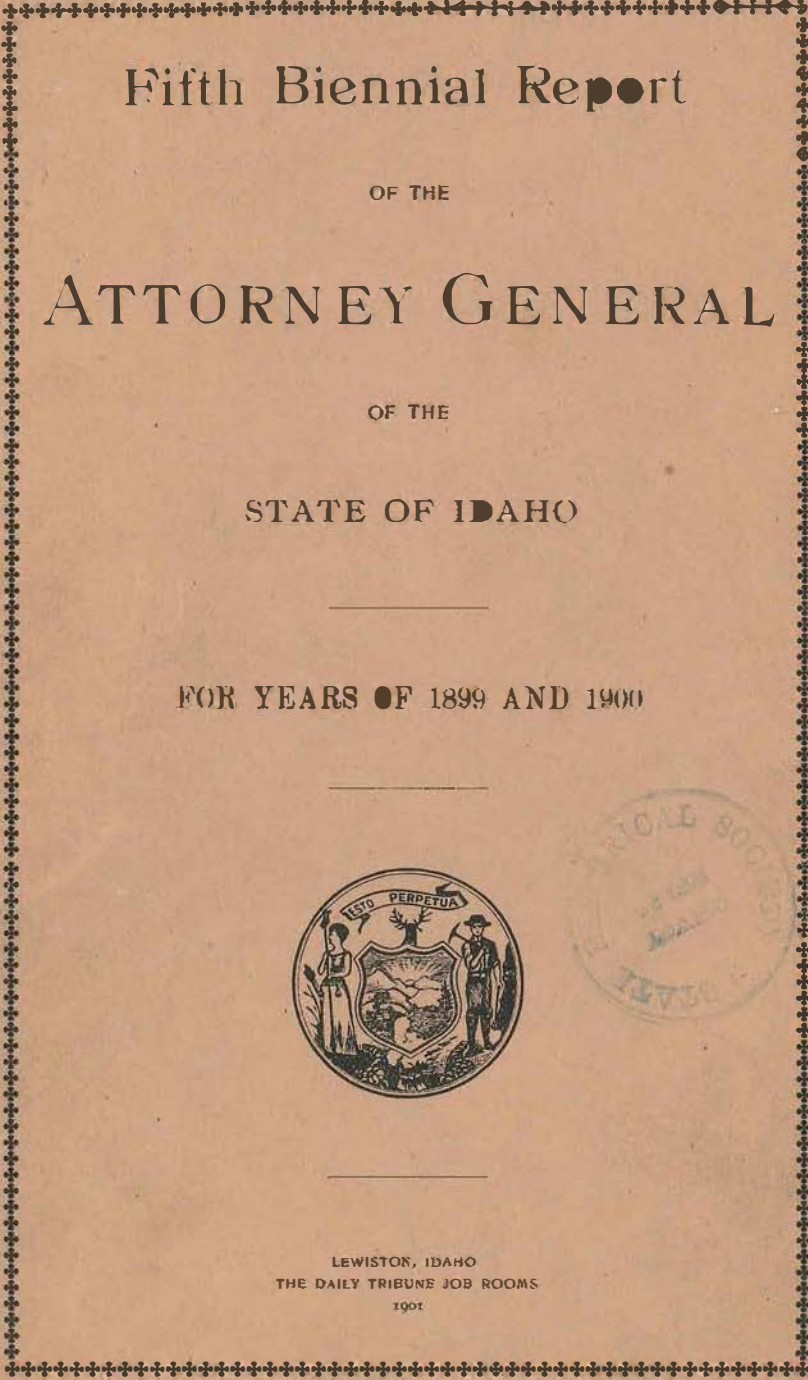


*Only available copy -  
held for office files.  
M.O.  
6-5-42*



Fifth Biennial Report

OF THE

ATTORNEY GENERAL

OF THE

STATE OF IDAHO

FOR YEARS OF 1899 AND 1900



LEWISTON, IDAHO  
THE DAILY TRIBUNE JOB ROOMS  
1901

To His EXCELLENCY,

HON. FRANK STEUNENBERG,

GOVERNOR OF IDAHO:

Sir: In compliance with law I submit herewith a report of the business of the attorney-general's office of the state of Idaho for the years 1899 and 1900. Unless otherwise specified the cases following were argued in the state supreme court:

SAMUEL H. HAYS,

Attorney General.

### REPORT OF CASES ARGUED.

1. State vs. George G. Webb (55 Pac., 892). Convicted of robbery committed in Shoshone county. Reversed.
2. State vs. Chas. J. Baker (56 Pac., 81). Convicted of rape committed in Ada county. Reversed.
3. State vs. D. W. Fouch. Foreclosure of mortgage. Appeal by State from Ada county. Reversed.
4. State vs. Albert Fouch. Foreclosure of mortgage. Appeal by State from Ada county. Reversed.
5. In re Davis. Petition for habeas corpus in U. S. circuit court. Writ denied and appeal taken to circuit court of appeals. Dismissed for want of jurisdiction. (97 Fed., 501.)
6. State vs. C. E. Thum, receiver. Proceedings for recovery of state moneys in the hands of the receiver of C. Bunting & Company. Motion to remand to state court. Motion granted and order for payment of money, \$11,024.8, made in state court.
7. In re Marshall (56 Pac., 470), habeas corpus. In this proceeding the constitutionality of the act of March 6th, 1893, amending the Information act, was attacked. Writ denied by supreme court.
8. C. J. Sponberg vs. Oneida county (59 Pac., 532). Appeal from order of county commissioners settling the accounts of the tax collector. The

question involved was the amount of poll tax to be collected after the second Monday of December. The decision was in favor of the county, the judgment of the district court being affirmed.

9. *State vs. F. M. Potter* (57 Pac., 431). Convicted of rape committed in Nez Perce county. Reversed.
10. *P. E. Stookey vs. Board of County Commissioners* (57 Pac., 312). Mandate. This was a proceeding against the board of commissioners of Nez Perce county to test the constitutionality of the act known as the "Salary Law." Writ denied.
11. *State vs. Daniel Beard*. (57 Pac., 867.) Convicted of assault with intent to commit rape. Committed in Bear Lake county. Affirmed.
12. *In re William Boyle*. Petition for habeas corpus presented to district court in Shoshone county. William Boyle was one of the persons imprisoned in the Stockade at Wardner during the insurrection, and this proceeding was brought for the purpose of testing the legality of his imprisonment and the validity of the proceedings of the state authorities. The state was successful and the writ was denied.
13. *In re William Boyle* (57 Pac., 705). Petition for habeas corpus to state supreme court. Writ asked by same person and for same purpose as in No. 12 above. Writ denied.
14. *In re William Boyle*. Petition for habeas corpus in the U. S. circuit court. Writ asked by same person and for same purpose as in Nos. 12 and 13 above. Petition dismissed.
15. *William Boyle, Plaintiff in Error, vs. Bartlett Sinclair* (178 U. S., 611). In supreme court of the United States. Writ of error to state supreme court in No. 13 above. In this proceed-

ing the decision of the state supreme court was brought before the supreme court of the United States by writ of error. Plaintiff in error requested the supreme court of the United States to advance this cause on the calendar. Motion denied. Defendant then moved the dismissal of the writ of error on the ground that plaintiff in error was no longer in custody. Motion granted and writ dismissed.

16. State vs. Horace Mulkey. (59 Pac., 17.) Convicted of gambling committed in Idaho county. In this case the "Anti-Gambling Law" was declared constitutional. Affirmed.
17. State vs. William B. McGraw (59 Pac., 178). Convicted of rape committed in Latah county. In this case the "age of consent" law was declared constitutional. Affirmed.
18. In re Paul Coreoran (59 Pac., 18). Petition for habeas corpus before state supreme court. In this case the policy of the state adopted in the Coenrd'Alene cases was contested. The decision was in favor of the state. Affirmed.
19. State vs. Herman L. Watkins (59 Pac., 1106). Convicted of murder committed in Blaine county. Affirmed.
20. State vs. R. Rasmussen (59 Pac., 933). Convicted of violation of sheep quarantine proclamation, committed in Oneida county. In this case the validity of the law permitting the governor to declare a quarantine against districts in other states infected with diseases contagious among animals was attacked. The law was upheld. Affirmed.
21. Samuel H. Hays vs. James D. Young, Sheriff. (59 Pac., 1113.) Removal from office. I brought this proceeding under the statute for removing the defendant from his office of sheriff of Sho-

shone county. His conduct was such as to conclusively show his participation in the Coeur d'Alene riots. He was removed from office by the district court and the judgment was on appeal affirmed.

22. Samuel H. Hays v. Moses Simmons, Wm. Boyle and Wm. Stimson, County Commissioners of Shoshone county. Removal from office. Sec. 1759, Rev. Stat., par. 22, authorizes the board of county commissioners to do and perform all acts and things "which may be necessary to the full discharge of the duties of the chief executive authority of the county government."

Two of the commissioners particularly, Wm. Boyle and Wm. Stimson, knowing the dangerous condition existing at Wardner in April, 1899, neglected to perform the duty which the statute and common business judgment required of them in connection with their supervision of the sheriff's office, and they were also found to be in full sympathy with the rioters. In addition to this the administration of the law by all the board had been careless and neglectful to such a degree as to call for their removal. To illustrate: they had entirely ignored the provisions of the law requiring the giving of a bond before issuing a liquor license. They were removed from office by the district court and on appeal the judgment was affirmed.

23. State vs G. F. Anderson (59 Pac., 180). Convicted of rape, committed in Blaine county. Reversed.
24. State vs. Yee Wee (61 Pac., 598) Convicted of murder, committed in Blaine county. Affirmed.
25. In re Davis (59 Pac, 544). Petition for habeas corpus. This proceeding was instituted by the sheriff of Cassia county to determine the right

to the custody of Jack Davis, held under sentence of death. I advised warden of the penitentiary that the law in my opinion required that the custody of the prisoner be given to the sheriff, but that under the circumstances it ought to be determined by the judgment of a court. The writ was granted.

26. State vs. S. O. Tannahill et al. Action on official bond of clerk of court for failure to pay over stenographer's fees. Judgment by the district court of Ada county for the sum of \$735.00 and costs in favor of the state.
27. State vs. Frank Kruger, C. B. Gagen and Harry L. Daugherty (61 Pac., 463). Convicted of burglary, committed in Blaine county. Affirmed.
28. In re Alcorn (60 Pac., 561). Petition for habeas corpus. Kootenai county. Writ denied.
29. State vs. Paul Corcoran (61 Pac., 1034). Convicted of murder in the second degree, committed in Shoshone county. Defendant was a leader of the Coeur d'Alene rioters. He was found guilty of murder in the second degree and sentenced to a term of seventeen years in the state penitentiary. Affirmed.
30. State vs. Walter Taylor (61 Pac., 288). Convicted of murder, committed in Shoshone county. Reversed.
31. State vs. James White (61 Pac., 517). Convicted of assault with intent to murder, committed in Nez Perce county. Affirmed.
31. D. C. McGuinness vs. W. Arthur Davis, assessor and collector. Tienjoin tax sale. Appeal by plaintiff. Appeal dismissed.
33. State vs. Cornelius Murphy (61 Pac., 462). Convicted of murder in the second degree, committed in Owyhee county. Affirmed.
34. Samuel H. Hays, Attorney General, vs. George H.

- Stewart, District Judge (61 Pac., 591) Petition for mandate. This proceeding was brought to determine whether or not a convict in the state penitentiary could be tried for an escape prior to the expiration of his original sentence. It was held by the supreme court that he could, and the writ was granted.
35. William H. Taylor vs. Canyon County (61 Pac., 521). Recovery of deputy hire. In this case the law relating to deputy county officers is discussed. Reversed.
  36. State vs. E. H. Seymour (61 Pac., 1033). Convicted of larceny, committed in Fremont county. Reversed.
  37. State vs. Ada County (62 Pac., 457). Recovery of money due the state. This case holds that the state revenue can only be collected from the county as fast as the same is paid into the county treasury. Judgment was rendered for the state in the district court, but on appeal was reversed.
  38. State vs. B. Rigley Young (62 Pac., 679). Convicted of an assault, etc., committed in Idaho county. Affirmed.
  39. State vs. Emil Marquardsen. Convicted of larceny, committed in Canyon county. Reversed.
  40. Jack Davis vs. J. E. Burke, Sheriff. Appeal to the supreme court of the United States from the order of the U. S. circuit court during a writ of habeas corpus. Order of the lower court denying the writ affirmed, with costs.
  41. In the matter of the appeal of D. H. Andrews from the order of the board of county commissioners of Ada county, authorizing the issuance of bonds for the purpose of building a bridge. This case involved the constitutionality of the act of Feb. 7, 1899, relating to county bonds



and the procedure in case of the construction of a bridge. The district court held the law valid, but farther held the acts of the commissioners in letting the bridge contract erroneous. The judgment of the district court was affirmed.

#### CASES PENDING.

- State vs. Irvian Lyons, charged with murder committed in Canyon county. This case is now before the supreme court for hearing at the next term.
- State vs. Levi Dixon. Convicted of an assault, &c., committed in Nez Perce county. Pending before supreme court for hearing at next term.
- State vs. Rasmussen. Charged with violating sheep quarantine. On writ of error from supreme court of Idaho to supreme court of the United States (see No. 19 above.) for hearing at the present term.

#### SUMMARY.

Total number of cases argued and decided.....	41
Cases in which this office was successful.....	32
Cases in which this office was unsuccessful.....	8
Cases in which this office was partly successful....	1
Cases pending.....	3
Number of criminal cases argued.....	18
Number of civil cases.....	7
Number of special proceedings.....	15

Of the eight cases in which this office was unsuccessful four were reversed for errors in law committed by the lower court and four were reversed on the ground of insufficiency of the evidence. Of the eight cases one was a civil case and seven were criminal cases.

Numerous and important questions as to the constitutionality of laws have been raised, but in

each instance the validity of the law has been sustained.

I further report that approximately five hundred opinions have been rendered during the term now ending, to state and other officials.

#### THE INSURRECTION IN SHOSHONE COUNTY.

The insurrection in Shoshone county has already been the subject of a special report and will not be considered in detail here. Suffice to say that the policy and practically all of the proceedings of the state administration have been attacked in the courts of the state and of the United States, and in every instance have been upheld. In subduing the insurrection the state has expended up to the present time (Dec. 31, 1900,) \$59,849.96. Some proper provision should be made for securing the payment from Shoshone county of the amount which should in equity be paid by that county on this account.

#### RECOMMENDATIONS.

I recommend that changes be made in the laws as follows:

1. That an adequate punishment be provided for destroying buildings by the use of dynamite or other explosives.
2. That in criminal cases where a county is in a state of insurrection, and in other cases of proper necessity, the state be permitted a change of venue to some county where a fair trial may be had.
3. That the provisions of the school law relating to elections be so amended as to clearly define the qualifications of voters.
4. That the school law be so changed that second and third grade teachers' certificates shall be of force and effect in all counties of the state as well as in the county where issued.

5 That on the request of a proper number of qualified voters, that special school meetings or elections be held for the purpose of transacting general business of public importance to school districts.

6. That the power of school trustees to employ teachers for a period beyond the current year be better defined.

7. That a proper system be devised for the taxation of the property of private car companies doing business in the state.

8. That an appropriation be made to the attorney general's office for the express purpose of securing an accounting with the various counties of the state for the amount due the state. Owing to the change in our system caused by the adoption of the constitution, the numerous changes in county offices, the division of counties, changes in the statutes, and misunderstanding of their duties on the part of state and county officers, there is now due the state from various counties a considerable amount of money which should be paid. This work should be taken up by the attorney general's office for the reason that most of the questions involved are questions of law and not questions of bookkeeping merely.

9. That in cases where state school funds have been loaned on property on which the taxes may thereafter become delinquent, that said property be withheld from sale and be struck off to the county or state pending foreclosure of the mortgages:

10. That a specific provision be made for the redemption by lien holders of portions of lands sold for taxes.

11. That the statute be made certain as to when the lien for taxes accrues.

12. That a provision be made for the taxation of lands proved up on subsequent to the day on which the tax lien accrues.

13. That the time when poll taxes become delinquent be made uniform with the time fixed for delinquency of property taxes.

14. That temporary liquor licenses good until the next meeting of the board of county commissioners may be issued by the collector of license taxes.

15. That the fish and game law be made more definite and certain.

16. That the statute providing for the sale of timber on state lands be amended so that sales may without question be made independently of other land sales and also that the conditions of sale be more specifically set forth.

17. That a continuing appropriation be provided for the payment of traveling expenses to the attorney general in all cases where he may be required to argue cases before courts outside of this state.

18. That the act of March 15th, 1899, providing for two sets of judges at elections be so amended as to make it certain whether a private or a public count of the ballots is intended. Taken in connection with the general election law this is now an uncertain question.

Respectfully submitted,

SAMUEL H. HAYS,

Attorney General.

