

It is our considered opinion that query No. 1 is to be answered in the affirmative, with the qualification that you, as Governor, have the power to make a temporary appointment to fill the existing vacancy, the term of which will continue to and end January 3, 1955.

Answering query No. 2, it is our opinion that party State Central Committees may each nominate one candidate for United States Senator, and cause proper declarations of candidacy and acceptance thereof to be filed with the Secretary of State not less than 30 days prior to November 2, 1954. The Secretary of State to certify the names of such candidates to the respective County Clerks. Thereafter the regular election procedure to be followed.

The right to extend or amplify this opinion is hereby reserved should the need therefor arise.

This opinion completed October 5, 1954.

Respectfully submitted,  
W. T. MATHEWS, *Attorney General*.

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**OPINION NO. 1954-350(a). Supplemental to Opinion 350.**

CARSON CITY, December 1, 1954.

HONORABLE CHARLES H. RUSSELL, *Governor, Executive Chamber, Carson City, Nevada.*

DEAR GOVERNOR RUSSELL: Receipt is hereby acknowledged of your letter of December 1, 1954, received in this office at 1 p.m. this date, wherein you request the opinion of this office as to whether Alan Bible, the now United States Senator elect, is qualified to take his seat in the United States Senate at this time, preferably today. In view of the fact that Senator Brown was appointed by you on October 1, 1954, in an appointment containing the following language:

I, Charles H. Russell, the Governor of said State, do hereby appoint Ernest S. Brown a Senator from said State to represent said State in the Senate of the United States until the vacancy therein, caused by the death of Patrick A. McCarran, is filled by election, as provided by law.

he is actually filling the office of United States Senator in the United States Senate. The quoted part of the appointment was taken from page 14714 of the *Congressional Record*, dated November 8, 1954. Mr. Bible is at present in Washington, D.C., and this office is most reliably informed that Mr. Brown is willing and will surrender his office to Mr. Bible upon his qualifying as United States Senator.

You quote from my opinion of October 1, 1954, as follows:

It is our considered opinion that query No. 1 is to be answered in the affirmative, with the qualification that you, as Governor, have the power to make a temporary appointment to fill the existing vacancy, the term of which will continue to and end January 3, 1955.

And your request goes to the point of whether the quoted part of the opinion governs at the present time or whether the fact that the Supreme Court of the State of Nevada, on October 8, 1954, held that candidates for the office of United States Senator could be placed upon the ballot for the November election held November 2, 1954, to fill the vacancy for the unexpired term of the late Senator McCarran.

At the time of the furnishing of my official opinion to you concerning the question of filling the vacancy caused by the death of Senator McCarran I could not, at that time, determine with certainty whether an election on November 2, 1954, would be held. I did know from the Constitution of the United States that a new session of Congress would come into being on

January 3, 1955, and that most certainly you, as Governor, had the power under the Seventeenth Amendment to the Constitution of the United States and Section 2593, N.C.L. 1929, to make a temporary appointment pending an election to fill the vacancy, if such be held, so that now it develops your appointment of Senator Brown certainly expresses the thought that the vacancy caused by the death of Senator McCarran could be filled by an election. The question boils down to this—that an election having been held and a Senator elected by the people of Nevada to fill the unexpired term of the late Senator McCarran, it appears that he can assume the office of Senator upon the certification by the board of canvassers that such person was duly elected to fill such vacancy.

It most certainly appears now that Mr. Bible has been declared elected to fill the vacancy existing in Nevada's representation in the United States Senate and that he is now in a position to qualify for such office. Applying the language in Section 2593, N.C.L. 1929, to the matter as it stands now, we are of the opinion that even that particular section of the law warrants the answer that Mr. Bible is now eligible to qualify as United States Senator. The language provided in said section in this connection reads: "and until his successor shall be elected and qualified."

The Supreme Court of this State having sanctioned the election by the people of the United States Senator to fill the vacancy in that office, and such election having been held, it is our considered opinion that Mr. Bible is now qualified to assume his duties in the United States Senate as of this date.

The foregoing opinion is in the form of a letter as time does not permit of a more formal opinion.

Respectfully submitted,  
W. T. MATHEWS, *Attorney General.*

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**OPINION NO. 1954-351. Recordation of written instruments—when mandatory.**

CARSON CITY, October 29, 1954.

HONORABLE ROGER D. FOLEY, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. FOLEY: Receipt is hereby acknowledged of your letter of October 22, 1954, received in this office October 25, 1954, wherein you request the opinion of this office as to whether Writs of Attachment and Decrees of Distribution of estates should be filed or recorded.

In your letter you refer to certain Statutes of Nevada relating to the inquiry, to wit, Section 8708, N.C.L. 1929; Section 2112, 1929 N.C.L. 1949 Supp., and also Section 1496, N.C.L. 1929.

**OPINION**

An examination of the general law relating to the recording of instruments discloses that in its inception the recording Acts of the respective states first related to the recording of instruments conveying real property. The recording Acts, of course, are purely statutory and subject to such changes as the Legislature may desire to make therein. We agree that the sections of the law quoted in your letter are somewhat contradictory in their provisions insofar as interpretation thereof with respect to your inquiry is concerned.

It is clearly apparent that Section 2112, N.C.L. 1929, as amended at 1949 Statutes, page 84, makes it mandatory upon the Recorder to record the respective instruments therein specifically set forth. With respect to Decrees of Distribution, which are provided for in Section 9882.233, 1929 N.C.L. 1941 Supp., and therein required to be filed with the Recorder, naturally would impart notice of the contents thereof by examination of the file copy. However, this office is of the opinion that where a Decree of Distribution actually conveys title to real property that it then