

January next; if no one was elected for such unexpired term, then there is a vacancy in the office up to the first Monday of January next and the same may be filled by the Board of County Commissioners.

Mr. Hurley, who was elected at the last general election to such office, does not take office until the first Monday of January next.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General*.

238. Counties—Employees—Stenographers—Compensation.

There is no law which prevents a stenographer in the office of the District Attorney from reporting proceedings in the Justice's Court. Upon performance of such work, the stenographer is entitled to receive the compensation provided by law therefor, in addition to her regular salary.

CARSON CITY, November 15, 1918.

MISS M.U. SHIELDS, *Tonopah, Nevada*.

DEAR MISS SHIELDS: We are in receipt of your letter of the 12th instant, requesting an opinion upon the following question:

Is it not allowable for an employee drawing salary by the month from the county, to receive compensation also as per statute for work done in Justice's Court? For instance, is there anything in the law to prevent an employee on salary at \$100 per month in the District Attorney's office, from receiving the per diem and per folio rate for reporting and writing up the preliminary hearing and inquisition in the Justice's Court during that month?

There is no law which prevents a stenographer in the office of the District Attorney reporting proceedings in the Justice's Court. In the absence of such a provision you are legally entitled to perform such work and to receive the compensation provided by the law therefor in addition to your regular salary.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*.

BY WM. McKNIGHT, *Deputy*.

239. Elections—County Commissioners—Canvass—Returns.

In making the canvass of election returns, the Board of County Commissioners is nothing more or less than a board of canvassers, and they have no right to go back of the certificate of the judges of election or check the tally marks. Such board can only add up the totals from each precinct, and, in adding such totals, they can use only those expressed in the certificate of the inspectors and clerks.

RENO, NEVADA, November 15, 1918.

HON. S.W. BELFORD, *Attorney at Law, Reno, Nevada*.

DEAR SIR: I am in receipt of your request for an opinion on the following state of facts:

The County Commissioners of Washoe County, in making a canvass of the votes of the recent election for the office of Assemblyman, have determined that L.K. Gregory received in this county a majority of four votes over Joseph F.

McDonald. The determination of the board was reached, as I am advised, by checking the tally marks in aa certain precinct in the city of Reno which showed an excess of five votes over the total as certified to by the inspectors and clerks of election. In other words, the Board of County Commissioners in making an abstract of the votes followed the tally marks instead of the written totals, and went beyond the totals, as appearing in the certificate, to ascertain the actual number of votes from the tally marks.

This question is governed by sections 16 and 25 of the General Election Law of 1917, Statutes of 1917, pp. 363, 366. Section 16 provides as follows:

The ballots and poll-lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and for whom cast, and when completed, the clerks shall set down in their poll-books, the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed in writing at full length, and also in figures; such entry to be made, as nearly as the circumstances will admit, in the following form, to wit:

At an election held at the house of A.B., in the town or precinct) of in the county of, and the State of Nevada, on the day of, A.D., the following-named persons received the number of votes annexed to their respective names for the following-described officers, to with:

A.B. had votes for Member of Congress.
C.D. had votes for State Treasurer.
E.F. had votes for State Controller.
G.H. had..... votes for State Superintendent of Public Instruction.

I.J. had votes for member of State Senate.
K.L. had votes for member of the Assembly.
(And in like manner for any person voted for.)

M.N.,
O.P.,
Q.R.,
Inspectors of Election.

Attest: A.B.,
C.D.,
Clerks of Election.

Section 25 provides in part as follows:

That on the tenth day after the close of any election, or sooner if all the returns be received, the Board of County Commissioners shall proceed to open said returns and make abstract of the votes.

It will be observed from section 16 that the Legislature has taken every precaution to protect the integrity of the certificate. It has required a certificate by the inspectors and clerks of election, and has specified the form thereof; the Legislature has required that the name of every person voted for shall be written at full length; that the number of votes he received shall be expressed in writing and at full length, and also in figures.

I am of the opinion that the certificate controls, and that the Board of County Commissioners, under section 25, are nothing more or less than a board of canvassers, and that they have no right to go back of the certificate, and inspect or check the tally-marks. The Board of County Commissioners, as a board of canvassers, can only add up the totals going from each precinct, and in adding up the totals, they can only add up the totals as expressed in the certificate of the inspectors and clerks. If the Board of County Commissioners were permitted to check the tally-marks, what would there be to prevent them from going still further back and recount the ballots?

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

240. Corporation—Secretary of State—Appointment of Agent—Foreign Corporations.

The proper fee for the Secretary of State to charge for filing a certificate of appointment of agent of a foreign corporation is five (\$5) dollars.

CARSON CITY, November 15, 1918.

HON. GEORGE BRODIGAN, *Secretary of State, Carson City, Nevada*.

DEAR SIR: We are in receipt of your request for an opinion as to what is—

the proper fee to charge for filing appointment of agent, under the provisions of the Act of 1889.

It is unnecessary at this time to discuss the provisions of the Act mentioned, because your fees are regulated by section 102 of the General Corporation Law (Stats. 1913, p. 58), wherein it is provided that:

On filing any certificate or articles or other paper relative to corporations in the office of the Secretary of State, for the use of the State: * * * For all certificates not hereby provided for, five dollars; *provided*, that no fees shall be required to be paid by any religious or charitable society or educational association having no capital stock; *and provided further*, that foreign corporations shall pay the same fees to the Secretary of State as are required to be paid by corporations organized under the laws of this State.

You are, therefore, advised that the proper fee to charge for filing a certificate of appointment of process agent for a foreign corporation is \$5.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

BY WM. McKNIGHT, *Deputy*.

241. Elections—County Clerks—Fees.

County Clerks are entitled to charge and receive for their own use the fee of 10 cents per name provided for furnishing certified copies of the register for use at the primary election named in section 15 (Stats. 1917, p. 283).

CARSON CITY, November 21, 1918.

HON. L.E. GLASS, *County Clerk, Nye County, Tonopah, Nevada*.

DEAR SIR: We are in receipt of your letter of recent date, wherein you request an opinion as