Laws 1929, as amended by 1931 Statutes of Nevada, chapter 27, page 32, subsection g, reads in part as follows:

> If the applicant desires a renewal of the license, the state board shall grant it, except for cause, and the annual fee for renewal of licenses shall not exceed the sum of $5.

The refusal of the State Board of Embalmers to renew this license, should proper application therefor be made, would be tantamount to a revocation thereof. It, therefore, necessarily and naturally follows that, unless a failure to pay the renewal fee, as required by the law and as requested in the notice, is sufficient grounds for the revocation of the embalmer's license in question, then the same must be renewed by the board upon receipt of proper request for the renewal by said embalmer and the payment of the required fee.

The language of the above-quoted statute that "If the applicant desires a renewal of the license, the state board shall grant it, except for cause," means except for such legal cause as would be grounds for the revocation of the license. The causes for a revocation of an embalmer's license are specifically enumerated in section 3, subsection b of the Act, being section 2667, Nevada Compiled Laws 1929; and the failure to pay the fee required by the law and requested in the notice is not enumerated as a legal cause for revocation and it is, therefore, not a ground upon which refusal of renewal can be predicated.

It is held that:

> Where an act, ordinance, or statute enumerates the causes for which a license may be revoked, it cannot be revoked for any cause not enumerated. In re Lyman, 160 N. Y. 96, 54 N. E. 577; In re Kocher's License, 12 Pa. Dist. 513, 27 Pa. Co. 432; *Peterson v. Guernsey* (Wyo.), 183 P. 645.

It is here pointed out that, under the statute above quoted, your board was within its rights in dropping the name of the embalmer in question from the list of licensed embalmers in the State of Nevada, and, should the same embalmer, during the interim between the expiration of his license (by reason of his failure to pay the lawfully required fee) and the renewal thereof by your board, practice the profession of embalming in this State, then said embalmer would be legally guilty of a misdemeanor and subject to the punishment provided by section 7 of the Act, being section 2671, Nevada Compiled Laws 1929.

Maintaining the views herein expressed, we answer the inquiry in the negative.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By JULIAN THRUSTON, Deputy Attorney-General.

HON. S. E. ROSS, President of Nevada State Board of Embalmers.

SYLLABUS

153. Bounties for Destruction of Predatory Animals.

1. The Act providing an appropriation for the payment of bounties for the destruction and eradication of predatory animals does not make any appropriation of public funds for the purchase or securing by the State Controller of the devices to be furnished by him to the various County Clerks for the purpose of marking the skins of such animals.

2. Neither the whole nor any part of the appropriation made in the Act is applicable to the year 1934.

INQUIRY

CARSON CITY, December 21, 1934.

Section 4 of an Act providing for the payment of bounties for the destruction and eradication of predatory animals, etc., adopted by the people of Nevada at the last general election pursuant to an initiative petition therefor, contains the following language:

> He (meaning the County Clerk) shall be provided by the state controller with a device for perforating said skin with the lettering and words. “Bounty paid--Nevada,” * * *

Section 5 of said Act provides an appropriation of $17,000 for each calendar year the Act shall be in effect “for the payment of bounties.” No specific appropriation is made in the Act for the payment of the device for perforating the skins of such predatory animals, which device is required to be furnished to the respective County Clerks by the State Controller.

1. Does the Act authorize the State Controller to pay for said device from the amount appropriated in the Act for the payment of bounties?

2. Is the whole or any part of the appropriation made in the Act applicable to the year 1934?

OPINION

The questions presented in the foregoing inquiry require an examination into constitutional law as applied to laws enacted by the vote of the people pursuant to an initiative petition. It may be thought that because a law is enacted by vote of the electorate that constitutional inhibitions are not applicable to such laws, and, further, that other laws enacted by the Legislature pertaining to the subject of the initiative law in some manner would have no bearing thereon. An examination of the authorities discloses to the contrary:

> Constitutional limitations and restrictions imposed upon the legislature are obligatory upon the people when legislating by the initiatory method. 59 Cor. Jur. 686, sec. 231.
>
> *See, also: Hammond Lumber Co. v. Moore*, 286 P. 504.
>
> The people, in the exercise of their legislative prerogatives, are subject to the same constitutional limitations as are applicable to the legislative assembly. *State v. Dixon*, 195 P. 841.
>
> Through the initiative the people are a coordinate legislative body with coextensive legislative power, exercising the same power of sovereignty in passing upon measures as that exercised by the legislature in passing laws. Statutes enacted by the people directly under the initiative are of equal dignity with those passed by the legislature, for the result is the same in either case. Although the constitutionality of an initiative enactment is prima facie presumed, when acting as a legislative body the people can no more transgress the constitution than can the legislative assembly * * *. 59 Cor. Jur. 687, sec. 233.

Thus it appears that the people of the State, while possessing the power to initiate laws and pass them by a direct vote thereon, nevertheless are bound by constitutional provisions relating to the affairs of their State Government, including the fiscal affairs thereof, and legislation initiated by the people is enacted by them at the polls subject to constitutional restrictions. This must be so, else the State Constitution would be set at naught by legislation at any time, and constitutional government most seriously impaired.

Section 19 of article IV, Constitution of Nevada, provides:

> No money shall be drawn from the treasury but in consequence of appropriations made by law *

> * *.

Supplementing this constitutional provision, the Legislature provided in section 6931, Nevada Compiled Laws 1929, as follows:

> The sums appropriated for the various branches of expenditure in the public of the state shall be applied solely to the object for which they are respectively made, and for no others.

And in section 7050, Nevada Compiled Laws 1929, it is provided:

> It is hereby declared to be unlawful for any state officer, commissioner, head of any department, or employee in this state to bind, or attempt to bind, the State of Nevada or any fund or department thereof, in any amount provided by law, or in any other manner than that provided by law, for any purpose whatsoever.

Pertinent to the instant matter is the rule of law laid down by the Supreme Court of Nevada that the Legislature must be presumed to have knowledge of the state of the law upon the subject upon which it legislates. *Clover Valley L. & S. Co. v. Lamb*, 43 Nev. 375.

The pronouncement of our Supreme Court is, we think, applicable to the people of the State when enacting initiatory measures at the polls, as well as to the Legislature when engaged in legislating for the same people. The people are presumed to know the state of the law in existence upon the subject upon which they legislate. The state of the law, in existence at the time the people enacted the initiative Act under discussion, was that no money shall be drawn from the State Treasury but in consequence of an appropriation made by law (*see* constitutional provisions, supra); that appropriations, when made, must be applied solely to the objects for which made, sec. 6931, supra; and that the officer or officers charged with the disbursement of such appropriations cannot disburse them in any other manner than provided by the law, neither can they bind the State or any of its funds in any amount in excess of such appropriations, sec. 7050, supra.

Did the people, in the initiative Act, abrogate or set aside such existing law? We think not. The initiative Act is not so inconsistent with the cited statutes as to effect an implied repeal thereof. The inconsistency, if any inconsistency exist, is the failure of the initiative Act to properly and constitutionally make an appropriation for one of the elements necessary for proper administration thereof, i.e., the furnishing of the device. In no event can the Act be inconsistent with the constitutional provision quoted.

The initiative measure is to be construed in pari materia with these prior statutes to determine the effect thereof. It is clear that insofar as the initiative Act appropriated money for the payment of bounties that a valid appropriation has been made, and it is also clear that a specific amount has been set aside by the Act for a specific purpose, i.e., the payment of bounties, but there is no language in the initiative Act making an appropriation of public funds for the purchase or securing by the State Controller of the devices to be furnished by him to the various County Clerks for the purpose of marking the skins of predatory animals. The words “He shall be provided by the state controller with a device,” without other and additional language somewhere in the Act more specifically setting aside public money for the purpose of securing such device, falls far short of making such an appropriation as will protect the State Controller in a contract binding the State for the payment of the device. The appropriation made in and by the initiative Act is for a specific purpose, i.e., the payment of bounties, and made in such express language as to exclude any implication that any part of the sum appropriated can be used for any other purpose. We know of no other Act or appropriation now in existence that authorizes the State Controller to purchase the devices required in the administration of the initiative Act.

The Supreme Court in *State v. La Grave*, 23 Nev. 25, said:

> To constitute an appropriation there must be money in the fund applicable to the designated purpose.

By a specific appropriation we understand an Act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand.
The appropriation made in the initiative Act conforms to this holding of the Supreme Court as regards the bounty payment, but fails to do so with respect to the purchase of the device, and the Act being defective in this respect brings the matter squarely with the case of *State v. Eggers*, 29 Nev. 469. We here quote the syllabus:

> State Appropriations--Necessity, Stats. 1907 (p. 408, c. 185) created the state industrial and publicity commission, and provided (sec. 3, p. 409) that the chairman should receive from the state treasury the sum of twenty-five hundred dollars a year in monthly installments, and that the members of the commission should be allowed necessary mileage and traveling expenses on affidavit of the members claiming the same that the mileage and expenses were actually and necessarily incurred in official business, etc. Held, that the act constituted a sufficient appropriation of the salary of the chairman; but, as it failed to prescribe any maximum expenditure for traveling expenses, the act was void insofar as it authorized payment of such expenses by the state, under the constitution, art. IV, sec. 19, providing that no money shall be drawn from the state treasury except under appropriations made by law.

It is therefore our opinion that no appropriation has been made in the initiative Act whereby the State Controller is legally empowered to expend public moneys in the purchase of the device mentioned in said Act. Inquiry No. 1 is answered in the negative.

We suggest, however, that we think there is no constitutional objection to a legislative appropriation to cover the cost of the device, as such appropriation Act would be in aid of the initiative Act and not necessarily an amendment thereof.

Answering query No. 2. The initiative Act became effective upon the official declaration of December 17, 1934, following the official canvass of the vote on the measure. Whether the appropriation made by the Act is available for the balance of the year 1934 is somewhat doubtful. The Act provides for an appropriation for "each calendar year while this act shall be in effect." The term "calendar year" means the period from January 1 to December 31, next thereafter, inclusive. *Byrne v. Bearden*, 107 S. E. 782.

To the same effect: *Shaffner v. Lipinsky*, 138 S. E. 418; *People v. Milan*, 5 P.(2d) 249.

The Act is not retroactive. The appropriation could not in any event be made to relate to the calendar year 1934 prior to December 17. We think the real intent of the people, as expressed in the above-quoted language, is that the first appropriation is to relate to the first full calendar year commencing after the effective date of the Act, but, be that as it may, we think the administration of the initiative Act must await the furnishing of the device for the perforating of the skins of the predatory animals at the time of the counting and examination of such skins by the County Clerk. This is a necessary proceeding in order to safeguard the public moneys and prevent perpetration of fraud against the State. For the reasons contained in the whole of the foregoing opinion, query No. 2 is answered in the negative.

Respectfully submitted,
GRAY MASHBURN, Attorney-General.

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

HON. ED. C. PETERSON, State Controller, Carson City, Nevada.
HON. L. C. BRANSON, Senator, White Pine County, Nevada.