Art. X, Sec. 1, Constitution of Nevada, provides in part: "The legislature shall provide by law for a *uniform* and equal rate of assessment and taxation * * * for taxation of all property, real, personal and possessory * * *." (Italics supplied.)

The Act under discussion, in providing for the creation of fire protection districts and the assessment and collection of taxes for their support follows this constitutional mandate in providing for the taxation of "all real property together with improvements therein" in any district established pursuant thereto. This language cannot be accorded any other meaning than that which is obvious on its face, and, therefore, admits of no exceptions as to the property subject to the special tax.

In our opinion, question number one must be answered in the negative and number two in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 56-188 ELECTIONS; OFFICERS—1. Person elected to fill county office by an interim biennial election to assume office on first Monday in January following election. 2. When two Assemblymen are to be elected from an undistricted county and more than two Democrats and only one Republican have filed, there are only two Democratic nominees to be placed on the general election ballot. 3. Candidate for partisan office permitted to withdraw candidacy prior to nomination—no refund of filing fee upon withdrawal.

Carson City, July 24, 1956

Honorable Roscoe H. Wilkes, District Attorney, Lincoln County, Pioche, Nevada.

Dear Mr. Wilkes:

The following is in answer to your letter of July 18, 1956, requesting the opinion of this office on three election questions. Our answers will follow each statement of your questions and the facts involved in each question where necessary.

Facts in Question No. 1

Vacancy in the office of Sheriff of Lincoln County occurred in 1955. Appointment to fill the vacancy until the next biennial election was made. Several candidates have filed for election to this office in the forthcoming 1956 election.

Question No. 1 as quoted from your letter:

Will the candidate, who is eventually elected to fill the unexpired term of a county officer, take office *immediately* after his election and qualification, or will he take office after qualification on the first Monday of the January next following the general election? This question is submitted because of the wording of Section 4813 N.C.L. 1929 as amended which reads in part "until the next ensuing biennial election."

Opinion to Question No. 1

Sec. 4813 N.C.L. 1931-1941 Supp. Provides as follows:

> When any vacancy shall exist or occur in any county or township office, except the office of district judge, the board of county commissioners shall appoint some suitable person to fill such vacancy until the next ensuing biennial election.

Prior to 1939 this section had provided for the filling of such vacancies "until the next general election." This had been construed by the Supreme Court in *ex rel. Bridges v. Jepsen*, 48 Nev. 64, 227 P. 588, to mean the next general election at which the office was regularly to be filled, and not necessarily the next ensuing biennial election. In 1939 the Legislature amended this section to its present form for the purpose of changing the rule laid down in the Bridges case.

Grant and McNamee v. Payne, 60 Nev. 250, 107 P.2d 307.

It was for this purpose, then, that the 1939 amendment to this section was made and not for the purpose of providing, in addition, that the tenure of office shall begin at the time of the "next ensuing biennial election." Prior to 1939 and under the rule in the Bridges case, an appointee would hold the office until the regular four year term of office would expire. In such event, Sec. 4781 N.C.L. 1929 would be the guide to the proposition that one elected at such regular election

would assume the duties of office on the first Monday of January following election. Sec. 4781 provides as follows:

> County clerks, sheriffs, county assessors, county treasurers, district attorneys, county surveyors, county recorders, and public administrators, shall be chosen by the electors of their respective counties at the general election in the year nineteen hundred and twenty-two, and at the general election every four years thereafter, and shall enter upon the duties of their respective offices on the first Monday of January subsequent to their election.

See also, in this connection, *Cordiell v. Frizell*, 1 Nev. 130.

Having in mind then that Sec. 4813 was amended in 1939 for the one purpose as declared in the Grant case, this office is of the opinion that it was not the intention of the Legislature to apply a different time for the beginning of office tenure simply because the vacancy is to be filled by election at an interim biennial election. We are, therefore, of the opinion that the successful candidate in the forthcoming 1956 General Election will take office on the first Monday in January 1957; that the appointment of the incumbent should be construed in accordance with this opinion to the end that he shall hold office, under his present tenure, until the first Monday in January 1957.

Question No. 2 as quoted from your letter:

> When two Assemblymen will be elected in the general election and when there are six Democratic candidates in the primary election and one Republican candidate in the primary election, how many Democratic candidates are entitled to nomination and the placement of their names on the general election ballot in November?

Opinion to Question No. 2

There seems to be no question that your position is correct that two Democratic candidates are to be placed on the general election ballot and not three.

The case of *Cline Ex Rel. v. Payne*, 69 Nev. 127, 86 P.2d 26, without doubt covers this question.

Facts in Question No. 3

Several candidates have filed for the Democratic nomination to the office of Assembly. One such candidate for nomination desires to withdraw his candidacy, the closing date (July 16, 1956) having passed.

Question No. 3 as quoted from your letter:

> May a candidate for nomination at the primary election withdraw his candidacy after the closing date for filings has passed and, if so, is he entitled to the return of his filing fees?

This question is answered by the court in *State v. Brodigan*, 37 Nev. 458, 142 P. 520, to the effect that withdrawal is permitted at any time prior to nomination. As we understand this decision, nomination is effected either by primary election or nomination by operation of the Primary Election Law, as, for example, where only one candidate has filed for party nomination and he is to be certified as the nominee at the close of the filing period. Under the circumstances presently existing in Lincoln County, the candidate desiring to withdraw is a candidate for Democratic nomination. He, being one of several other candidates for nomination by that party, can, under the reasoning of the Brodigan case, withdraw at any time prior to nomination by the primary election. The Brodigan case places no limitation on withdrawal with respect to the date of printing the primary ballot. That case states that there is no limitation in the statute other than the oath taken that withdrawal shall not be made after nomination. The court was in that case construing the 1913 Election Law, and that law, as does the present law, contained a date prior to the election at which the official ballot was to be printed. We take it, then, that the court did not consider the printing of the ballot and the date thereof to be an obstruction to

withdrawal prior to election; although it appears to us that difficulties would surely arise in respect to a withdrawal after such printing.

Concerning the question of refund of the filing fee after withdrawal, the Brodigan case is also in point. Under the reasoning there set forth, such fee is taken for the act of the clerk in filing the candidacy. That act having been performed, there is no basis for refund. Therefore, refund is not allowable.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Attorney General

OPINION NO. 56-189 NEVADA STATE BOARD OF HEALTH—State Board of Health authorized to promulgate regulations defining what constitutes public and private swimming pools. Health laws and regulations liberally construed. Also, board empowered to determine from extent of use of any swimming pool whether health problems created justify board's jurisdiction over same.

Carson City, July 24, 1956

Mr. W. W. White, Director, Division of Public Health Engineering, Nevada State Department of Health, 755 Ryland Street, Reno, Nevada.

Dear Sir:

You have requested the opinion of this office as to what constitutes a public swimming pool and bathhouse as contemplated under Secs. 5313.01-5313.06 N.C.L. 1931-1941. It is specified that the pool and bathhouse in question are located on premises privately owned and used by the family residing thereon, together with some 25 additional families in the course of their activities as members of a riding club located on said premises, and also overnight guests occupying rooms in a motel operated in connection therewith.