We have your letter of December 3, 1956 asking the opinion of this office upon the advisability of lending the school bus owned by the Nevada State Children's Home to Ormsby County School District for emergency school transportation.

OPINION

A thorough search of the statutes fails to reveal any authority authorizing the lending of any property owned by the Nevada State Children's Home under any circumstances. We find in Chap. 254, Stats. of Nevada 1951, Sec. 6, concerning the powers and duties of the superintendent of said home, that "The superintendent shall have power to manage and administer the affairs of the home and to establish rules for its operation not inconsistent with any policies set forth by the state welfare board." Under the provisions of Chap. 327, Stats. of Nevada 1949, setting out the powers and duties of the State Welfare Board, we find in Sec. 9 thereof that said board is authorized to "administer and manage the affairs of the Nevada State Orphans Home." No details are specified as to the manner in which the board might exercise its powers, but we do not feel that it was the intention of the Legislature to authorize the lending of any porperty belonging to the Nevada State Children's Home.

It is a general rule of law in determining the powers of all appointive and elective officers that such officers are empowered to do or perform only what the statutes specifically enumerate as powers and duties or what the statutes specifically enumerate as powers and duties or what may be reasonably inferred therefrom. In our opinion no inference may reasonably be drawn from any laws presently in effect authorizing use of any property of the State Children's Home by a school district or any other unit of state, county or city government.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 56-228 CONSTITUTIONAL LAW—Law approved by referendum vote of the people cannot be amended except by direct vote of the people, in conformity with Section 2 of Article XIX of the Constitution of the State of Nevada.

Carson City, December 10, 1956

Mr. J. E. Springmeyer, Legislative Counsel, Carson City, Nevada

Dear Sir:

You have advised this office that the Legislative Commission requests an answer to the following question:

> Under the provisions of Art. XIX of the Constitution of the State of Nevada, may the 1957 Session of the Nevada Legislature amend Chap. 397, Stats. of Nevada 1955, known as the Sales and Use Tax Act of 1955, in view of the fact that the said Chap. 397 was given referendum approval by the people of the State of Nevada at the general election held on November 6, 1956?

OPINION

An answer to this question requires a careful study and analysis of Sec. 2 of Art. XIX of the Constitution of Nevada, particularly with reference to the meaning of the words and phrases "overruled," "annulled," "set aside," "suspended," "or in any way made inoperative." In order to facilitate reference to the pertinent provisions of Sec. 2 of Art. XIX of the Constitution of Nevada, it is hereby set forth:

> When the majority of the electors voting at a state election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect.

The paramount question confronting the Legislature is in effect this: Are the words and phrases "overruled," "annulled," "set aside," "suspended," "or in any way made inoperative," synonymous with the word "amend." If they are, either grouped together or standing alone, then, the people having approved the Sales and Use Tax Act by a referendum vote, the Legislature could not amend the Act at the forthcoming session of the Legislature. If they are not synonymous, then the Act could be amended.

It is important to decide the intent of the Legislature in adding Art. XIX to the Constitution of Nevada, in order to determine the true meaning of the words used. In short, did the legislators

purposely omit the word "amend" from Sec. 2 of Art. XIX, so as to leave the door open for legislative amendment, or did they omit it feeling that it was unnecessary in view of the words and phases used.

We are constrained to feel that the words used by the Legislature are to be taken together so as to prevent amendment of a law that by referendum vote stands as the law of the State by the terms of Sec. 2 of Art. XIX of the Constitution. The phrase "or in any way made inoperative" lends credence to this legal interpretation, for if the Act as approved by the people can be emasculated by amendment, thus falling short of annulment, abrogation or suspension, yet it could most certainly to all intents and purposes be made inoperative. Who is to say, if legislative amendment be possible under the constitutional prohibition, where such amendments are to end. We strongly feel that the method of amendment has, by the Constitution itself, been provided by the phrase, "except by the direct vote of the people." The people have adopted the law as it now stands. If they become dissatisfied with it, they can, by direct action, initiate such changes as they deem desirable.

That the reasoning of this office is correct is clearly indicated by the opinion of our Supreme Court in the case of *Tesorieré v. District Court*, 50 Nev. 302. In that case the Legislature had proposed a different measure than the initiative measure proposed and both were submitted to the people for approval or rejection at the general election held November 7, 1922. The measure proposed by the Legislature was approved and the measure proposed by initiative petition was rejected. The Supreme Court held that the measure approved by the people was subject to amendment because it had originated in the Legislature. That its holding would have been otherwise if the initiative measure proposed by the people had been approved is indicated by the language of Justice Ducker in his concurring opinion. We quote it herewith:

> It will be observed from these provisions that three things must occur before a law is confirmed by the people so that it cannot be amended or repealed except by their direct vote: First, there must be a law; second, there must be the expressed wish of 10 per centum or more of the voters of the state that it be submitted to the vote of the people; and, third, a majority of the electors voting at a state election must signify approval of the law.
>
> None of these essentials appeared in the procedure followed as prescribed by section 3 of said article 19 by which the said measure became a law. It was not a law when submitted, but a measure proposed by the legislature with the approval of the governor under the right conferred by section 3. It was not referred to the

electors for their approval or rejection by the expressed wish of 10 per centum or more of the voters of the state, but by the legislature under said authority of said section 3. It was not approved by a majority of electors voting at a state election, but by a majority of the votes cast for and against the measure. Consequently it did not by referendum become enacted into a law that could not be amended by the legislature by reason of the prohibition of section 2 of article 19.

For the reasons above set forth, it is the opinion of this office that Chap. 397, Stats. of Nevada 1955, known as the Sales and Use Tax Act of 1955, cannot, because of its adoption by a referendum vote of the people at the general election on November 6, 1956, be amended except by a direct vote of the people in accordance with the provisions of Sec. 2 of Art. XIX of the Constitution of Nevada.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 56-229 NOTARIES PUBLIC—Governor authorized to issue Notary Public Commission to employees of the U.S. Government, but not to a person holding a lucrative office thereunder unless otherwise excepted in Article IV, Section 9, Constitution of Nevada.

Carson City, December 11, 1956

Honorable Charles H. Russell, Governor of Nevada, Carson City, Nevada

Dear Governor Russell:

This acknowledges receipt of your inquiry of November 23, 1956, enclosing a copy of a letter recently received by your office concerning application for a notary commission by an employee of the United States Government. It is noted that the commission is desired for purposes of convenience and with no expectation of receiving any compensation for notarial services during office hours as such practice is prohibited by Internal Revenue rules. Based upon these facts you have submitted the question hereinafter stated for the opinion of this office.

QUESTION

Is the issuing of a notary commission to an employee of the United States Government prohibited by reason of Art. IV, Sec. 9, Constitution of the State of Nevada, which reads as follows:

> No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this state; provided, that postmasters whose compensation does not exceed five hundred dollars per annum, or commissioners of deeds, shall not be deemed as holding a lucrative office.

OPINION

The power of the Governor to appoint and commission notaries public in this State is provided for in Secs. 4732-4735 N.C.L. 1929. The Nevada State Supreme Court has ruled that