

HON. MARTIN G. EVANSEN, *District Attorney, Hawthorne, Nevada.*

DEAR MARTIN: In your letter of July 17 received here July 19, 1946, you state that Fred F. Parker, Power System Manager, filed his declaration of candidacy for the Republican nomination for Sheriff of your county and "there is no primary fight." Under the circumstances he became the nominee of the Republican party for that office automatically and he will appear as such on the general election ballot in November.

You call attention to Statutes of Nevada 1945, page 330. This is the further amendment of section 17 of the Mineral County Power System Act of 1921. The last paragraph of subdivision (a) of section 17 reads:

No person who holds a public office shall be permitted to occupy the position of general manager. In the event such general manager is nominated or appointed to public office he shall be immediately removed from the position of general manager and another appointed in his place.

Both these sentences contemplate a disability preventing an office holder from being employed as general manager. There is no punctuation such as commas to create uncertainty.

We believe the word *nominated* as used in the above section is synonymous with the word *named*.

The nomination you speak of is a nomination as a party candidate and not a "nomination or appointment" to public office. The latter words are used synonymously. (*People v. Fitzsimmons*, 68 N.Y. 514, 519; 28 Words and Phrases (Permanent Edition) 705). The two sentences taken together prevent any appointed or elected public officer from being or continuing to be general manager.

The validity of the provision is not in issue.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-333. Intoxicating Liquors—Retailer or Liquor Dealer May Not Purchase Liquor From Other Than State Licensed Wholesaler.

Carson City, July 25, 1946

MR. H.S. COLEMAN, *Supervisor, Liquor Tax Department, Carson City, Nevada.*

DEAR MR. COLEMAN: Your letter of July 20 received here July 20, 1946, inquires whether it is a violation of the State Liquor law for a retail liquor dealer to purchase liquor in wholesale lots from another person who does not have a wholesale dealer's license. The answer is yes.

Section 70 of the Act provides that "No retailer or liquor dealer shall purchase any liquor from other than a state licensed wholesaler." No punishment is expressly provided.

Section 22 of the Act provides that "Any person violating any of the provisions of this Act * * * shall be punished upon conviction thereof as for a misdemeanor, except as may be otherwise expressly provided in this Act."

Section 9969, N.C.L. 1929, being section 20 of the Crimes and Punishments Act, fixes the punishment for a misdemeanor when not otherwise prescribed at a jail sentence of not more than six months or a fine of not more than \$500, or both.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-334. Elections—Primary—Existing Rivalry For Nomination Must Be Settled at Primary if There is an Independent Candidate.

Carson City, July 25, 1946

HONORABLE PETER BREEN, *District Attorney, Goldfield, Nevada.*

DEAR PETE: This will confirm my night letter to you of today reading as follows:

Reurlet it is our opinion that where there is one Independent candidate and two Democratic candidates for an office to which only one person can be elected the names of both of the partisan candidates must go on the primary ballot. The one successful partisan candidate at the primary election would then become the nominee of his party and would then go on the general election ballot to be opposed by the Independent at the general election to be opposed by the Independent at the general election. *See cases of State ex rel. Cline v. Payne*, 59 Nevada, 127, and *State v. Beemer*, 51 Nevada, 192. Regards.

The telegram is completely self-explanatory. In our opinion the first two provisos of section 22 of the Primary Election laws, being section 2425, N.C.L. 1929, 1941 Supp., when read together make it clear that in those cases where there is an Independent candidate as under the facts in your case, the names of two partisan candidates must be placed on the primary ballot. Although the cases cited in the telegram are not under exactly the set of facts, we believe much of the language and reasoning is pertinent in reaching the foregoing conclusion.

We had occasion to rule on this same question presented to us by John W. Bonner, District Attorney, Ely, in 1942. *See Attorney General's Opinion 345-M*, 1943-1944 biennium, and particularly our answer to question number 2.

Regards and best wishes.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-336. Insurance—State Fund—General Refunding Bonds of The Borough of Avalon Approved for Investment.

Carson City, July 26, 1946

HONORABLE D.J. SULLIVAN, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: Pursuant to your request conveyed to us by Mr. Richard Cullen of Cullen & Co., Reno, Nevada, we give you herewith our official opinion in writing for the benefit of the Nevada Industrial Commission as to the validity of the Acts under which certain refunding bonds offered the Commission for investment of surplus and reserve funds of the State Insurance Fund, are issued. (*See 1929 N.C.L., 1941 Supp., sec. 2721*). We find that the Borough of Avalon is an incorporated city within the meaning of said section 2721. *See also Ch. 191, Stats. 1943, 1945 pocket part, sec. 7058.*

The bonds in question are all part of an issue of General Refunding Bonds of the Borough of Avalon, County of Cape May, State of New Jersey.

The following table gives the numbers of the bonds respecting which this opinion applies including either the exact serial numbers of the bonds offered for purchase with the exact maturities or the brackets of numbers in which the bonds lie and to which the maturities noted apply. All maturities are absolute except that acceleration is validly permitted in the case of the bonds R481-\$534. All bonds are dated November 1, 1945, and are in denominations of \$1,000 each except as hereinafter noted.

Bonds C-270-277 for \$100 each not included in the table noting amounts of bonds 320-235 with maturity November 1, 1963, are also approved by this opinion.

1953, 85-100;* 1954, 101-117; 1955, 118-134; 1963, 320-325;* 1965, 359-281;* 1966, 382-405; 1967, 406-429; 1968, 430-454; 1969, 455-480;* 1970/55, R481-R507; 1971/55, R508-R534.

We have examined the papers presented by J.B. Hanauer & Co., Inc., of Newark, N.J., through Richard Cullen, who offer to sell the bonds, said papers including document duly certified showing that the bonds under consideration are part of an issue properly made pursuant to all applicable laws, ordinances, rules and regulations of the State of New Jersey, the County of