

The State highway routes designated in the amendment added under Route 33b the following: "Beginning at a point on route 3 at the junction of South Virginia Street in the city of Reno; thence westerly along West Second Street to a connection with Route 1 near the west Reno city limits."

Section 5341 Nevada Compiled Laws 1929, provides as follows: "Whenever a road, being a part of the system of State highways herein created, shall be constructed or improved under the provisions of this Act, the board shall thereafter keep all such roads in repair and the total cost of such maintenance shall be paid out of the State Highway Fund."

The provision in the agreement by the County Commissioners to thereafter maintain the project cannot be construed to be perpetual as the statute. Section 1973 Nevada Compiled Laws 1929, provides that no member of any Board of county commissioners shall be allowed to vote on any contract which extends beyond his term of office.

A similar question was decided by the court in the case of Board of Supervisors of Apache County v. Udall, reported in 1 P.(2d) 343, wherein it was held, "If the road * * * be a State route, the supervisors certainly cannot bind themselves to maintain perpetually a road which may be removed from their jurisdiction at any time by the highway commission."

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

158. County Commissioners—Vacancy on Board Caused by Death—Unanimous Vote of All Members Required to Legally Authorize Emergency Loan.

CARSON CITY, August 21, 1944.

HON. LOWELL DANIELS, *District Attorney, Nye County, Tonopah, Nevada*.

DEAR MR. DANIELS: On August 19, 1944, Governor Carville, at your request, propounded the following inquiry to this office for purpose of obtaining an opinion thereon.

A vacancy on the Board of County Commissioners having arisen by reason of the death of a member of such board, which said member was a candidate for reelection, but having no opposition in the coming primary election, and it appearing that the County Central Committee of the party to which the decedent belonged has the power under the election laws of this State to fill the vacancy in the nomination for such office at the coming general election, and it appearing that the question has arisen concerning the application by such Board of County Commissioners for an emergency loan in the immediate future as to whether such board may make application for such emergency loan and adopt the proper resolution therefor, that such action can be taken by the two incumbent members of the board, or whether such action requires unanimous concurrence of all the members of the Board of County Commissioners as constituted by law?

We understand that the member of the Board of County Commissioners of the county in question here died after the time for filing of candidacy for the coming primary election had expired. That such person was a nominee of his party for the office. Consequently, under section 2429 N.C.L. 1929, the County Central Committee of the party to which the decedent belonged had and has the power to fill the nomination by appointment of some member of the same political party, and that such person would then become the candidate for his party at the November election, there being no contest in the primary election. Such is the construction of

such section by the opinion of a former Attorney General of this state in an analogous situation. See Opinion No. 221, dated July 30, 1936, Report of the Attorney General 1936-1938.

It appears that there is now a vacancy on the Board of County Commissioners, which, under the law of this State, is subject to be filled by appointment by the Governor until the November election, constituting an interim appointment. It is also true that section 2429 N.C.L. 1929, relates to vacancies occurring after the holding a primary election, but, as pointed out in Opinion NO. 221, such statute is directory and such vacancy on the ticket could, in a nature of things, be made by the County Central Committee of the proper party even before the primary election. But, this is beside the question presented here. The question being whether a Board of County Commissioners may adopt a resolution seeking an emergency loan without the concurrence of all the members of the Board of County Commissioners as constituted by law.

Boards of County Commissioners are constituted by a membership of three. Section 3014 N.C.L. 1929, provides that in case of great necessity or emergency the Board of County Commissioners, *by unanimous vote*, may authorize a temporary loan for the purpose of meeting such necessity or emergency.

From an examination of the general law relating to such subject, it appears that in several States the term "unanimous vote" of a board is held to relate to a quorum of such board, and that action by the quorum would comply with the law with respect to unanimous vote. However, we have found no case dealing with the question of emergency loans whereby the term "unanimous vote" has been construed in that light.

Section 3014, supra, is section 5 of the so-called Budget Law of Nevada. Such Budget Law has been strictly construed, and we think that said section 3014 is in the nature of a proviso permitting a departure from the strict provisions of the Budget Law requiring careful application thereof to the financial affairs of the county and that, in our opinion, when it becomes necessary to create an emergency loan that the law really requires unanimous consent of all members of the board as constituted by law in order to make sure that emergency loans are not adopted for frivolous purposes or that such loans are not easily acquired.

If the Board of County Commissioners composed of three living members were to meet for the purpose of adopting an emergency loan resolution and one member of that board shall vote adversely, then, of course, the resolution could not be adopted. So, we think, and it is our opinion, that for a Board of County Commissioners to legally authorize an emergency loan and adopt the necessary resolution it requires unanimous vote of the three members of such board.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By W.T. MATHEWS, *Deputy Attorney-General*.

159. Old-Age Assistance—Adequate Office Space for the Visitors.

CARSON CITY, August 28, 1944.

MRS. HERMINE G. FRANKE, *Supervisor Division of Old-Age Assistance, Reno, Nevada*.

DEAR MRS. FRANKE: This will acknowledge receipt of your letter of August 12, 1944, received in this office on August 14, 1944, in which you state as follows:

The problem of adequate office space for Visitors of Old-Age Assistance has