected by the village council, pursuant to chapter 74, G. L. 1905.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Feb. 16, 1909.

798

VILLAGES—Vote necessary to separate from township—Distribution of moneys, debts and taxes.

Attorney General's Office.

Mr. Ed. Smith.

Dear Sir: You inquire as to whether at an election held for the purpose of separating a village from the township only freeholders are entitled to vote. Your question is answered in the negative.

Section 708, R. L. 1905, provides that a majority vote of the **electors** shall be sufficient.

You further inquire as to distribution and apportionment of moneys, debts and taxes, and I have to inform you that section 710, R. L. 1905, controls, and reads as follows:

"710. **Apportionment of Money and Debt—Taxes**—Upon the separation of such village from the town for election and assessment purposes, if there be in the town treasury any money in excess of its then floating indebtedness, such proportion of the excess as the total assessed valuation of the property within said village bears to the entire valuation of the town shall belong to such village, and may be recovered by action. The computation of such sum shall be made upon the last preceding valuation for purposes of taxation. All town taxes previously levied upon property within said village, and not yet collected, shall, when collected, be credited and paid to the village. And if there be bonded indebtedness of such town, the county auditor shall apportion the same, upon the same basis, and as often as necessary shall extend a tax upon the property assessable in the town and village, respectively, sufficient to meet the proportion chargeable upon each, with interest."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 7, 1909.

799

VILLAGES—Not responsible for damages in case of prosecution stated.

Attorney General's Office.

Mr. Geo. C. Baker.

Dear Sir: You state that a private citizen made complaint before a justice of the peace charging a certain person with having violated an ordinance of your village prohibiting the sale of intoxicating liquor to an habitual drunkard; that upon the trial of said case the defendant was acquitted; that the defendant brought suit for damages against the complaining witness and recovered a verdict in the district court for $75.00 damages.

You inquire whether the village should pay the damages in question as awarded, and I have to advise you that the village is in no way liable or responsible and cannot be compelled to make payment.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Feb. 5, 1909.

800

VILLAGES—Length of time for which licenses may be granted.

Attorney General's Office.

Mr. P. O. French.

Dear Sir: You inquire as to the right of the old village council to grant a liquor license for one year, the same covering a longer period of time than that for which the said members of the council were elected, and call my attention to subdivision 12 of section 727, R. L. 1905.

Your question is answered in the affirmative. If the granting of a liquor license is permitted in your village and a person qualified to receive such liquor license makes application therefor, it is competent for the old village council, under the provisions and regulations of law regarding the same, to grant such license. Section 727 above referred to has reference only to licenses other than those for the sale of intoxicating liquor. Under the section in question a village council cannot grant licenses other than for the sale of liquor, to extend beyond the time for which such council holds office.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

801

VILLAGES—Expenses for prosecuting village ordinances are to be paid by village.

Attorney General's Office.

Mr. John H. Norton, County Attorney.

Dear Sir: You enclose communication to you from the village recorder of Brookston, in which he inquires as to the liability of a village council to a justice of the peace for fees in cases where persons were tried by him on a drunk and disorderly charge, and had no money to pay the fine.

I take it that the prosecutions were brought under a village ordinance, and not under a state law. I think that the claim of a justice for such fees is a proper charge against the village under the circumstances.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 1, 1909.

802

VILLAGES—Limitation on power of council to license amusements.

Attorney General's Office.

Mr. George E. Means, Village Recorder.

Dear Sir: You call attention to sections 711 and 727, R. L. 1905, and inquire as to the right of the old council, whose terms of office expire on the first Tuesday in April succeeding your annual election on the second Tuesday in March, to license places of amusement.

I do not think that the old council would have a right to grant any license extending beyond the first Tuesday in April, at which time the new council takes the reins of government. It was manifestly the intention of this law not to have the old council in any way hamper or foreclose the right of the new council to act on these licensing matters during the year for which they are in charge of the village affairs. Upon the new council assuming control, licenses for amusements, etc., in proper cases can be granted by such new council for a period of time not in excess of that for which such council is elected.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 4, 1909.

803

VILLAGES—Australian ballot system does not apply to villages.

Attorney General's Office.

Mr. C. G. Hankey.

Dear Sir: You inquire whether at annual village elections the village council can provide by resolution for the use of the Australian ballot system at such election.

Replying, I have to inform you that it is my opinion that your question be answered in the negative. The Australian ballot system does not apply to village elections, but such elctions are conducted insofar as the ordinary ballot is concerned in the same manner as is prescribed for township elections.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 1, 1909.

804

VILLAGES—May employ an attorney—Ordinances must be published—Saloons must close at once when license fails to carry.

Attorney General's Office.

Mr. J. W. McCormick, Village Recorder.

Dear Sir: You state that your village voted "dry' 'on March 8th and that there was a saloon in operation at that time, and you inquire when such saloon should be closed.

Replying, I have to advise you that the saloon should be closed at once upon a canvass of the votes and the determination of the result. As soon as such canvass and determination was made the sale of intoxicating liquor in your village at once became unlawful and any saloon in operation should have closed immediately.

Your further inquire as to whether it is competent for a village council to employ a village attorney at a regular monthly salary. Assuming that your village is incorporated under the general laws, I have to advise you that under paragraph 4 of section 727, R. L. 1905, a village council is empowered, among other things, "to appoint, when necessary, a village attorney,' 'and by paragraph 1 of said section the council is authorized "to fix the compensation of its employes."

Section 729, R. L. 1905, as amended by chapter 26, G. L. 1905 provides that "all ordinances, rules and by-laws enacted by a majority of all members of a village council shall be signed by the president, attested by the recorder, **and published once in a newspaper published in said village;** and if there be no

newspaper published in said village then such ordinance shall be published once in a newspaper published in the county in which said village, or the larger part of its territory, shall be situated; and if there be no newspaper published in said village or in said county, then by posting them conspicuously in three of the most public places in said village for ten days."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 23, 1910.

805

VILLAGES—Annual statement of treasurer may be published in paper owned by member of council, it being only one in village.

Attorney General's Office.

Mr. E. J. Bahe.

Dear Sir: The law (chapter 75, G. L. 1905) requires the village treasurer's annual statement to be published in a local newspaper, and you inquire whether, where there is but one paper in the village and the publisher of that paper is a member of the village council, the publication can be made in such paper and the publisher thereof collect therefor.

The question is not without its difficulties; for the law prohibit scontracts with the village by a member of a council. I am inclined, however, to the opinion that under the state of facts as presented by you it would be proper to have tht statement published in the local paper, it being the only one in the village, and that such publisher can be paid therefor by the village council. I am led to this conclusion for the reason that the law requiring the publication in a local paper was enacted after the revised laws that prohibit the contracting referred to, and the maximum amount that can be charged therefor is fixed by law.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 8, 1909.

806

VILLAGES—Ordinances may be enacted for removal of curtains and screens of saloons.

Attorney General's Office.

Chas. E. Conant, Esq.

Dear Sir: In your favor of recent date you submit for my opinion the question as to whether the village council of the village of Wells may lawfully pass an ordinance requiring licensed vendors of intoxicating liquors therein to remove, during the times in which they are permitted by law to keep their saloons open, all curtains and screens from the front doors and entrances of the front room wherein they are licensed to sell intoxicating liquor.

Replying thereto, I am of the opinion, assuming that the village of Wells is organized under the general village law of 1885, that the village council has such power and that the adoption of such an ordinance in the way prescribed by law would be a valid exercise thereof. The village council has power to license, restrain and prohibit any person from selling, bartering, disposing of or delivering any spirituous malt, fermented, vinous or mixed intoxicating liquors. The power to prohibit carries with it the power to regulate.

I am of the opinion that the power is vested in the village council to summarily remove the village marshal. Attention is called to the case of State ex rel Egan vs. Schram, 82 Minn. 420, in which, among other things, the court says:

"The marshal is expressly made a creature of the council; he may be removed at will and without cause."

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

April 21, 1910.

807

VILLAGES—Rights and liabilties of villages not separated from townships—Liquor licenses therein.

Attorney General's Office.

Mr. George E. Sloan.

Dear Sir: A village may be incorporated and not become a separate election or assessment district. If such village is not separated from the township for assessment and election purposes then the residents of the village have a right to participate in township elections. Assessments of property in such village will be made by the town assessor. The village may hold a village election for the purpose of electing officers and in which such election the residents of the township may not participate. If after the formation of a village, which is not a separate election district, a proposition is submitted to bond the township, the voters resident in such village will have a right to vote upon the bonding proposition, and the property in the village will be holden for its share of the indebtedness the same as though there had been no incorporation. A separation of the village afterward into a separate election and assessment district would not relieve the property therein from its share of the bonded indebtedness.

You state that the population of the territory which it is proposed to incorporate in the village is less than five hundred, and I have to inform you that the village council of such incorporation could issue not to exceed one saloon license until such time in the future as by a national or state census it shall be determined that the population exceeds five hundred. Upon the incorporation of the village the saloon licenses theretofore granted by the county commissioners, which are in operation within the territory of such village, will at once become annulled and the holders of such licenses will be entitled to receive back a pro rata part of the license money theretofore paid by them.

In the territory of the township outside of the village it will be competent for the county commissioners to grant at least one saloon license, and in any event not more than one for each 500 inhabitants or fraction thereof of such territory outside of the village limits. The question would arise, perhaps, as to what was the population of the township outside of such village limits as determined by the last federal or state census. But in any event there could be one license issued.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 12, 1910.

808

VILLAGES—Cannot enact valid ordinance prohibiting sale of non-intoxicating malt.

Attorney General's Office.

A. Massey, Esq., Village Recorder.

Dear Sir: In reply to your letter of June 10th to the attorney general relative to the legal effect of an ordinance against the sale of malt, etc., I have to say that the ordinary village has no power to make an ordinance against the sale of non-intoxicating malt. The laws make the distinction between liquors depend not on their name but on their quality, as to whether they are intoxicating or not.

Any person selling intoxicating "malt" is guilty of an offense against the laws regulating intoxicating liquors if such sale be made without a license.

Yours truly,

LYNDON A. SMITH,
Assistant Attorney General.

June 15, 1910.

809

VILLAGES—Duties of county commissioners in acting on petition for formation.

Attorney General's Office.

F. C. Irwin, Esq.

Dear Sir: You inquire generally whether, when a petition is submitted to a county board for the incorporation of a village, it is competent for the county commissioners to hear evidence in the way of affidavits or otherwise to determine the question as to whether there is a sufficient number of names upon the petition of persons properly qualified to sign the same.

I am inclined to the opinion that your inquiry is to be answered in the negative. Attention is called to the case of State ex rel Young vs. Village of Gilbert, found in 120 N. W. Rep. 528; 107 Minn. 364.

An examination of this opinion will be of interest and particular attention is called to the language of Justice Lewis found on page 531, wherein he says:

"But in our examination of this class of cases we have failed to discover any instance where such a body (county board) has been vested with judicial or quasi judicial powers sufficient to consider and finally determine the merits of the question, that the legislature intended to introduce so radical a change is not warranted by the language of the amendment. The significant words relied upon by respondents are 'if the county board approves such petition.' What is meant by the word 'approve?' Does it refer to the determination of the reasonableness of the proposition to include the outlying territory, or does it merely mean that the commissioners shall determine **from the face of the petition** whether it contains the requisite number of residents and signers and is in proper form? It is our opinion that the amendment imposes no new duties on the board of commissioners. It is simply another way of stating the same duty imposed by the former statute."

In the opinion we also find this language:

"Under the old statute the commissioners were not vested with and discretionary power. It was simply made their duty, when a petition in the proper form was presented to them, to cause the notice of the election to be given and appoint inspectors for the election. They did not even have the power to go back of the petition and determine the genuineness of the signatures, as is prescribed in proceedings for the removal of county seats."

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

May 2, 1910.

810

VILLAGES—Limitation of corporation tax.

Mr. W. F. Lewis, Recorder.

Dear Sir: Your attention is called to section 741, R. L. 1905, which in effect is the same as sections 1251 and 1557, General Statutes of Minnesota for 1894. It is provided in the law above referred to that a village council shall determine by resolution the amount of corporation taxes to be assessed which shall not exceed two per cent of the assessed valuation of the property taxable in the village. It is not competent for the village council to vote to assess a certain

per cent of the taxable valuation. The amount of tax to be raised must be stated in dollars and the rate of such taxation will be determined by the auditor after the assessment has been finally equalized by the state tax commission.

The limitation of two per cent above referred to is a limitation upon the auditor, and notwithstanding the amount that may be designated by the village council, the auditor cannot extend an amount which will equal more than two per cent of such valuation.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

May 18, 1910.

811

VOTERS—Qualifications respecting local option.

Attorney General's Office.

Louis Hallum, County Attorney.

Dear Sir: In answer to your letter of March 3d, I have to advise you that it is not necessary that an elector be a taxpayer to be entitled to lawfully vote upon the local option question.

It is sufficient if he is a legal voter.

Yours truly,
GEORGE W. PETERSON,
Assistant Attorney General.

Mar. 4, 1910.

812

VOTERS—Must have been citizen of the United States in order to vote.

Attorney General's Office.

Mr. Howard F. Stoltz, Town Clerk.

Dear Sir: A person who has had his citizen papers for only one week is not entitled to vote at an annual school meeting. A person, to be entitled to vote, must have been a full citizen of the United States for a period of three months next preceding any election.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 26, 1909.

813

VOTERS—Deaf and dumb person otherwise qualified may vote.

Attorney General's Office.

Isabella Angus.

Dear Madam: You inquire relative to the qualification of certain persons as voters and I have to inform you that section 2 of article VII of the state constitution provides, among other things, as follows:

"* * * No person who has been convicted of treason or any felony, unless restored to civil rights; and no person under guardianship or who may be non compos mentis or insane, shall be entitled or permitted to vote at any election in this state."

Being deaf and dumb does not prevent a person from voting who is otherwise qualified.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

July 25, 1910.

814

VOTERS—Right of students to vote.

Attorney General's Office.

H. O. Sproat, Esq.

Dear Sir: In reply to your letter of September 8th to the attorney general inquiring about the right of students to vote where they are attending school, I enclose herewith a copy of the law upon the subject of the residence of voters.

Attorney General Young, in considering a similar question as to the voting of students who attended Gustavus Adolphus College at St. Peter, Minnesota, said this:

"I think however that any student who came to St. Peter with the intention of remaining indefinitely and who considers that place his home, should be permitted to vote there; but if any student who came to the local college intending to stay only during the school year with the intention of then returning to some other place which he considers his home were permitted to vote, it would in my opinion be a violation of the law."

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 9, 1910.

815

VOTERS—Persons born in United States are (generally).

Attorney General's Office.

Mr. Louis Roderick.

Dear Sir: You state that you were born in Canada but have resided in the United States for the last thirty years without taking out naturalization papers; that all your children were born in the United States and have always resided here, and you inquire whether it will be necessary for your children to take out naturalization papers in the United States in order to be citizens thereof.

Your question is answered in the negative.

Yours truly,
CLIFFORD L. HILTON,
Assistant Attorney General.

Mar. 15, 1909.

816

VOTERS—Naturalization here necessary in order to vote after taking homestead in Canada.

Attorney General's Office.

A. T. Richards, Esq.

Dear Sir: Persons cannot take homesteads in Canada without becoming subjects of the British Crown, and when a person has once become such subject he cannot return to the United States and be a citizen here without being naturalized the same as though he had always been a citizen of a foreign country.

Yours truly,
LYNDON A. SMITH,
Assistant Attorney General.

Sept. 14, 1910.

817

VOTER—Does not lose right to vote because of temporary absence in foreign country.

Attorney General's Office.

Mr. John Simenson.

Dear Sir: A person who is a natural born citizen of the United States or who is foreign born and has become naturalized does not lose his citizenship by leaving the state and going to some foreign country on a visit and for

temporary purposes only, with the intention of returning to the United States. A person who has acquired a residence in a place in this state for the purpose of voting, that is, has been a resident of the state for six months and of the place in question for thirty days, does not lose such residence or right to vote by being absent therefrom for temporary purposes only, having a fixed intention of returning to such place.

If you were a naturalized citizen of the United States and a resident and voter of Maynard, Minnesota, and left Maynard for a trip to Norway, simply going on a visit without the intention of losing your citizenship in the United States and your residence in Maynard, you did not thereby lose such residence. I enclose copy of section 235, R. L. 1905, which is the law of this state relative to the determination of residence of voters.

Yours truly,

CLIFFORD L. HILTON,
Assistant Attorney General.

Sept. 22, 1910.

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