

contractually shift the statutory incidence of that tax. These same statutory principles are of course uniformly applicable throughout the title insurance industry in Nevada.

Except as barred by applicable statute of limitations, you are advised that it would be proper to institute immediate administrative or legal action for recovery of all unreported and unpaid title risk premium taxes against First American Title Insurance Company, and any other similar companies that have not been reporting or paying the tax as required by [NRS 695.160](#).

You are further advised [NRS 695.160](#)(3) requires this tax shall be paid before issuing a renewal certificate of authority to any title insurance company to do business in this State.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

By ROBERT E. HOLLAND, *Deputy Attorney General*

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**685 Elections—Death of candidate after primary election and before general election, when both candidates qualifying for the general election were of the same party, leaves vacancy on the general election ballot to be filled by state central committee of that party. No vacancy occurs as far as the other two parties are concerned, because neither nominated a candidate for the primary election.**

CARSON CITY, September 29, 1970

THE HONORABLE JOHN KOONTZ, *Secretary of State*, Carson City, Nevada 89701

DEAR MR. KOONTZ:

You have requested an opinion as to whether the untimely death of State Inspector of Mines Mervin Gallagher affords an opportunity to the Republican Party and the Independent American Party to place a candidate on the general election ballot for that office.

You ask the further question as to whether, in view of the fact that the ballots have not been printed, the county clerks should be notified to delete Mr. Gallagher's name from the ballot.

#### ANALYSIS

This office has reviewed past opinions concerning the situation which now confronts the people of this State in the coming general election as the result of the death of Mervin Gallagher, the incumbent State Mine Inspector.

Mr. Gallagher, a Mr. Springer, and a Mr. Hudgens, all Democrats, were the contestants for the office of State Mine Inspector in the primary election held on September 1, 1970. Mr. Gallagher and Mr. Springer received the highest number of votes and were nominated to oppose each other in the general election. Mr. Gallagher died on September 28, 1970.

In the present case there is no vacancy occurring as far as the Republican party or the Independent American Party are concerned, because neither party nominated a candidate for the primary election.

Back on May 20, 1954, the County Auditor and Recorder of Mineral County died. He was an incumbent, and had filed for reelection as an Independent candidate, without opposition.

The question arose as to whether the Republicans or Democrats could nominate candidates for this office, and this question was answered in the negative. The learned Attorney General held that petitions could be filed to place Independent candidates only on the ballot.

In *District Party Committee of Republican Party v. Ryan*, 106 P.2d 261, it was held that where a candidate for judge filed for the Democratic nomination and the Republican Party did not nominate a candidate against him and the candidate died after the holding of the primary, and thereafter both the Democratic and the Republican parties filed candidates for the office to fill the vacancy on the ticket, the Secretary of State properly refused to certify the name of the Republican Party committee nominee.

Thus it must be determined that insofar as the Republican Party and the Independent American Party are concerned, they cannot place a nominee on the ballot, not having had a candidate at the primary election.

The question now arises as to whether a vacancy exists on the Democratic ticket which may now be filled by the Democratic Party. As stated by a distinguished predecessor, the problem here involved touches upon very substantial rights of the remaining candidate now seeking the office of State Mine Inspector. Because of conflicting opinions, it is hoped that the Supreme Court will eventually face the problem and issue an opinion to guide us in future similar situations.

An election may be broadly defined as the expression of a choice by voters of two candidates for the same office. I am convinced, despite a former opinion, that any election in which the voters are denied the right to make that choice is contrary to the American system of government. There may be a choice between persons of the same party seeking the same office, just as there is a choice between two philosophies of government.

As General Bible pointed out in a former opinion, “\* \* \* The Legislature intended that a choice of persons in the candidates for office should be offered the electors whether or not there was a choice of a political party.”

[NRS 293.165](#), subsection 1(a), provides:

1. A vacancy occurring in a party nomination for office may be filled by a candidate designated by the appropriate political party central committee of the county or state, as the case may be, where:

(a) The nominee dies after the primary election and before the general election.

The question then arises as to whether a vacancy exists which comes within the purview of the statute for filling such vacancies.

#### CONCLUSION

This office feels that Mr. Gallagher’s death created a vacancy in that the electors of this State are left without a choice in the race for State Mine Inspector, and that the state central committee should nominate a Democrat to fill the vacancy on the general election ballot occasioned by the death of Mervin Gallagher.

The second inquiry is answered by this opinion. Mr. Gallagher’s name should not be placed on the ballot as a candidate for the office of State Mine Inspector.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*

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**686 Teachers—Election to State Board of Education—Teachers are not precluded from being candidates for a position on the State Board of Education.**