

REPORT
—OF THE—
ATTORNEY GENERAL
—OF THE—
STATE OF IDAHO

FOR THE
YEARS 1911-1912



D. C. McDOUGALL
ATTORNEY GENERAL.

J. H. PETERSON,
O. M. VAN DUYN,
Assistants.

MARTHA HEUSCHKE,
Stenographer.

Territorial Attorneys General.

*D. B. P. Pride.....	1885-1886
Richard Z. Johnson.....	1887-1890

State's Attorneys General.

George H. Roberts.....	1891-1892
*George M. Parsons.....	1893-1896
Robert E. McFarland.....	1897-1898
Samuel H. Hays.....	1899-1900
Frank Martin.....	1901-1902
John A. Bagley.....	1903-1904
J. J. Guheen.....	1905-1908
D. C. McDougall.....	1909-1912
J. H. Peterson.....	1913-1914

*Deceased.

Justices Supreme Court, 1911-1912.

George H. Stewart, Chief Justice.....	Boise
James F. Ailshie, Associate Justice.....	Grangeville
I. N. Sullivan, Associate Justice.....	Hailey

Justices Supreme Court, 1913-1914.

James F. Ailshie, Chief Justice.....	Boise
I. N. Sullivan, Associate Justice.....	Hailey
George H. Stewart, Associate Justice.....	Boise

United States District Judge.

Frank S. Dietrich.....	Boise
------------------------	-------

Idaho District Judges.

District.	1911-1912.	1913-1914.	Address.
First.....	W. W. Woods.....	W. W. Woods.....	Wallace.
Second.....	E. C. Steele.....	E. C. Steele.....	Moscow.
Third.....	Carl A. Davis.....	{ Carl A. Davis..... Charles P. McCarthy.....	Boise. Boise.
Fourth.....	E. A. Walters.....	{ E. A. Walters..... Chas. O. Stockslager.....	Shoshone. Twin Falls.
Fifth.....	Alfred Budge.....	Alfred Budge.....	Pocatello.
Sixth.....	James M. Stevens.....	James M. Stevens.....	Blackfoot.
Seventh.....	Edward L. Bryan.....	Edward L. Bryan.....	Caldwell.
Eighth.....	R. N. Dunn.....	{ R. N. Dunn..... John M. Flynn.....	Coeur d'Alene. Coeur d'Alene.
Ninth.....		James G. Gwinn.....	St. Anthony.

Prosecuting Attorneys of the Various Counties of Idaho.

County.	1911-1912.	1913-1914.	Address.
Ada.....	R. L. Givens.....	R. L. Givens.....	Boise.
Adams.....	L. L. Burtenshaw.....	B. J. Dillon.....	Council.
Bannock.....	R. M. Terrell.....	C. C. Smithy.....	Pocatello.
Bear Lake.....	William Higgins.....	Jesse P. Rich.....	Paris.
Bingham.....	James E. Good.....	James E. Good.....	Blackfoot.
Blaine.....	Henry F. Ensign.....	Richard M. Angel.....	Hailey.
Boise.....	D. L. Rhodes.....	D. L. Rhodes.....	Idaho City.
Bonner.....	Peter Johnson.....	Wm. J. Costello.....	Sandpoint.
Bonneville.....	Wm. J. Hanson.....	Robert S. Meyer.....	Idaho Falls.
Canyon.....	J. A. Elston.....	B. W. Henry.....	Caldwell.
Cassia.....	T. Bailey Lee.....	L. A. Bauman.....	Albion.
Clearwater.....	Wm. J. Hannah.....	A. A. Holsclaw.....	Orofino.
Custer.....	Milton A. Brown.....	A. J. Higgins.....	Challis.
Elmore.....	W. L. Harvey.....	W. L. Harvey.....	Mountain Home.
Fremont.....	Bert H. Miller.....	A. H. McConnell.....	St. Anthony.
Idaho.....	Edw. H. Griffith.....	M. R. Hattabaugh.....	Grangeville.
Kootenai.....	N. D. Wernette.....	N. D. Wernette.....	Coeur d'Alene.
Latah.....	Geo. W. Suppiger.....	John Nisbet.....	Moscow.
Lemhi.....	John K. Rankin.....	Geo. W. Padgham.....	Salmon.
Lewis.....	Frank E. Fogg.....	Frank E. Fogg.....	Nez Perce.
Lincoln.....	James R. Bothwell.....	Harlan D. Heist.....	Shoshone.
Nez Perce.....	Dwight E. Hodge.....	Miles S. Johnson.....	Lewiston.
Oneida.....	Thomas D. Jones.....	T. E. Ray.....	Malad.
Owyhee.....	Chas. M. Hays.....	C. E. Melvin.....	Silver.
Shoshone.....	James A. Wayne.....	Carlton Fox.....	Wallace.
Twin Falls.....	A. R. Hicks.....	A. R. Hicks.....	Twin Falls.
Washington.....	J. L. Richards.....	James Harris.....	Weiser.



Report of Attorney General

BOISE, IDAHO, DECEMBER 1, 1912,

TO HIS EXCELLENCY, JAMES H. HAWLEY, GOVERNOR:

As required by law, I have the honor to submit my official report, touching matters of public interest connected with the Attorney General's Department, and giving a brief synopsis of a portion of the work done by the office during the years 1911 and 1912.

Necessarily, a great portion of the work of the office cannot be reported by reason of the nature of the work itself. Cases tried, board meetings attended, abstracts passed upon and farm loans made, opinions rendered to State Officers and County Attorneys and to the Legislature represent but a very small portion of the work of the office. A great bulk of the time of the office is taken in rendering opinions to individuals, to school districts, to municipal corporations and to irrigation districts concerning matters of more or less public moment, in which case the Attorney General's office, by right of custom, has been made the clearing house for the settlement of moot questions. A great deal of time is also taken in rendering verbal opinions to State Officers and in discussing with them, from day to day, the business of their various offices, with a view to directing them in the proper course with reference to smaller matters which come up with great regularity. We have endeavored to be uniformly courteous to all who have requested advice from the office and have, whenever the official duties of the office permitted it, given opinions to those who have requested them. In a great many cases, however, the work of the office made it absolutely impossible to advise upon purely personal matters.

We are constantly receiving communications from outside the State from individuals who desire information concerning our laws and concerning our State generally. We have made it a special point to answer all such communications promptly and fully.

Practically my entire time has been devoted to the duties of the office, and both myself and two assistants whom I have had during the greater part of my incumbency have spent all of our time in attending to the State's business.

The criminal business and civil business before the Supreme Court has been rather heavy and, in each case presented, we have prepared elaborate briefs on the points of law involved, knowing the benefits, financially and otherwise, to the counties of having the judgments of the lower courts affirmed. A statement of cases which we have argued in the Supreme Court and presented on briefs is appended hereto.

The land business of the State has been particularly heavy during my incumbency, as will be seen by the list of cases presented herewith. Many points have arisen in connection with the State's land business which have required the most exhaustive research. It might not be inappropriate in this connection to mention two lines of cases that have caused us a great deal of work and their importance to the State necessitated their being handled very carefully.

Under the Act of 1894 (28 Statutes, 394), in order that the State might secure its grants from the Federal Government, provision is made for withdrawal of unappropriated public lands upon the application of the Governor of the State for the survey thereof being made to the Commissioner of the General Land Office, and publication thereof in a newspaper published in the vicinity of the land made within a prescribed period and covering a prescribed time. Under this act the State has made

most of its selections. The statute was devised for this purpose, because it will be at once understood that the State cannot enter into a race with settlers and the railroad companies to secure its selections, and, in case such a course were necessary, the State selections would be so terribly cut up and would be in such small tracts that its handling would cost more than the land itself is worth. Under the act referred to, great bodies of land can be selected. The difficulty we have encountered is this: After the State has made its application in due form to the Commissioner of the General Land Office and publication thereof has been made in accordance with law, the land embraced in the application has, in many cases, been included within a forest reserve by a proclamation of the President and, under a ruling of the Secretary of the Interior founded upon an opinion of the Attorney General of the United States, in a case of this nature, *Heirs of Irwin vs. State of Idaho* (38 L. D. 219), the forest reserve took precedence of the application of the State. We thought this ruling a rank injustice to the State and appealed and thoroughly briefed every case involving the point. Motion for rehearing of the Irwin case was made before the Secretary of the Interior and oral argument was made before the Secretary on behalf of the State by the Attorney General of Idaho.

The Secretary, however, again decided against the State in this case, and it seemed that the result of this decision would be disastrous to the State's interests. This office as a last resort requested a hearing before the President of the United States upon this matter, which was granted, and at such hearing the State was represented by the Governor and the Attorney General, and President Taft, after being advised of the facts, and against the protests of the Secretary of the Interior and the Assistant Forester, recognized the equities of the con-

troversy in favor of the state, and issued his proclamation as President, amending the former proclamation of President Roosevelt so as to permit the State to secure title to one hundred thousand acres or thereabouts of the land in question. This land is the most valuable white pine timber land in the world, and yields an enormous revenue to the public school funds of the State.

At the same time another vexatious land question was taken up by the State with the Forestry Department, and an agreement reached. There was at that time approximately three hundred and fifty thousand acres of sections 16 and 36, unsurveyed, in forest reserves, over which the State could acquire no jurisdiction or control until such time as the Government Survey had been made, and as most of it was not accessible and in mountain regions, it was not the intention of the Government to have it surveyed for an indefinite period.

It was proposed that the State and the Government jointly have these lands examined and classified, and their value appraised, and that thereafter an equal acreage of lands be released from the forest reserves in solid bodies and the same exchanged. That is, the State would surrender its right to the unsurveyed forest reserve land for a like amount of equal value of surveyed lands in a body where the same was accessible, and over which the State would have immediate control, and be able to obtain a revenue at once. This agreement was made and signed by the officers of the Department and the State, and such lands have now been classified and appraised, and the exchange will in a short time be consummated. And when so done, practically all the difficulties between the State and the Government regarding public lands granted to the State by the Enabling Act will have been settled.

Another line of cases which has caused us almost endless

work is the series of cases known as the Marble Creek cases, involving land in Township 44 North, Ranges 2 and 3 East, B. M. The land embraced in these cases was applied for under the act above referred to but the Commissioner of the General Land Office failed to notify his local land officers of the State's prior right and such local land officers, having no notice of the State's right, permitted entrymen to file homesteads upon the land. Then the plats of survey were filed, the State filed its lists covering the land, relying upon its preference right, and its position—after a very hard fought and bitter contest—was sustained by the Interior Department. It will be seen at a glance that injustice had been done the settlers on this tract of land, who in good faith, had entered the land under the homestead law and spent their time and money in improving the land. The Tenth Session of the Legislature, realizing the equities of some of these settlers, appointed a committee, which went upon the land and reported upon the bona fides of the settlers and reported that a large portion of the land should be relinquished for the benefit of the settlers whom they found to be in absolute good faith.

Before the Land Board had opportunity to even investigate the report of the legislative commission, proceedings were instituted in the Supreme Court by William Balderston, a taxpayer, asking for an injunction against the Land Board to prevent them from relinquishing any of the land. The settlers involved were given opportunity to be heard by their counsel, and the State Land Board was represented in the case by this office. The Supreme Court, in the case of *Balderston vs. Brady* (108 Pac. 742), decided that the State Land Board could not relinquish land involved in the case and held that the only method by which the title could be divested from the State was at public auction at not less than \$10.00 per acre.

During the course of its opinion in this case, the Supreme Court, replying to oral arguments made by attorneys for the settlers, referred to the State's title to sections 16 and 36 wherever found and, in discussion of such title, used language which, wilfully or otherwise, has been misconstrued by every one contesting the State since the date of the decision. Immediately the decision was promulgated, this office asked for a modification of the language of the decision concerning the State's title to sections 16 and 36 in every township, and a subsequent decision was rendered, making the court's position more plain.

In order to understand the problem presented, it would be necessary to say that, since the inception of Statehood, the Land Board of this State has conceived the law to be that, where sections 16 and 36 are lost to the State by reason of being included in Indian reservations, forest reserves, or otherwise, the State had a right to select lieu lands in place thereof. This policy has been consistently followed. In a great many cases, through protraction or otherwise, the State has ascertained that great numbers of its sections 16 and 36 were in forest reserves, were isolated and comparatively worthless. Such sections have been designated "lost," and lieu lands selected in place thereof in accessible places, to the great financial benefit of the State. This office, therefore, conceived that the decision, holding that sections 16 and 36 passed to the State at the date of the grant, absolutely worked a great hardship upon the State, and this was the interpretation which parties adverse to the State sought to place upon the decision of our Supreme Court in the case of *Balderston vs. Brady*, *Supra*.

Before motion was made to modify the language of the Court in this case, we were served by the Department of the Interior with a notice to show cause why the land selected in

the Marble Creek District, heretofore referred to, should not be relinquished under the language of our Supreme Court in the *Balderston vs. Brady* case. That is because a great portion of the base used in the selection of this land was 16 and 36 in the Coeur d'Alene Indian reservation and in forest reserves.

We have answered by brief very thoroughly the order to show cause, but have received no decision thereon to this date. This is another matter which if decided adversely to the State must be threshed out in the Federal Courts of the land.

The Supreme Court after argument upon rehearing in the *Balderston vs. Brady* case, however, made its position plain upon the question and held with the contention made by this department as to the rights of the State to said school sections, and the Legislature at its last session, by appropriate action passed legislation removing all doubt of the right of the State to assign as base unsurveyed sixteens and thirty-sixes where the same was included within forest reserves, and hence lost to the State.

These two lines of cases and the preparation of the exhaustive briefs thereon have involved this office in tremendous work aside from its regular duties.

The problem of securing patent for the Carey Act lands in the State which have been reclaimed has taken a great deal of the time of this Department during the past two years.

Under the Carey Act, the State is entitled to patent for a project whenever it has provided a sufficient water right in a substantial ditch to reclaim the lands from their desert character. There are now pending before the Department lists for patent 6, 7, 8, 9, 10, 11, 12, 13 and 14, embracing lands upon the original South Side Twin Falls project, the Twin Falls North Side project and the Idaho Irrigation project. The many questions that have been raised by the Department have

caused great delay, and required this office to procure a great number of reports and statements regarding water supply and construction work upon these projects. It is my opinion that the delay is caused primarily for the reason that the Government has but one man who makes the inspections required not only in this state, but of all the Carey Act projects, and that up until recent date, such inspectors have been men entirely unfamiliar with irrigation problems. However, the officer now in charge is very energetic and thorough in his knowledge of the questions before him, and during the next year, the matter should be brought to a close.

The importance of obtaining the patents to these lands is readily seen when thought is given to the fact that until this step is taken the settlers have no title upon which they can borrow money for improvements, and that the land in such a condition has not its market value, nor is it taxed above the minimum amount.

Many other cases of State wide importance have been before the Supreme Court during my term of office, and will receive such consideration as I deem they merit at a later stage of this report.

During the past two years, this office has examined and passed upon some five hundred and six abstracts in connection with farm loans. Some of these abstracts have been very long and complicated, and in many instances they had to be passed upon several times before they were found satisfactory, but each abstract which passed through this office received thorough and careful examination.

I have kept the work of the office within the appropriation prescribed by the Legislature.

I desire to express my appreciation of the courtesy extended to this office by the members of the Legislature, the Supreme

Court and the District Court, the various State officers, and the County Attorneys of the various counties. Because of the courteous treatment received from all we have had dealings with, the work of the Attorney General's office has been greatly facilitated and pleasure added to what would otherwise have been mere drudgery in the performance of official duties.

RECOMMENDATIONS.

The land business of the State is the greatest business in which the State is engaged. It is a tremendously great institution. The effect of mishandling this business will redound to the State's detriment not only at present but for generations to come.

Under our constitution the land business of the State is vested in four (4) executive officers of the State, the Governor, the Attorney General, the Superintendent of Public Instruction and the Secretary of State. Under an amendment submitted, the State Auditor has been added to this list, making five (5) members of the State Land Board. All the business of the State concerning its lands must be acted upon directly by this board. I believe a moment's consideration will convince any one that this system of handling the State's most important business is inadequate and unbusinesslike.

Matters arise concerning the State's land business which should receive immediate attention, but they must be deferred until such time as the majority of the board can be gotten together. In the meantime, the members of the board are attending to other official duties and may not be within reach. No important action can be taken without a meeting of this board.

The statute provides that the regular meetings of the board should be held on the second Wednesday of each month. The

actual facts are that the State Land Board should meet every day, and it does meet day after day when a quorum can be secured. But great time is wasted in trying to get the attendance of members when pressing matters require immediate attention. The business of the office that should be taken up day by day and disposed of is delayed days and weeks, through no fault of the members of the board, who are compelled to give attention to other matters.

There are now in the State of Idaho 42 Carey Act projects, involving 2,630,833.43 acres of land. Thousands of settlers have come from various parts of the United States to make their homes among us. It has been the constant desire and effort of the State Land Board to look after their interests and protect them in every possible way, and this has been done as nearly as it can be done under existing conditions and with the antiquated method of doing business which the constitution of this State prescribes in matters concerning the land business of the State.

I have tried to detail some of the difficulties that arise concerning the business of this great board, and I believe that steps should be taken by this Legislature to bring about much needed changes in the method of administering the State's land business.

Great bodies of the State's land are included within Carey Act projects, and it is necessary for the State to take steps to procure water for these lands. Under our statute an appropriator has nine years within which to put the water to a beneficial use and, in case this is not done within the prescribed time, the appropriator loses control of the water. Cases arise, therefore, where water has been contracted for State land but where the land, under our constitution, has not passed to the settler within the time allowed the irrigation company to put the water

to a beneficial use. For the protection of this State land, therefore, it is necessary that an act be passed which would permit a greater time for the reclamation of State land than is allowed for private lands.

Provision should be made by law authorizing the Attorney General, the Governor, or the Legislature, in cases of great public moment, to submit to the Supreme Court of the State, questions for decision. I am fully aware that the Supreme Court is almost overcome with work, but I believe that the public good requires the measure to which I have just referred, without the necessity for indulging in an obvious subterfuge in order to get test cases before the Supreme Court.

The anti-trust law of this state should be strengthened. Our law at the present time on this subject is very inadequate. I believe that the public is suffering from local trusts and combinations and understandings had between dealers in the necessities of life, and that these combinations arbitrarily fix the price of such necessities. A law should be framed to give the Attorney General power and authority to conduct inquisitions, and to appear before grand juries, and to make investigation into conditions in this regard throughout the State.

The public institutions of the State are doing business under an antiquated system, and the present Legislature should enact laws modernizing the system under which the business of the state is transacted. I have a special reference in this matter to the state educational institutions. I believe that a thorough systematizing under the new constitutional amendment, providing for a State Board of Education would reduce the cost of operating State Educational Institutions by a very material amount.

Our people are suffering at the present time from over taxation. This is not due in my opinion so much to any particular

administration as it is due to a spirit of profligacy and ruinous extravagance existing in the smaller subdivisions of the government and municipalities. Incoming county commissioners and local school boards should be warned by the Legislature to adopt a strict and rigid spirit of economy in all affairs. The present administration in the state, I am sure, will see to it that the State government is economically conducted, and the local boards and bodies heretofore referred to should realize the seriousness of the situation and should economize in every possible way consistent with good government.

It should be borne in mind constantly that Idaho is a new state. That much of our land is not improved, and that our resources have not been developed as yet, and we should not permit ourselves to fashion too closely after our rich neighbors who are better circumstanced than we are, in the matter of adopting new fangled notions of government, trying out new theories, and establishing new institutions, all of which must be supported in the last analysis by the taxpayers.

I would most earnestly recommend that you in an appropriate manner urge the Legislature to curtail expenditures and economize in every possible way, and to scrutinize most closely all demands made upon it for expenditure of State money.

Building and loan companies are operating in the state at present, and have been for a great many years without regulation of any kind, and the result has been that irresponsible companies have milched the people of our state, and especially the poorer classes who desire to build homes and are unable to do so for want of capital. The Legislature should pass a law compelling an examination of these building, loan and security companies before they are permitted to operate in the State of Idaho, and to regulate the business of such company and pre-

vent wild cat schemes of this kind from being perpetrated upon the people.

The last Legislature amended the law so that the Board of Examiners are authorized to allow items in bills less than two dollars without vouchers. This law should be changed so far as it applies to appointive officers, and an appointee should be required to file vouchers for each item of his bill, except salary.

Heads of departments and appointive officers should not be allowed expenses outside of the state unless directed in writing by their boards to make such trip upon important business of their departments, and then only when the matter has been submitted to the State Board of Examiners, who should certify that the business is public business necessary to the State's welfare, and that the amount of expenses which the party shall incur is limited by the said board. A large item of expense has been incurred by the practice that has grown up of heads of departments attending conventions and making extensive trips outside of the State without authorization, and without the knowledge of anyone connected with the State's government until a bill for expenses has been presented for payment.

In many counties of the State, the compensation of the County Attorneys is wholly inadequate, and under the law at present the Board of County Commissioners have no authority to employ counsel to assist the County Attorney in important criminal cases. The Legislature has provided that the County Commissioners may employ counsel in civil cases to assist the County Attorney, and I recommend that this authority be extended in criminal cases as well.

STATEMENT OF CASES ARGUED IN THE SUPREME COURT OF THE STATE—CRIMINAL APPEALS.

State vs. Harvey L. Beslin (112 Pac. 1053)—The defendant was convicted in the District Court of the Eighth Judicial District of the crime of child stealing, and was sentenced to imprisonment to from two to ten years. The decision of the lower court was reversed.

State vs. Louis Moon, et al. (117 Pac. 757)—The defendant was convicted in the District Court of the Third Judicial District of the crime of assault with a deadly weapon, and sentenced to imprisonment for eighteen months. Judgment of the lower court was affirmed.

State vs. Henry Schreiber (114 Pac. 29)—The defendant was convicted in the District Court of the Fifth Judicial District of the illegal sale of intoxicating liquors, and sentenced to pay a fine of \$250. The appeal was dismissed.

State vs. Earl Haggerty (114 Pac. 29)—The defendant was convicted in the District Court of the Fifth Judicial District of the illegal sale of intoxicating liquors, and sentenced to pay a fine of \$500 and confinement in the county jail for five months. The judgment was modified by stipulation to the extent of eliding from said judgment the punishment of imprisonment.

State vs. Ova Allen (117 Pac. 849)—The defendant was convicted in the District Court of the Seventh Judicial District of the State of Idaho, in and for Washington county, of the crime of battery, and sentenced to pay a fine of \$300 and costs of prosecution. The decision of the lower court was affirmed.

State vs. William Davis (Not reported)—The defendant was convicted in the District Court of the Third Judicial District of the crime of petit larceny, and the case came before the

Supreme Court in an application for writ of habeas corpus. The writ was denied.

State vs. Fred Caldwell (123 Pac. 299)—The defendant was convicted in the District Court of the Second Judicial District of the crime of selling intoxicating liquor in violation of the local option statute, and sentenced to pay a fine of \$500, and costs of suit. The lower court was reversed.

State vs. Leo Cramer (119 Pac. 30)—The defendant was convicted in the District Court of the Fourth District of the crime of violating the banking laws of the State, and sentenced to imprisonment in the penitentiary for a term of from six months to two years. The judgment of the lower court was affirmed.

State vs. Josie West (118 Pac. 773)—The defendant was convicted in the District Court of the First Judicial District for the crime of having voted at an election, contrary to Section 360, Revised Codes of Idaho, and fined in the sum of \$200 and costs of prosecution. The judgment of the lower court was reversed.

In re Dawson (117 Pac. 696)—The petitioner was convicted in the District Court of the Fourth Judicial District of the crime of grand larceny. Application was made for writ of habeas corpus, which was denied by the Supreme Court.

State vs. Manual Silva (120 Pac. 835)—The defendant was convicted in the District Court of the Fourth Judicial District of the crime of selling intoxicating liquors in violation of the local option law, and sentenced to imprisonment in the county jail for five months and to pay a fine of \$500 and costs of prosecution. The lower court was affirmed.

State vs. Nathan Lott and Harrison Jabeth (123 Pac. 491)—The defendants, allottees in the Nez Perce Indian Reservation, were convicted in the District Court of the Second Judicial

District of the crime of grand larceny, and were sentenced to imprisonment for the indeterminate period of from eighteen months to fourteen years. The lower court was affirmed.

State vs. G. T. Osmer (120 Pac. 165)—The defendant was convicted in the District Court of the Second Judicial District of illegal sale of intoxicating liquor, and was fined \$50.00 and costs. The judgment of the lower court was reversed.

State vs. John Brill (120 Pac. 165)—The defendant was convicted in the District Court of the Third Judicial District of the crime of robbery, and sentenced to imprisonment in the penitentiary for from five to eight years. Judgment of the lower court was affirmed.

State vs. August Paulsen (123 Pac. 588)—The respondent was indicted for making a false report in regard to a bank of which he was director. A demurrer to the indictment was sustained. Appeal was taken by the State for the purpose of obtaining a construction of Sec. 7128, Revised Codes. The action of the trial court in sustaining the demurrer held error.

State vs. Jesse Miles (124 Pac. 786)—The defendant was convicted of forgery in the District Court of the Fourth Judicial District, and sentenced to from two to four years in the State Penitentiary. The decision of the lower court was reversed.

State vs. N. S. Sage (126 Pac. 403)—The defendant was convicted in the District Court of the Sixth Judicial District of the crime of embezzlement, and sentenced for a term of from one to fourteen years in the State Penitentiary. The lower court was affirmed.

State vs. George Winter (Not reported)—The defendant was convicted in the District Court of the Fifth Judicial District of the crime of resisting an officer, and sentenced to pay a fine of \$3,000.00 and imprisonment in the county jail for a

period of thirty days. This case is now pending on appeal before the Supreme Court.

State vs. Herman Layman (125 Pac. 1043)—The defendant was convicted in the District Court of the Ninth Judicial District for the illegal sale of intoxicating liquors, and sentenced to pay a fine of \$500.00. The judgment of the lower court was affirmed.

State vs. Yturaspe (125 Pac. 802)—The defendant was convicted in the District Court of the Third Judicial District of the crime of assault with a deadly weapon, and sentenced to pay a fine of \$500.00. The judgment of the lower court was affirmed.

State vs. W. H. Adams (126 Pac. 401)—The defendant was convicted in the District Court of the Ninth Judicial District for a violation of the local option law. The judgment of the lower court was reversed.

State vs. Emil Carlson (Not reported)—The defendant was convicted in the District Court of the Ninth Judicial District for maintaining a common nuisance contrary to the Search and Seizure Act. This case is now pending before the Supreme Court.

State vs. August Vogel (Not reported)—The defendant was convicted in the District Court of the Ninth Judicial District of the crime of grand larceny, and sentenced to serve a term of from one to fourteen years. This case is now pending on appeal from the Supreme Court.

State vs. Clevenger and Allen (Not reported)—The defendants were convicted in the District Court of the Fourth Judicial District of the crime of murder in the first degree, and sentenced to life imprisonment in the State Penitentiary. This case is now pending on appeal before the Supreme Court.

CIVIL APPEALS.

Curtis Pike vs. State Board of Land Commissioners (113 Pac. 447)—This was an original action brought in the Supreme Court for a writ of prohibition against the State Board of Land Commissioners to prevent the sale of a large body of State lands. The writ was denied.

Geo. B. Rogers vs. James H. Hawley et al. (115 Pac. 687)—This was an original action brought in the Supreme Court praying for a writ prohibiting and restraining the State Land Board from the commission of certain threatened acts—involving the right of the Land Board to assign as a base for lieu land selections sections 16 and 36 in forest reserves, or in any other part of the unsurveyed public domain within the State. The Supreme Court held that the board was acting within the scope of its power and authority, and that the writ prayed for should not issue.

State & H. T. West vs. Twin Falls Canal Co., (121 Pac. 1039)—This was an original action brought in the Supreme Court praying for a writ of mandate to compel defendants to issue shares of water stock to Plaintiff H. T. West, who was a purchaser of State land under the irrigation system of defendant company. The writ was granted.

Geo. W. Fletcher vs. W. L. Gifford (115 Pac. 824)—This was an application for writ of mandate to compel the defendant as Secretary of State to sign bonds of the State authorized by the Eleventh Session of the Legislature. This action was brought to test the validity of the bond issue amendment. Peremptory writ issued.

Grice vs. Clearwater Timber Co. (117 Pac. 112)—This was an injunction suit brought by plaintiff against defendant to prevent the construction of a dam in the North Fork of the

Clearwater river. Judgment of the lower court in favor of defendant was affirmed. This office appeared as amici curiae.

Ex parte Case (116 Pac. 1037)—Petitioner was arrested and convicted in the Justice Court for violation of Section 1458 of the Revised Codes of Idaho, relating to the employment of aliens on public works. Upon application for writ of habeas corpus to obtain discharge from imprisonment, petitioner was discharged.

Continental Life Insurance Co. vs. Hattabaugh (121 Pac. 81)—In this case, the plaintiff, a foreign corporation, made application for a writ of mandate to compel the defendant, the State Insurance Commissioner, to accept, adopt and approve a certain policy of the plaintiff which did not contain certain matters required by the statute to be set out in policies of insurance. Application for writ of mandate was denied.

Edna R. Kohney vs. Wm. C. Dunbar (121 Pac. 544)—This was an appeal by the administratrix of the estate of Albert B. Kohney from an order of the Probate Court refusing to settle and allow final account of administratrix until such time as she paid an inheritance tax upon the half interest in the community property belonging to the wife of the deceased. Judgment of the probate court reversed by the District Court. Judgment of the District Court affirmed.

Fenton vs. Board of County Commissioners of Ada County (119 Pac. 41)—This was an action by a taxpayer to have a certain order of the Board of County Commissioners of Ada county, levying and fixing a tax of three mills on the dollar for general school purposes for the county for the year 1911, set aside and annulled. The order was set aside by the District Court, which was affirmed by the Supreme Court.

Barton vs. Schmershall et al. (123 Pac. 385)—This was an original action against the State Board of Medical Examiners

to compel the issuance of a physician's license without an examination. Writ was denied.

State vs. Fred Gooding (124 Pac. 791)—This was an appeal from the District Court of the Fourth Judicial District from a judgment rendered in favor of the defendant in a proceeding by the State to remove him from the office of Highway Commissioner. The lower court was affirmed.

Walbridge et al. vs. Robinson, State Engineer (125 Pac. 812)—This was an action by Walbridge et al. for writ of mandamus to compel A. E. Robinson, State Engineer, to give notice and grant a certificate of completion of diversion work. From a judgment by the District Court of the Third Judicial District, granting the writ, the defendant appeals. The lower court was reversed.

Sullivan vs. Board of Commissioners of Lemhi County (125 Pac. 190)—This was an appeal from an order of the Board of County Commissioners of Lemhi county refusing to grant a liquor license. The Commissioners appealed to the Supreme Court from a judgment of the District Court reversing the action of the board. The lower court was reversed.

Joy vs. Gifford (125 Pac. 181)—This was an original proceeding against Wilfred L. Gifford, Secretary of State, for writ of mandamus to compel him to file the nomination of Charles P. McCarthy, candidate for District Judge. The Secretary declined to file the same for the reason that he claimed there was no election to be held for election of District Judge. Alternative writ was quashed and proceedings dismissed.

Seawell vs. Gifford (125 Pac. 182)—This was an original application by John L. Seawell for a writ of mandate, commanding Wilfred L. Gifford, Secretary of State to receive and file a certificate of nomination. Application denied.

Hyslop and Shinn vs. Board of Regents of the University

(Not reported)—This is an action instituted by plaintiffs against the Regents of the University for a recommendatory judgment arising out of a contract between each of the plaintiffs and the board. This case is now pending before the Supreme Court.

State ex rel Spofford vs. Gifford (126 Pac. 1060)—This was an original action instituted in the name of the state for a restraining order enjoining Wilfred L. Gifford from certifying nominations of the Progressive party. Granted in part and denied in part.

MISCELLANEOUS CASES.

State Board of Health vs. C. C. Conant (Not reported)—This action was instituted to recover a certain sum of money held by C. C. Conant as administrator of the estate of J. L. Conant, deceased. The matter was settled out of court.

Idaho Iowa Lateral & Reservoir Co. vs. State of Idaho (Not reported)—This action was brought to condemn certain state land desired for a reservoir site. Damages were awarded the State upon report of commissioners appointed.

State vs. Addie Marsters et al. (Not reported)—This was a foreclosure proceeding instituted by the State upon a mortgage given to it to secure a farm loan.

State vs. John Beede et al. (Not reported)—This was a foreclosure proceeding instituted by the State in the Second Judicial District upon a mortgage given it to secure a farm loan. The matter is still pending.

State vs. American Bankers Assurance Co. (Not reported)—This is an action instituted by the State in the District Court of the Third Judicial District to secure the payment of a certain bond executed by the defendant company to the State of Idaho. The matter is now pending.

The Great Shoshone and Twin Falls Water Power Co. vs. State Board of Land Commissioners (Not reported)—This was a condemnation proceeding instituted to condemn a strip of state land desired for reservoir site. The matter is pending.

The Twin Falls Railway Co. vs. State Board of Land Commissioners (Not reported)—This was a condemnation proceeding instituted by the Twin Falls Railway Co. to condemn a strip of land desired for right-of-way. The matter is pending.

CASES IN THE FEDERAL COURT.

United States vs. State (Not reported)—This was an action in condemnation instituted by the United States to condemn certain State land situated in Boise and Elmore counties, desired for reservoir purposes.

Western Union Telegraph Co. vs. James H. Hawley et al. (Not reported)—This is an action instituted by the Western Union Telegraph Co. in the United States District Court applying for an order restraining the Board of Equalization and the assessors of the various counties throughout the state from assessing and collecting taxes from the plaintiff company. The case is now pending before the Circuit Court.

LAND CASES.

State vs. F. E. Winchell. Land in Twp. 46 N. R. 5 W. State selections held intact.

State vs. John Yarber. Land in Twp. 48 N. R. 5 W. Pending before the Commissioners of the General Land Office.

State vs. James B. Sargent. Land in Twp. 44 N. R. 3 E. Pending before the Secretary of the Interior.

State vs. Archie L. Sinclair. Land in Twp. 45 N. R. 4 W. Commissioner General Land Office affirmed rejection homestead application.

State vs. Daniel J. Blackmer. Land in Twp. 45 N. R. 4 W.
Pending.

State vs. Frank S. Royer. Land in Twp. 45 N. R. 4 W.
Commissioner General Land Office affirmed rejection
homestead application.

State vs. Chas. A. Dervey. Land in Twp. 44 N. R. 2 E. Pend-
ing before the Commissioner General Land Office.

State vs. Thos. Spivey et al. Mineral protest. Land in T. 5
N. R. 6 E. Pending.

State vs. Albert Balshisser. Land in T 44 N. R. 4 W. State
selections held intact.

State vs. Edwin A. Squibb. Land in T. 44 N. R. 5 W. State
selections held intact.

State vs. J. Lee Williams. Land in T. 44 N. R. 5 W. State
selections held intact.

State vs. Mildred Wiggins. Land in T. 44 N. R. 5 W. State
selections held intact.

State vs. John C. Black. Land in T. 43 N. R. 4 W. Pending
before the Secretary of the Interior.

State vs. Charles A. Libby. Land in T. 43 N. R. 4 W. Pend-
ing before the Secretary of the Interior.

State vs. Geo. E. Coleman. Land in T. 44 N. R. 4 W. Pend-
ing before the Secretary of the Interior.

State vs. Geo. E. Magee. Land in T. 43 N. R. 4 W. Pending.

State vs. John S. McIntyre. Land in T. 44 N. R. 5 W. Pend-
ing before the Secretary of Interior.

State vs. Thos. A. Rogers. Land in T. 43 N. R. 4 W. Pend-
ing before the Secretary of the Interior.

State vs. Joseph W. Volleneck. Land in T. 48 N. R. 5 W.
State selections held intact.

State vs. Archie W. Lammers. Land in T. 48 N. R. 5 W.
State selections held intact.

State vs. Salma A. Nyquist. Land in T. 47 N. R. 5 W. State selections held intact.

State vs. Hattie Smith. Land in T. 44 N. R. 4 W. Commissioner of the General Land Office affirmed rejection homestead application.

State vs. Geo. E. Douglas. Land in T. 44 N. R. 2 E. Pending before the Commissioner of the General Land Office.

State vs. Lillian Ferguson. Land in T. 44 N. R. 2 E. Pending before the Commissioner of the General Land Office.

State vs. David H. Kerr. Land in T. 44 N. R. 2 E. Commissioner General Land Office affirmed rejection homestead application.

State vs. O. W. Lindsley. Land in T. 56 N. R. 2 E. Pending.

State vs. Oscar L. Lindsley. Land in T. 56 N. R. 2 E. Pending.

State vs. James Campbell. Land in T. 56 N. R. 2 E. Pending.

State vs. Emmett Cudy. Land in T. 54 N. R. 5 W. Pending.

State vs. Martha Cudy. Land in T. 54 N. R. 5 W. Pending.

State vs. Michale Brady. Land in T. 45 N. R. 3 W. State selections held intact.

State vs. W. W. Bracken. Land in T. 47 N. R. 3 W. Pending.

State vs. John Dunphy. Land in T. 44 N. R. 4 W.

State vs. Chas. J. Morgan. Land in T. 47 N. R. 5 W. State selections held intact.

State vs. Frank Keller. Land in T. 44 N. R. 3 E. Commissioner General Land Office affirmed rejection homestead application.

State vs. Wm. J. Harris. Land in T. 37 N. R. 5 E. Mineral protest. Pending.

State vs. Henry M. Smith. Land in T. 52 N. R. 5 W. Commissioner General Land Office affirmed rejection homestead application.

State vs. M. F. Setters. Land in T. 48 N. R. 6 W. Case closed upon withdrawal of appeal. State selections held intact.

State vs. Bert A. Reed. Land in T. 48 N. R. 6 W. State selections held intact.

State vs. Ira C. Hartsall. Land in T. 48 N. R. 6 W. State selections held intact.

State vs. Wm. C. Kruse. Land in T. 48 N. R. 5 W. Commissioner affirmed rejection homestead application.

State vs. Roy A. Braman. Land in T. 48 N. R. 5 W. Commissioner General Land Office affirmed rejection homestead application.

State vs. Margaret Hester. Land in T. 44 N. R. 4 W. State selections held intact.

State vs. Edward Collins. Land in T. 44 N. R. 5 W. State selections held intact.

State vs. John A. Keeper. Land in T. 44 N. R. 4 W. State selections held intact.

State vs. Joel I. Sheldon. Land in T. 46 N. R. 4 W. State selections held intact.

State vs. Lewis E. Larson. Land in T. 48 N. R. 6 W. State selections held intact.

State vs. Nicholas Kayl. Land in T. 48 N. R. 6 W. State selections held intact.

State vs. Salam C. Kurdy. Land in T. 48 N. R. 3 W. State selections held intact.

State vs. Oscar C. Young. Land in T. 48 N. R. 5 W. State selections held intact.

State vs. Ennis C. Thomas. Land in T. 48 N. R. 5 W. State selections held intact.

State vs. James H. Wylie. Land in T. 48 N. R. 4 W. State selections held intact.

State vs. John M. Privett. Land in T. 48 N. R. 5 W. State selections held intact.

State vs. Alonzo E. Rice. Land in T. 44 N. R. 3 E. Commissioner General Land Office affirmed rejection homestead application.

State vs. Wm. D. Fisher. Land in T. 45 N. R. 5 W. Pending before Commissioner General Land Office.

State vs. Wm. H. Rudolph. Land in T. 44 N. R. 4 W. Pending before Commissioner General Land Office.

State vs. Willis L. Christie. Land in T. 47 N. R. 4 W. Pending before the Secretary of the Interior.

State vs. James Welch. State selections held intact.

State vs. Ernest Martin. Land in T. 46 N. R. 4 W. State selections held intact.

State vs. John M. McCarty. Land in T. 44 N. R. 4 W. Commissioner General Land Office affirms rejection homestead application.

State vs. Mary L. King. Land in T. 44 N. R. 4 W. Commissioner General Land Office affirms rejection homestead application.

State vs. Geo. B. May. Land in T. 44 N. R. 4 W. State selections held intact.

State vs. Earl J. Smith. Land in T. 47 N. R. 3 W. State selections held intact.

State vs. Carl L. Schulrud. Land in T. 44 N. R. 4 W. Pending before the Secretary of the Interior.

State vs. Index Mining Co. Land in T. 49 R. 2 E. Mineral protest. Pending.

State vs. Geo. Putman. Land in T. 32 N. R. 4 W. Passed by the State.

State vs. Orville B. Webb. Land in T. 48 N. R. 5 W. State selections held intact.

State vs. Peter Coll. Land in T. 47 N. R. 2 E. Pending.

State vs. Walter Hess. Land in T. 47 N. R. 2 E. Pending
before the Commissioner General Land Office.

United States vs. State. Involving lists 04401, 01397, 01391,
01398, 01044, 011071, 03238.

In re applications for patent under the Carey Act. Lists Nos.
7, 8 and 9, covering 198,570.58 acres, are now pending
before the Department. Also lists Nos. 10, 11, 12, 13
and 14 are pending.

The fact that a great portion of my time is taken up by board meetings has made it necessary to rely, to a considerable extent, upon my assistants for the detail work of this office. I have at all times during the present had two Assistants Attorney General in the office, and one stenographer, namely, Hon. Joseph H. Peterson, Hon. O. M. Van Duyn and Miss Martha Heuschkel. Their time has been taken up entirely with the work of the office, and much credit is due them for the able and conscientious work done in achieving the results set out in this report. They and each of them have my utmost confidence, and I desire to commend them for the services they have rendered this office and the State. I have also had a connection with Hon. John M. Rankin, an attorney in Washington, who has rendered considerable valuable assistance in the settlement of the land questions before the Department. His compensation has been paid partly from the office funds, and partly from the general maintenance of the Land Department.

As stated in the early part of this report, much time is required in answering questions and in writing opinions for public officers and individuals in private life. The Attorney General is by statute required to advise State Officers, Members of the Legislature and County Attorneys on questions of

law, but we have in a great many instances, where the work of the office has permitted, given opinions to individuals where points involved seemed to be of public importance. Following are a few of the opinions which have been rendered during my incumbency, and are included in my report, as it is believed their promulgation in this fashion will save much time in the future in answering the same questions which are attempted to be answered in these opinions.

Respectfully submitted,

D. C. McDOUGALL,
Attorney General,

OPINIONS

May 1, 1911.

Hon. O. V. Allen, State Treasurer, Boise.

Dear Sir: Replying to yours of this date asking my opinion as to the validity of the bond issue to the extent of \$4,000, under House Bill 275, I have to say, this bill provides in the title for the issue and sale of \$4,000 bonds for the bonding of the construction and grading of fifteen miles of public highway described, and provides throughout the bill in all particulars except in section 6, for the issuance and sale of \$4,000 bonds.

Section 6 directs and authorizes the State Treasurer to issue six bonds in the sum of \$1,000 each. This is manifestly a typographical error, and our court has held in the case of *Speer vs. Stephenson*, 16 Idaho 708, that where in a bill the statute uses one word, and it is manifest from the context of the bill that another is meant, or was intended to be used, it was such an error as would not render the statute indefinite or uncertain so as to make it void or unconstitutional, but that the court would construe the statute according to the evident intent of the Legislature.

I am, therefore, thoroughly of the opinion that this bill authorizes the sale and issuance of \$4,000 of State bonds.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

March 19, 1912.

Hon. O. V. Allen, State Treasurer, Building.

Dear Sir: Replying to yours of the 18th inst. asking for construction of Chap. 207 of the Laws of 1911, and as to whether the same is operative for the full year of 1911 or only from May 1, 1911, I beg to say that in my opinion the law was only operative from May, 1911, but for the purpose of fixing the liability of the express companies, this is immaterial.

Under said chapter, all express companies in the State are required to procure a license and pay for the same three per cent upon their gross income for the preceding year ending December 31st. There is no provision for giving them a license for part of a year, and the law does not provide for the payment of the license for the months that they are doing business, but upon the going into operation of this law, the said companies were required to pay an annual license, the fee of which is determined by the amount of their total business for an entire year. The Legislature might have selected the year 1905, and required them to pay a license fee upon the business they did during that year, although during the year 1905, the law was not in existence. The term of one year is used entirely for ascertaining the amount of the license fee, and you are, therefore, advised that it is the opinion of this office that the companies should make a statement showing the amount of their gross receipts of such company received in the state for the year ending December 31, 1911. Then three per cent of said sum is the amount of their license tax.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

July 10, 1912.

Stanton Bark, Esq., County Surveyor, Mountain Home, Idaho.

Dear Sir: Replying to your question as to whether a county central committee can place a name on the official ballot for the November election, relating to the filling of a vacancy where no person's name was filed for nomination on that ticket at least thirty days before the primary election to be held in July, will say it is my opinion that this does not create a vacancy within the meaning of the primary election law, and that the central committee would have no power to fill such position by appointment so as to entitle the name of a person nominated by said committee to be placed upon the party ticket at the general election.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

March 27, 1911.

Mr. H. Rothwell, Deputy Assessor, Grangeville, Idaho.

Dear Sir: Replying to your letter of March 24, 1911, which is as follows:

"During the year 1910, E. W. Oliver of this place made final proof on a piece of mining ground, receiving a Receiver's receipt for the fee. He did not get the deed until after the second Monday of this year.

Is the property subject to taxation for the year 1911?"

I beg to say that in my opinion the said property is subject to taxation for the year 1911.

The rule established by a long line of authorities is that where the property has been "earned;" where everything has been done by the entryman, and there only remains to issue a patent to him in order to vest him with a perfect legal and equitable title, that the property is taxable, even though a patent has not issued.

With best regards, I am,

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

March 22, 1911.

Mr. James R. Bothwell, County Attorney, Shoshone, Idaho.

Dear Sir: Replying to your letter of the 11th inst. asking the opinion of this office as to whether or not lands upon which final proof by the settler under the Carey Act has been made but patent not issued from the government to the State nor from the State to the settler is subject to taxation.

Also the same question relating to lands under the Government project. We have gone into this matter to a quite full extent endeavoring to reach a correct conclusion and one which is necessary we think will be sustained in the Courts.

The rule with regard to taxation of lands is stated in Cooley on Taxation, Vol. 1, page 136, as follows:

"It is customary for the Federal Government in receiving a new State into the Union to require from the State, though without necessity, a stipulation that the public domain lying within its limits shall not be taxed by the State. The disability remains effective until the United States shall have made sale or disposition of the lands, but it then terminates notwithstanding the title may not have passed by the actual execution and delivery of a patent of conveyance; the land being actually severed from the public domain by the sale itself. But this principle will not apply in any case, until the right to a patent is complete, and the equitable title fully vested in the party without anything more to be paid or any act to be done going to the violation of the right."

The rule is likewise stated by Judson on Taxation, page 23, to be:

"It may be said in general terms that all the property of the United States held for Federal purposes, as for public buildings or reservations, including public domain, is exempt from taxation, but this exemption no longer exists when the right to a conveyance is secured by certificate of entry or purchase, even though no patent has been issued. The equitable title must, however, be fully vested without any more to be paid or any act to be done going to the foundation of the right before the land can become taxable."

The authorities cited to support this doctrine are:

Railroad Co. vs. Prescott, 16 Wallace 603, Wis.

Central Railroad Co. vs. Price County, 133 U. S. 496.

The Prescott case referred to is very plain and to the point:

"While we recognize the doctrine heretofore laid down by this court that land sold by the United States may be taxed before they have parted with the legal title by issuing a patent, it is to be understood as applicable to cases where the right to the patent is complete and the equitable title is fully vested in the party without anything more to be paid or any act to be done going to the foundation of his right."

Section 1643 of our Codes defines the property subject to taxation in this State to be:

"All property not exempt under the laws of the United States including interest in said lands to the extent of the amount paid thereon and the value of any improvement."

For the purposes of this case, this section of the statute may be considered identical with Sec. 3607 Kerr's Code of California, in construing which the Supreme Court of that State in a long line of cases has held that lands ceased to be public domain with respect to taxation, where private individuals have made application therefor, paid purchase money and received certificate from land office, even though patent has not issued. See cases under note 34 Kerr's Code, page 881.

See also Witherspoon vs. Duncan, 4 Wall. 210.

Carroll vs. Stafford, 3 Howard 441.

Brocklin vs. State of Tennessee, 117 U. S. 151.

In the case of Mariner vs. Oconto Land Co. (Wis.) 126 N. W. 34, it is held that title to public lands granted to the State for a particular purpose and regranted by the State for the purpose of the trust passes to the grantee as soon as it is earned and that fact is duly determined, and from such date, the lands are subject to the taxing laws of the State whether the legal title shall have passed by patent from the State or general government or not. It is held further in the same case that no tax can be imposed on public lands granted to the State in trust for works of internal improvements and as to which the trust has not been executed. But when the trust is executed and the land earned, a tax may be imposed though patents therefor which are due have not been issued.

In State against Itasca Lumber Company (Minn.) 111, N. W. 376, it is held:

"Where the legal title to lands remains in the United States, the land is subject to taxation by the State only after the full consideration has been paid, and a perfect equitable title has vested in the purchaser."

See also N. Mexico vs. Delinquent Tax List, etc., 73 Pac. 621.

In determining whether or not Carey Act lands can be so taxed it will be necessary to apply the foregoing principles to the facts in connection with the Carey Act project under consideration. The Act of Congress making appropriations for sundry expenses for the Government for the year ending June 30, 1897, and for other purposes approved June 11, 1896, there is under the head of appropriations for survey of public land the following provision:

"That under any law heretofore or hereafter enacted by any State providing for the reclamation of arid land in pursuance and acceptance of the terms of grant made in Sec. 4, an Act entitled 'An Act Making Appropriations etc.' Approved August 18, 1894, a lien or liens is hereby authorized to be created by the State to which said lands are granted but no other authority whatever and not created shall be valid on and against the separate legal subdivisions of land reclaimed for the actual cost and necessary expense of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal or by artesian wells or reservoir to reclaim a particular tract or tracts of such land then patent shall issue for the same to such State without regard to settlement or cultivation, provided, etc."

Section 1628 Revised Codes of Idaho provides among other things that when the entryman under the Carey Act law shall make the proof before the proper officer of reclamation, settlement and occupation as required by said section and make his final payment to the Register of the Board upon approval of his proof by the Board the settler shall be entitled to his patent. We have searched diligently to find if this question of taxing Carey Act lands had yet been before the Courts of any other State and so far we are unable to find any such case, and applying the rules laid down in the cases above cited it would seem clear to me that where the project was so far advanced as to have sufficient water right in a substantial ditch of a capacity sufficient to carry the water for the project and sufficient to warrant the State in accepting the final proof of the settler, that this condition, if the settler's proof had been approved as to his reclamation, cultivation and occupancy and all fees and charges paid and a final certificate issued to him, which certificate entitles him to a patent, that certainly he has done all the law requires him to do and he has an equitable title and the patent will issue to him as a matter of course. While it is true that there may remain on the part of the State the duty to submit their proof to the Department of the Interior, yet the settler or claimant to the land has nothing further to do and nothing further to say as far as the land is concerned. It is my opinion that the lands under the Carey Act as above set forth are liable to taxation notwithstanding that the State has not yet received the patent from the Government.

The second question as to the status of the lands under Government project is somewhat more complicated. On April 22, 1910, I wrote Mr. Frank T. Disney, Esq., County Attorney, Lincoln County, which letter is contained on page 80 of the report of this office of the years 1909-10. In this letter I refer to bill then pending before Congress, which was afterwards enacted. In this letter I stated that it was my understanding that the bill pending provided for taxation of the lands, but an examination of the Act as it became a law does not bear me out. The Act is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the Act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: Provided, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act."

It would seem to me that under this project after the five years residence, improvement and cultivation proof, has been made; and that the Government recognized that the settler has a valid existing property right in and to the land covered by the homestead; and has so recognized said right by providing that it might be sold and conveyed, and the assignee should take it subject to the duty of complying with the requirements for the payments afterwards to fall due for the purchase of water right, that a complete equitable title has been earned and the original homestead law fully complied with. It is possible that Courts would hold that there was yet a condition to be performed by the settler before he would receive his patent and therefore applying the rule laid down in the cases cited in the first part of this letter, the land would not be subject to taxation. I think, however, that the Courts would be justified in holding that the further conditions and proof to be made and payments to be liquidated are incidents outside of the general homestead law and refer only to the payment of the water rights which under these projects are in addition to the naked title to the land.

There is at least enough question that I believe it our duty to submit it to the Court for its decision and to that end I advise that unless a friendly suit can be made that the Assessor of your County be advised to place this land upon the assessment roll the same as other property.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

May 1, 1911.

G. E. Bowerman, Esq., St. Anthony, Idaho.

Dear Sir: The Secretary of State has referred to us your letter of April 28, 1911, in which you ask as to the definition of the words, "now doing business" as applied to the corporation license fee. We will say that the interpretation of this office is that all corporations which have not gone out of business are under the law required to pay the tax.

Because a company, in existence, having its officers, elections, keeping its minutes, etc., has disposed of what property it has, it does not signify that it is not "doing business." We interpret the words "doing business" as being in existence, holding meetings, electing officers, and carrying on other details that are necessary to keep the corporation alive, and no attention or regard is paid to the fact whether or not it has any actual property in existence. The fact that a corporation may hold land or other property would not make it any more subject to the said tax than one that did not. Moreover, section 2784, page 9, 1909, Session Laws says: "Every corporation organized or formed under, by or pursuant to the laws of this State." So under either view of the case, the lack of property held in the state, or the fact that the corporation did not buy or sell would make no difference.

When, however, a corporation has ceased to exist, that is to say when it no longer meets, no longer has elections or officers, no longer keeps its minutes, and has ceased to be in a position where it is able to do business, then it would not be subject to the tax. Such a condition as I have referred to may be evidenced and shown by affidavits that the corporation has ceased to hold its meetings, that its stockholders are scattered, and that it is no longer in a position to do business. It may also be shown by resolution entered upon the minutes stating that the corporation is dissolved, and that its existence has been terminated. It would be impracticable for the State to allow any corporation to show that for two or three or more months, it was out of business, because that would make endless confusion in the records, and because such was not the purpose of the law. The purpose of the law was to compel every corporation that was formed under the laws of

the State to pay a certain fee to the State for the purpose of acting and being allowed to act in its incorporate capacity.

Trusting that this may answer the questions that you have asked in your letter, I am,

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

January 17, 1911.

Milton A. Brown, Esq., County Attorney, Challis, Idaho.

Dear Sir: Replying to yours of the 12th inst. in which you ask in reference to the liability of live stock assessed for special taxes in the school district, I beg to say, in my opinion, the assessor should assess all live stock in the district wherein they are located on the second Monday in January, and that they are liable for all taxes exactly the same as any other class of property.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

July 19, 1912.

Miss Etta Brown, Lewiston, Idaho.

Dear Madam: In reply to your letter of July 15, 1912, I have to say that our school laws provide no method for the dissolution of a joint district. It is very questionable indeed whether or not a joint district can be dissolved where the same is composed of parts of two counties, unless it be done by act of the Legislature. However, I have to say that if it can be dissolved under our present laws that the safest and best way in my judgment to do it would be to have the County Commissioners of both counties to agree upon the dissolution. At the best, joint districts which take in parts of two counties are very cumbersome, and should not be encouraged, unless it is the only way to provide school children with school facilities.

In regard to your second question as to a petition asking to form a new school district, and including therein the school house and grounds, I have to say that as the rule is in division of districts that the old school district assumes the indebtedness and retains the school buildings that it would not be wise for the petition to attempt to include the school house and grounds within the new district. In forming a new district out of two or more districts, it is necessary to proceed in the same way and have the same number of signers as required for a change of boundaries.

That part of your letter which refers to the parents and guardians of at least ten children signing the petition means a district organized out of unorganized territory.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

April 16, 1912.

L. L. Burtenshaw, Esq., Prosecuting Attorney of Adams County, Council, Idaho.

Dear Sir: In response to your letter of April 13, 1912, asking whether or not in our opinion the holding of an election for fixing the county seat of Adams county is a matter that can properly come within the jurisdiction of the County Commissioners of said county, and as to whether or not any election fixing said county seat can be held on account of the proper machinery not being provided in the laws of the State of Idaho for the holding of said election, I have to say as follows:

In my opinion, the Legislature has expressly required that an election fixing the permanent county seat of Adams county shall be held at the general election in 1912, and that although the machinery and methods of holding such election have not been set out with perfect completeness, yet nevertheless, there are sufficient directions and requirements provided by law for holding the said election. This being true, it is incumbent upon the proper authorities of Adams county to give the required notices, prepare the ballots and place the said question before the people as required by the Act of 1911.

Sec. 5 of the Act of 1911 relating to the fixing of a permanent county seat for Adams county provides as follows:

"Sec. 5. The temporary county seat of the said Adams county shall be, after the establishment of the county, located at and within the corporate limits of the present village of Council. And at the general election held in 1912, a vote as provided by law shall be had as to the location of the permanent county seat of said Adams county."

It will be observed by a reading of said Sec. 5 that the said law fixes only the temporary county seat, and provides and requires that the permanent county seat shall be fixed by the people themselves at the general election. We have here, therefore, a special mandate of the Legislature of the State of Idaho that the permanent county seat shall be fixed at the said election. This bill does not provide for the removal of any county seat, but for the location of the county seat. And in carrying out the mandate of the Legislature, the requirements of the law concerning the removal of the county seats cannot and need not be observed. The question to be determined must, therefore, be determined at the general election in the same way that other special questions pertaining to an individual county are required to be determined. Therefore, in determining the matter of procedure, it is necessary to refer to the general election laws of the State.

Section 356 of the Revised Codes, among other things provides that,

"Questions to be submitted to the people of a county or municipality shall be advertised in some newspaper of general circulation in the county or town to be affected at least twice, and twenty days before election."

Section 406 of the Codes, among other things provides that,

"The County Auditor shall also prepare the necessary tickets whenever any question is required by law to be submitted to the vote of the electors of any locality, and not to the State generally."

Section 405 of the Codes, among other things provides as follows:

"All other questions to be submitted to the votes of the people, excepting constitutional amendments and county seat or boundary questions, shall be printed on separate ballots on light blue colored paper * * *, and at the top of the blue colored ballots shall be the words "other question" or "other questions" as the case may be."

And prescribes a form of ballots for these other questions.

In the General Election laws there is provided a complete scheme of registration, qualifications for voters, manner of voting, time of voting, and all such other details as are required for carrying out an election.

Therefore, in construing the words "as provided by law," as found in Sec. 5, supra, it is necessary to consider all laws in regard to voting that may be found within our statutes, and inasmuch as we cannot properly consider the matter of removing county seats as in any way relating to the fixing and location of the same, it will be necessary to construe the words, "as provided by law" as referring to the manner of voting and the machinery therefor as provided for by the General Election laws. This being so, the case of Knight vs. Trigg is not in point for the reason that while in that said case the court decided that no machinery was provided for carrying out that said election, yet this case is to be distinguished from that case for the reason that reference is made in the bill itself to the general election for the machinery necessary to carry out the fixing of the

location of the county seat of Adams county. The qualifications of voters are provided for, their registration, the manner of voting, and everything necessary for a complete expression of the will of the people. The question here shall be considered rather in the light of Gillesby vs. Board of County Commissioners, 17 Ida. 586, wherein the Court lays down the rule as to the manner of considering the General Election laws in connection with the Local Option law, holding that the same should be applied as far as applicable.

The General Election laws, construed with the Adams county law as far as possible set out a complete scheme for the special election and provide an adequate and fit method for fixing the location of the permanent county seat of Adams county.

It is impossible to escape the mandate of the Legislature, as laid down in Sec. 3, supra, that said election shall be held. Said Legislature evidently did not intend to take upon themselves the responsibility of fixing the location of the county seat, but considered that in this case, it was a proper question to be determined by the people at the general election of 1912. The reasons must be strong indeed that would be necessary to overcome the express command of the Legislature, and we do not believe that there is such a lack of requisite necessary to make a valid election that would justify this suggestion in determining that such an election should not be held.

As to whether or not it is incumbent on the County Commissioners to make any order in their records calling such an election is a question which may be of some doubt. The laws of the State make provision that the Secretary of State shall certify down to County Auditors special questions that are to be submitted to the people of the State or to the people of a particular county, and it is made the express duty of the Auditor to make the proper publications, and give the proper notices to the people and provide the proper ballots upon which the people may vote upon the special question. Therefore, while it may not be absolutely necessary it might be a proper course to pursue to have the County Commissioners incorporate in their minutes an order requiring the County Auditor to duly provide for said special election by giving the proper notices, and preparing the proper ballots as required by law.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

November 1, 1912.

Capt. E. G. Davis, Secretary Republican Central Committee, Boise.

Dear Sir: In reply to your verbal inquiry as to where names shall be written in in the ballot in order to be counted where the voter is desirous of voting for a person whose name is not printed upon the ticket, I have to say that an elector may vote for a person whose name is not upon the ballot either by writing in the name of said person in the blank ticket upon the ballot under the name of the office which he desires to be filled by his candidate, or the said elector may if there is a blank space for any office in any ticket write in the name in said blank space of the person who he desires to fill said office. The first of these methods herein set out is the preferable one, and is the one concerning which there can be no question as to whether or not the vote so indicated shall be counted.

Bearing upon the question of writing in names in ballots, we find in Sec. 404, Revised Codes of Idaho, the following:

"Nothing in this title contained shall prevent any voter from writing on his ticket the name of any person for whom he desires to vote for an office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter."

Sec. 405, Revised Codes, provides among other things that,

"The width of the ballot must be divided into equal perpendicular

spaces, one for each political party, represented by the different opposing candidates in which the tickets of the different parties must be printed, and one similar in which are only the names of the different offices, to be filled in at the election, shall be printed and below which the voter may write the names of the persons he wishes to vote for."

Sec. 405, in a different place provides that a voter may vote by writing in as follows:

"By writing in the blank ticket the names of the persons he desires to vote for and placing a cross on the right in the circle."

Sec. 424, among other things provides that a voter may vote by writing in names as follows:

"By filling in or writing the name of the person for whom he wishes to vote in the blank space provided therefor in the column or division of the ticket for that purpose provided, and marking a cross opposite thereto."

It will be observed by the first quotation from Sec. 405, Revised Codes, that a ballot is divided into perpendicular spaces, and that these perpendicular spaces are further divided into horizontal spaces containing the names of offices and the names of each person nominated for each respective office. A perpendicular space belongs to each party, which has its name at the top of the same except one perpendicular space which has no name. These spaces are called tickets and named the "Republican" "Democratic" etc., tickets, as the case may be, with the exception of the blank ticket which has no name.

Under Sec. 404, first quoted, it is provided that nothing in this title contained shall prevent any voter from writing, on his ticket the name of any person for whom he desires to vote. Therefore, if there should be a blank space for any given political office in any given ticket, it follows that the voter may write in said particular blank space the name of the person for whom he desires to vote because the law provides that he may vote in the blank space on his ticket. The distinction between "ticket" and "Ballot" should be noticed. The blank column is no one's ticket; but the Republican ticket or Democratic ticket, as the case may be, is the ticket of the Republican or Democrat, who votes for the same, and he may accordingly vote on his ticket. The other sections, 405 and 424, provide that the voter may write the names of those for whom he desires to vote in the blank column.

So it is provided that a voter may express his choice in two ways. It was undoubtedly the sense of the Legislature that when a voter had clearly expressed the name of a person for whom he intended to vote and the office which he intended said person to fill, that the same should be counted, and the blank ticket was created so that the same could be used by the elector in case all the regular tickets had been filled with printed nominees, and the voter being desirous of expressing another choice might vote for the same by filling in the name in the blank ticket.

The rule of law as laid down by all the recent decisions is to make a liberal construction of election laws so as not to disfranchise the voter. All statutes tending to limit the citizens in exercising the right of suffrage should be liberally construed in their favor. *Salcido vs. Roberts* (Cal.) 67 Pac. 1079; *Tebbe vs. Smith*, 108 Cal. 107; *Bowers vs. Smith*, 111 Mo. 45.

A voter should not be disfranchised if it is clear that he has made an honest effort to comply with the requisites of the statutes. See 15 Cyc. page. 353.

Ballots which fairly and reasonably indicate the intention of the elector are to be counted as cast unless to do so would run counter to some positive statutory enactment.

In regard to the second method of voting by writing in as set out in this letter, it will be observed that it does not run counter to any positive statutory regulation, but that there is express authority for writing the name in the ticket of the elector.

As said in the first part of this letter, the first method of voting, by writing in, is preferable for the reason that in construing statutes pertaining thereto, there is no room for argument as to the proper conclusion. The second method is less desirable for the reason that there is a question that is at the very least debatable, and by using such method confusion may arise in the minds of the judges when they come to count the vote.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

June 5, 1911.

Mr. John Dolan, Assessor Shoshone County, Wallace, Idaho.

Dear Sir: In reply to your letter of May 28, 1911, in the matter of the assessment of a railroad six miles in length running up Big Creek, we desire to say that if said railroad is owned by a timber or saw mill company, and is used solely for removing their own timber and no other timber, that it would be assessable by the County Assessor as part of the property belonging to the company owning the timber or milling plant. On the other hand, should this road be owned by an independent company, charging fares for the hauling of logs or other supplies, it would be assessed by the State Board of Equalization. From another point of view, if this six mile railroad is the extension of any railroad system, then it would be assessed by the State Board of Equalization.

Should be pleased if you would let me know as to which one of these heads said railroad will fall within.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

October 28, 1912.

W. H. Eckers, Esq., Cambridge, Idaho.

Dear Sir: In reply to your letter of October 23, 1912, asking whether or not a vote should be counted for a candidate whose name is written in the ballot opposite which a cross has not been placed, I beg to say that we find in the election laws of the State of Idaho, three provisions bearing upon this question.

Section 424, among other things provides that a name may be voted for by,

"Filling in or writing in the name of the person for whom he wishes to vote in the blank space provided therefor in the column or division of the ticket for that purpose provided, and marking a cross opposite thereto."

In Sec. 405, it is provided that a name may be voted for,

"By writing in the blank ticket the names of the persons he desires to vote for, and placing a cross on the right of the names in the circle."

Were these the only sections in our laws pertaining to elections, there would be no question but that a name should not be counted if the person writing in the name had failed to put a cross opposite it. But in Sec. 404, Revised Codes, we find this provision:

"Nothing in this title contained shall prevent any voter from writing on his ticket the name of any person for whom he desires to vote for an office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter. The voter may place a cross opposite the name he has written, but his having written the name of his choice is sufficient evidence that such is the person for whom he desires to vote."

You will observe that in this section 404, the law says "nothing in this title" shall prevent a name from being counted where the voter has written in the name, and it explicitly says that having written the name is sufficient evidence that such is the person for whom he desires to vote. As all of these sections, 404, 405 and 424 fall within the same title, it, therefore, follows by reason of the exception made in 404, that it is not necessary to place the cross after a written name, and it must, therefore, follow that the name having once been written in that it shall be counted.

It is, of course, the better practice both to write and place the cross after the name, but the writing, under the law will be sufficient evidence of the intent of the voter to justify the counting.

Yours very respectfully,

D. C. McDougall,

Attorney General.

March 23, 1911.

Herbert A. Ellsworth, Esq., Assessor Ada County, Boise.

Dear Sir: Replying to your verbal inquiry as to the method of assessing banks and banking stocks, and exemption allowed on account of indebtedness owed by the stockholders, I beg to say from an examination of the statute and cases cited thereunder by our Supreme Court, I am of the following opinion:

All real estate belonging to banking corporations should be taxed the same as other real estate, whether State or National banks.

Sec. 1672, Revised Codes of Idaho.

Sec. 5219, United States Revised Statutes.

First National Bank of Weiser vs. Washington County, 17 Ida. 319.

The banking corporation cannot claim any exemption whatever.

First National Bank of Weiser vs. Washington Co.

The capital stock of banks should not be assessed to the banking corporation but should be assessed to the individual stockholders at its value the same as other property, and in arriving at the valuation of the shares of stock, the assessor may take into consideration the undivided profits and surplus of the corporation. Sec. 1672, Revised Codes.

It is the duty of the banking association or corporation to furnish the assessor with full and correct list of the names and residence of its stockholders and the number of shares held by each, and the bank must pay the taxes of the stockholders upon such shares and charge the same against the stock held by him. Sec. 1672, Revised Codes, and First National Bank of Weiser vs. Washington Co., above cited. Shainwald vs. First National Bank, 18 Idaho, 290.

The stockholder or shareholder in a bank corporation may claim a deduction the same as any other taxpayer, and in the same manner as allowed by Sec. 1683, Revised Codes, and in no other way. The bank cannot claim the exemption for the stockholder. Cases above cited. Under Sec. 1683, the taxpayer, in order to avail himself of credit for amounts due from him to bona fides residents of the state, unsecured by mortgage or trust deed or lien on real or personal property, must make out the schedule showing all his monied capital upon which he is liable for taxation, which includes state, county, municipal and other taxable bonds, judgments for money, state, county or city warrants, unsecured credits or solvent debts due from others, including deposits in any bank, or with any banking firm or association, shares in national or other banks. If the taxpayer has listed all of the above described monied capital, he is allowed to deduct from such total all unsecured debts due to bona fides residents of this state, and the balance is assessable. No deduction, however, shall be made unless the party claiming the same discloses, under oath, the name or names of the persons to whom such taxpayer is indebted, with the amount of every such indebtedness and also that

such indebtedness is not barred by the statutes of limitation, or if barred, that he waives such bar. Sec. 1685, Revised Codes; First National Bank of Weiser vs. Washington Co., above cited.

**Right of Assessor to Subpoena Witnesses to Give Information Concerning
Taxation.**

Sec. 1684, Revised Codes provides for the giving of statements by the taxpayer, and Sec. 1685 is the form of the statement. Sec. 1687 is a complement of and relates to the statements mentioned in 1684. Sec. 1687 provides that the assessor may subpoena and examine witnesses in relation to any statement, or claim for reduction, and may compel the production before him of books, papers and accounts to verify any statement, or claim for reduction.

Yours very respectfully,

D. C. McDUGALL,
Attorney General.

January 16, 1912.

H. F. Ensign, Esq., County Attorney, Halley, Idaho.

My Dear Ensign: I have looked into the question of the trial of a convict at the State Penitentiary for an offense committed before his sentence which he is now serving at the Penitentiary, and find that our statutes on the subject, Sec. 7237, is as follows:

"When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be."

This statute is taken bodily from California, and was construed by the Supreme Court of California in the case of *Ex parte Morton*, 64 Pac. 469; 132 Cal. 364, and in that case the Court held that,

"Sec. 669 of the Penal Code (which is identical with Sec. 7237 of our Code) only allows successive and accumulative terms of imprisonment where a person has been convicted of two or more crimes before sentence has been pronounced upon him for either, which may be done in all cases where two separate crimes are charged against the same person by postponing judgment on the first conviction until after the verdict in the case."

The Court further says in the same case:

"Where the defendant has been already sentenced to the State's prison for a term of years for one crime, he cannot upon subsequent conviction upon a second charge be sentenced to a second term of imprisonment to commence at the expiration of the first term of years, and such sentence is invalid and void, and after the expiration of the first term of imprisonment, the prisoner is entitled to be discharged upon habeas corpus."

A like statute prevails in the State of Missouri where it was held in the case of *State vs. Buck*, 25 S. W. 578:

"From the time of the conviction and sentence of defendant in the first case, he was in legal contemplation, in a custody different from that of the Circuit Court, and could not be put on his trial in any other case until he had served out his time for which he had been sentenced in the first case or until the judgment and sentence in the first case had been set aside or reversed. Until then it is to be deemed of full force and effect."

The Court in quoting from a previous case of *Ex parte Meyers*, 44 Mo. 282, says:

"The Courts in this State have no common law jurisdiction in felonies and the powers they exercise are such as are conferred by statute only. There is no provision anywhere made that I have been able to find where separate sentences can be passed upon a prisoner and he be subject to more than one term of imprisonment unless the different convictions be had at the same time, and were both obtained previous to the sentence. But there is no authority for convicting a prisoner of felony at one term of the court, and regularly passing sentence upon him, and then remanding him to jail until the next succeeding term, and again convicting him and sentencing for other felonies."

See also Ex parte Ryan, 10 Nev. 261.

The Courts uniformly hold that the specific provision for cumulative sentences referred to in the above quoted statute, gives only the power to impose such sentences at the same time, and that this specific exception operates as an exclusion of all other exceptions to the rule.

It seems clear to me, therefore, that a convict may not be taken from the penitentiary and placed on trial for a crime committed before his sentence which he is serving was pronounced upon him.

Yours very truly,

D. C. McDOUGALL,
Attorney General.

August 28, 1912.

H. F. Ensign, Esq., County Attorney, Hailey, Idaho.

My Dear Harry: Referring to Sec. 1734, I believe that the Assessor should comply literally with the statutes which read:

"That when the tax collector makes out the notice of taxes due on any lot or parcel, or any part thereof, of property, if the taxes for any previous year are unpaid on such property, or if such property has been sold for taxes in any previous year, it is hereby made the duty of the tax collector to stamp notices of such unpaid taxes or of such sale, as the case may be, in red ink across the face of the notice of taxes due,
* * *."

From the above it would seem that the tax collector is only required to stamp all notices of unpaid taxes or of sale, if sale has been had. I believe the purpose of this red ink notice is to put the purchaser on his guard, and not to furnish complete information concerning the exact amounts due. The red ink notice, however, should be so couched as not to mislead persons receiving the notice.

Referring to your second question: "Where no deed giving the county title to the property (sold under taxation) has passed, and the three years for redemption has not expired, can the redemption, as provided for in said Sec. 1773 be made on the ten per cent basis?"

I think not. The last paragraph of Sec. 1773, as amended by the 1911 Legislature provides for redemption on the ten per cent basis where real estate has been sold for delinquent taxes, and the county has become the purchaser, and tax deed has issued to the county. I think, however, that redemption should be allowed on the ten per cent basis where the period for redemption is passed, whether the deed has issued or not.

Yours very truly,

D. C. McDOUGALL,
Attorney General.

May 15, 1911.

Dr. Ralph Falk, Secretary Board of Health, Boise.

Dear Sir: I am herewith returning you letter of Parker B. Lewis, dated,

April 22, 1911, enclosed in your letter of May 9, asking as to the jurisdiction of county health officers within the confines of a regularly incorporated village.

The 1909 Session Laws, page 153, among other things provides as follows:

"Cities and villages and other localities in which there is urgent need therefor may organize a local board of health to be composed of at least one physician, who shall be the executive officer of such local board, and two other persons who may or may not be physicians. Such local board of health shall act under the authority and direction of the county board of health for the county in which the city, village or other locality will be situated, and shall report to said county board of health."

You will observe by the law as just set out that the city boards of health are under the jurisdiction of the county board of health. This means the county physician may take such measures as he sees fit in regulating the spread of diseases in cities, even though there may be a city board of health in said city. Of course, the county board of health, so acting, shall not in any way violate the rules and directions of the state board of health. If there are any conflicts between the county and city boards as to the authority of either, or the means to be used in the prevention of the spread of disease, it shall be referred to the State board of health for his determination.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

February 2, 1912.

Dr. Ralph Falk, State Registrar, Boise.

My Dear Doctor: We have your letter of the 26th ult. in which you ask whether the county may pay the local registrar fees under the provisions of the Vital Statistics law of this State, where births or deaths occur within the limits of an incorporated town or village.

Section 3 of the Act in question provides as follows:

"That for the purpose of this Act, the State shall be divided into registration districts as follows: Each city and incorporated town shall constitute a primary registration district, and for that portion of each county outside of the cities and incorporated towns therein, the State Board of Health shall define and designate the boundaries of such a number of rural registration districts, which it may change from time to time, as may be necessary to insure the convenience and completeness of registration."

Section 20 is in part as follows:

"That each local registrar shall be entitled to be paid the sum of 25 cents for each birth and each death certificate properly and completely made out and registered with him, and corrected, copied and promptly returned by him to the State Registrar as required by this Act. * * * * Provided, however, that compensation for such service may be fixed by the city council or other governing body of such city, incorporated town or registration district. All amounts payable to registrars outside of cities or incorporated towns under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon certificate by State Registrar."

The above provisions undoubtedly place the power to fix the compensation of the registrar in incorporated cities and towns within the hands of the governing body of such municipalities, and the language used thereafter in said section, and above quoted, to the effect that the amount paid registrars outside of cities or incorporated villages, should be paid by the county treasurer, in my opinion precludes the idea of the payment of these fees by such

county officer for registrars acting within incorporated cities or villages.

Yours very truly,

D. C. McDOUGALL,
Attorney General.

March 13, 1912.

O. H. Gamewell, Esq., Rupert, Idaho.

My Dear Mr. Gamewell: Replying to yours of the 11th inst. in which you state that school district No. 25 of your county has been subdivided, and you now have districts Nos. 25, 1 and 6, and you desire to know what your procedure should be at the annual school election to be held in April. You have asked several questions, which I will endeavor to answer in a general way, without reference to the questions.

Sec. 47b, page 19 of the School Code, as adopted at the Eleventh Session, which I shall in this letter refer to, and copy of which I am mailing you today, under separate cover, provides among other things, that no such change of boundaries or organization of a new district shall take effect until the opening of the next school year. Therefore, if the action of the Board of County Commissioners has been a recent one, your district will not be divided or the new district organized until the beginning of the next school year.

Sec. 46, same act, provides in effect, each regularly organized school district is a body corporate, and may make contracts, etc. Therefore, until a district is organized, it is not in a position to make any contracts whatever. Therefore, there being no new districts and no change in the boundaries of the original district No. 25 at the time of the April meeting, you will at that time elect trustees for the original district as it stands in legal effect at this time, at which election, of course, all qualified voters of district 25 may vote, and on the question of levying special tax, the same procedure will be carried out as if no order had been made by your Board of County Commissioners. At the beginning of the next school year, the new districts become bodies corporate, and are ready for organization, at which time, under the provisions of Sec. 44, it will be the duty of the county superintendent to appoint trustees for the new districts, and should any of the trustees elected at this time for district 25 upon such organization reside within a district newly created, his office becomes vacant, and it will be the duty of the County superintendent to fill such vacancy by appointment from the residents of the then district 25.

Upon the organization of new districts or at the beginning of the next school year, the County Superintendent, under Sec. 51, will apportion the indebtedness and the amount of money on hand at that time (excepting special tax levied for district No. 5) among the districts entitled thereto. The old district which has the school house and the buildings will retain them of course, and be held for whatever bonded indebtedness may be in existence at that time.

Until such districts are organized and trustees appointed, the new districts, of course, cannot hold elections or vote bonds, nor levy taxes, for the reason that they are not legally corporate bodies authorized by law to transact business until such time as they may be organized under the statute.

It seems to me that I have, in the above, answered all the questions which you submitted. If I have overlooked any, or can be of further service to you, I shall be happy to do so.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

April 26, 1912.

E. G. Gallett, Esq., Pocatello, Idaho.

My Dear Ed: Your letter of April 17th has just been referred to me.

Section 32, Primary Election Law 1911, provides that, "The same officers shall be used in primary elections as provided for general elections," and Sections 443 provides for the appointment of two sets of officers in certain contingencies during a general election. I believe in those precincts where two sets of officers work during general election, the same number should be appointed for the primary election.

It is my opinion that the clerk should transmit the notices called for in Section 354 as well as published notices prescribed by Section 13, Primary Law of 1909.

We do not think that it is necessary for the officers to make out two sets of tally sheets and returns, as suggested by you.

It seems clear that the time during which registration may be made for a primary election is, "during each Saturday, including and from the first day of July to and including the Saturday next preceding the general election."

It is my opinion that one notice is all that is necessary under the provisions of Sec. 394, Session Laws 1911, page 580, provided the notices sets out fully when registration may be had for the primary election and also the general election.

I believe that you should supply all election officers with copies of the election law, and I believe the Secretary of State so construed the law when he ordered these laws printed, and he has a sufficient number for all officers.

The Constitution itself, Art. 20, Sec. 1, provides that constitutional amendments shall be published at least six consecutive weeks prior to the election at which they are submitted, in not less than one newspaper of general circulation published in each county, and the resolutions themselves provide for the same period of publication. The section to which you refer—Sec. 356, Revised Codes—has in my opinion no reference to the publication of constitutional amendments. The publication of amendments is handled entirely by the Secretary of State.

It is my opinion that in precincts which fall within the provisions of Section 443, Revised Codes that two full sets of officers are contemplated, and that the judges appointed in these precincts may choose two clerks in every instance.

When the Legislature changed the date of the primary to July, they neglected to amend Section 8 of the primary law of 1909, which provides that, "it shall be unlawful to procure any signature to a petition or nomination paper prior to the 10th day of June preceding the August primary." Inasmuch as the only change made in this regard was to change the date of the primary election, I am of the opinion that the 10th day of June would still stand, and that signatures procured before that date would have no efficacy.

It is provided in Section 5, primary law 1909, that nomination papers shall be filed at least thirty and not more than sixty days prior to the primary. So the earliest day at which petitions could be filed would be sixty days before the last Tuesday in July.

Yours very truly,

D. C. McDOUGALL,

Attorney General.

July 11, 1912.

Hon. W. L. Gifford, Secretary of State, Building.

Dear Sir: Replying to yours of the 9th inst. in which you state that on June 17, 1912, one J. R. Smeed of this city placed in nomination Mr. George W. Tannehill of Lewiston as a candidate for United States Senator on the Democratic ticket, and on June 20, 1912, Mr. Tannahill filed his acceptance for

said nomination, and on July 3, 1912, you received from Mr. Tannahill declination of said nomination, which is as follows:

"I, the undersigned, having been duly and regularly placed in nomination for United States Senator from the State of Idaho on the Democratic ticket, to be voted for at the primary election to be held throughout the State of Idaho on the last Tuesday in July, 1912, by nomination paper duly and regularly filed in the office of the Secretary of State of the State of Idaho, do hereby withdraw my nomination and my acceptance of such nomination, and most respectfully request the Honorable Secretary of State to not transmit my name to the County Auditors of the respective counties with the certified list containing the name, postoffice address and party designation of each person entitled to be voted for at such primary.

Dated at Lewiston, Idaho, this first day of July, A. D. 1912.

GEORGE W. TANNAHILL,

Residing at and an Elector of Lewiston First Precinct, Lewiston, Nez Perce County, State of Idaho.

State of Idaho,)
)ss.

County of Nez Perce.)

On this the first day of July, A. D. 1912, before me, the undersigned, a Notary Public in and for said county and state, personally appeared George W. Tannahill, to me personally known and personally known to be the person who signed the foregoing withdrawal of nomination and of acceptance of nomination, and acknowledged to me that he signed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.)

HENRY S. GRAY,

Notary Public in and for the County of Nez Perce, State of Idaho."

And on July 8th you received the following telegram from Mr. Tannahill, which was confirmed by letter:

"I have reconsidered withdrawal of my nomination for United States Senator and request you to certify my nomination to the various County Auditors pursuant to statute, confirmation of this by letter today.

6:37 P. M.

GEO. W. TANNAHILL."

At the time of the receipt of the telegram of Mr. Tannahill your certified lists of all nominations which had been accepted were ready to place in the mail.

The statute requires that all nominations for candidates to be voted for at the primaries shall be filed at least thirty days prior to the date of the primaries, which date the Supreme Court has found to be on the 29th day of June.

Section 10 of the Election Code provides that all candidates upon the State ticket, within ten days after their nomination has been filed, shall accept the same in writing, and file the same with the Secretary of State. And provides that in case said acceptance is not so filed, the name of the candidate shall not be placed upon the ballot, and contains the following clause:

"Provided, that this section shall not prevent the acceptance of said person of the nomination for the same office made by other nomination papers duly filed."

My construction of said Sec. 10 is that a person may be nominated for a position upon the State ticket and may let the time elapse in which to file his acceptance, or may even decline to accept, and yet the same candidate may if his nomination is filed again within the time allowed by law accept the second nomination notwithstanding he has declined the former one, or failed to accept within the time required by statute.

This office held two years ago that where a person's name was duly filed and he had accepted the nomination, yet afterwards he desired to withdraw his name from the ballot, and did duly with the formalities required for the filing of a nomination withdraw, that his acceptance filed prior thereto might be and would be by him withdrawn, and of the same effect as if no acceptance had been filed.

Applying this construction to the facts, Mr. Tannahill having withdrawn his acceptance on the 3d of July, on that date there was nothing in the office signifying to the Secretary of State that the candidate desired or was willing to become a candidate, but on the contrary, a former statement made, subscribed and sworn to before an officer, that he did not desire to become a candidate, and authorizing and instructing the Secretary to withdraw his acceptance. The time had on that date expired for filing a new nomination or filing a new acceptance. The nomination of Mr. Tannahill having been made on the 17th of June, the time in which he had by law been permitted to accept would expire on the 27th of June, a period of ten days before the second acceptance was received.

It is my opinion that the withdrawal of the candidate as filed on the 3d of July would be final, and that he is not entitled to have his name certified and entered on the primary ballot.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

September 18, 1912.

Hon. W. L. Gifford, Secretary of State, Boise, Idaho.

Dear Sir: I have before me a letter from Binkley, Taylor & McLoren of Spokane, with reference to filing certified copies of the Articles of Incorporation of the Northern Pacific Loan & Trust Company, a corporation organized under the laws of the State of Washington, in which they request you to file their articles without requiring of them the payment of the corporation tax as requested by the statute of this State.

They call attention to the case of H. K. Mulford Company vs. Secretary of State of California, reported in the 125th Pacific Reporter at page 236. This case held that the California statute requiring the collection of corporation tax in practically the same terms as our statute, to be unconstitutional on the grounds that such tax, First, imposed unlawful burdens on Inter-State Commerce; Second, that it takes property without due process of law; Third, that it violates requirements for equal protection of the law. This case was decided by the Supreme Court of California July 3d, this year.

Practically the same case was before the Supreme Court of Massachusetts in the case of S. S. White Dental Man. Company vs. Commonwealth, decided in May, 1912, where identically the same questions were raised and the decision of the Supreme Court of that State, after refusing identically the same Federal cases refused by the Supreme Court of California in the Mulford case, advises and decides the case in identically the opposite manner, and holds that the statute is not an infringement upon the right of Inter-State Commerce and does not impose unlawful burdens thereon; that it does not take property without due process of Law; and in my opinion is a much abler opinion, and I am inclined to think that our Supreme Court will follow the decision in the Massachusetts case rather than the one decided in California.

I, therefore, advise you that our statute requiring the payment of the incorporation tax is valid, and you should require the payment before filing the articles referred to.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

June 27, 1911.

Mr. D. G. Greenburg, Chairman Idaho State Grain Commission, Lewiston, Idaho.

Dear Sir: Replying to your letter of the 24th concerning the jurisdiction of your board over scales and measures in conformity with Chapter 49, Session Laws 1911, we have to say that Sec. 1493-h of said Act provides:

"All scales used in public warehouses, depot scales, street scales, or scales used in stock yards for the weighing of grain, hay, wool, coal, live stock, or other farm commodities shall be under the control of the State Hay and Grain Commission, and subject to the inspection and correction at least once a year, by the State Hay and Grain Inspector or his deputy, and shall be exempt from the jurisdiction of the sealer of weights and measures."

It would seem that any scales used for the purposes indicated in the above section are under your control, whether they are platform scales or any other style scales. We think the law does not confine your jurisdiction in this regard to any particular kind or style of scales, but the purpose for which the scales are used is the criterion which governs the jurisdiction of the inspector.

It would, of course, be impossible to go further than this in an opinion, and jurisdiction over any particular scales would be a matter to be determined in each case, but it seems to us that the provisions of the above quoted section are sufficiently explicit to enable you to ascertain your duty in each particular case.

Yours very truly,

D. C. McDOUGALL,

Attorney General.

March 8, 1912.

D. W. Greenburg, Esq., Chairman Idaho Grain Commission, Lewiston, Idaho.

Dear Sir: Your letter of February 29th is at hand. You ask for the construction of this office of Section 1482c and 1482d of the grain law, and desire to know what class of grain dealers or individuals must pay this license.

The statute relating to the powers of the Grain Commission is somewhat ambiguous, but a careful examination of the same leads me to the opinion that the intent of the Legislature can be readily understood.

Section 1497, Revised Codes, among other things provides,—

"The said Commission shall exercise general supervision over the hay and grain interests of the State, and of the handling, inspection, weighing and storage of hay and grain, and of the management of public warehouses, shall investigate all complaints or fraud or injustice in the hay and grain trade, and may fix the charges of public warehousemen."

Section 1482c is as follows:

"All elevators and warehouses in which hay, grain, wool or other product is received, stored, shipped or handled, situated on the right of way of any railroad company or adjacent thereto, to be used in connection with this line of railway at any station or siding, shall be public warehouses, and shall be under the supervision and subject to the inspection of the commission."

The same section also contains the following:

"Provided, that private warehouses and elevators, used solely and absolutely for private storage purposes by the owner or owners thereof, are not included in this Act."

The first portion of the section above quoted defines what are public elevators, or warehouses, and you will observe that any warehouse situated on the right of way of any railroad or adjacent thereto, are public warehouses as defined by statute. This part of the statute has been copied almost literally from the statutes of the State of Minnesota, and by the Supreme Court

of that State in the case of State vs. Cargill Co., 77 Minn. page 223, was construed and upheld. The same case was afterward appealed to the Supreme Court of the United States and affirmed, the decision being found in 182 U. S. pages 4 and 52.

The proviso contained in that section does not define what a private warehouse is, but simply says that a private warehouse or elevator used solely for private storage was not included in this act. I take it, therefore, that an elevator or a mill or a warehouse where grain is purchased, which is not situated on the right-of-way of any railroad, or adjacent thereto, or used in connection with the line of any railroad, etc., and where it is used solely and absolutely for private storage by the owner or owners are not public warehouses and are not subject to this license. But all such elevators or warehouses situated on or adjacent to the right of way of a railroad are public warehouses, and so far as the question that you have submitted to us is concerned come within, and are subject to the provisions of the next section of the law, which is as follows:

Sec. 1482d. "All such public elevators, warehouses and prospective purchasers shall be licensed annually by the commission. Applications for such license shall be made before transacting business. Every license issued shall expire on the thirtieth day of June, the following year. The fee for said license shall be five dollars (\$5.00) for each and every warehouse so operated and for each and every prospective purchaser. Such license shall be revoked by the commission for cause upon notice and hearing."

This last section was first passed at the session of 1909, and was amended by the session laws of 1911 so as to include "prospective purchasers," requiring them to procure a license the same as warehousemen or elevator companies. Just what is meant by "prospective purchaser" at first does not seem quite clear, but I am of the opinion that the Legislature meant by "prospective purchaser" any person within the State who holds himself out or advertises that he has a location for the purchase of grain, and thereby extends a general invitation to farmers to bring in their grain, and that he will purchase it at the market value. This would include elevator men who purchased and stored the grain they purchased, or warehousemen who not only stored the grain of others, but purchased it. And it is my opinion that all such persons who are in the grain business are subject to this license fee, and subject to inspection by the commission.

I do not think any other construction would be consistent with the duties of the State Commission, as set forth in the section first quoted.

The business of raising grain has become one of the chief industries of this State, and in many sections farmers rely upon it almost exclusively, depending upon the market at the nearest railroad station for the disposal of their crops. The grain buyers at that point with their elevators and warehouses can, if they so desire, and do to a very large extent, fix the price arbitrarily which they will pay to the farmers for their grain. They have their own scales, make their own grading, and in fact, the farmers of that community are almost at their mercy. The Courts have held that in conducting such a business they are not conducting a private business but a public business, and that it is a proper exercise of the police powers of the State to require people thus dealing with the public to comply with the regulations of the statute concerning the same. That they should be licensed and come within the jurisdiction and under the inspection of those whose duty it is to investigate all complaints and fraud or injustice in said market, so that they may exercise a general supervision over the grain interests of the state.

I enclose herewith file of correspondence submitted with your letter.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 30, 1911.

Heber Q. Hale, Esq., Chief Clerk Land Department, Boise.

Dear Sir: Replying to your letter of yesterday in which you ask, "Can bonds be legally accepted dated as March 10, 1911, while abstract shows in notice of bond sale that bonds shall be dated January 1, 1911?" You submit with your letter the bonds in question, being bonds of Independent School District No. 8, Bingham County, and also abstract of bond election proceedings, covering said issue.

Replying to your question would say that the dating of the bonds is violative of both the notice of election and the notice of sale of bonds, and it seems desirable to us that the bonds be dated to correspond with the published notice. We trust that this can be accomplished without great inconvenience to the school district in question, and at the same time indulge the hope that the officers of this district will not consider this office over technical, but after thorough consideration, we deem the above course advisable.

Herewith enclosures submitted.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 14, 1912.

J. Westley Holden, Esq., Idaho Falls, Idaho.

Dear Sir: Replying to yours of the 12th inst., I beg to say it is my opinion that the word "taxpayer" as used in the statutes concerning municipal bond elections will include a married woman whose husband has property assessed in his name, which property is community property, and the taxes are paid from the community earnings, and that, she, if otherwise qualified, is entitled to vote at such election as a taxpayer.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

April 17, 1912.

Miss Mary E. Harper, County Superintendent, Weiser, Idaho.

Dear Madam: Replying to your letter of April 11, 1912, asking as to whether school warrants should be advertised as provided for the advertisement of county warrants in Section 1996, 1997 and 1999, Revised Codes, I have to say that in our opinion that school warrants, although in a sense county warrants, are not such county warrants as would require advertisement under Sections 1996, 1997 and 1999, aforesaid. In the matter of school warrants, the county simply acts as a trustee and in behalf of the school district, and the funds of said school district so held by the county as trustee are not in reality county funds, and inasmuch as there is no direction in the school law itself as to advertisements for calling in warrants, I do not think this office would be justified in advising you that the law pertaining to its county warrants would be fully applicable to school warrants.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

June 3, 1912.

Hon. Hector C. Haight, Oakley, Idaho.

Dear Senator: Yours of the 22d ult. came to my personal attention Saturday, and I have given it considerable attention because of its importance. I have not the slightest doubt that you desire to do a banking business absolutely within the law, from your inherent desire to do right, as well as to

prevent complications and the annoyance of a possible violation of the statute relating to banks and banking.

Section 45 of the Banking Act of 1911, found on page 401 of the Session Laws is as follows:

"In all cases where money is borrowed the bank or trust company shall issue its bills payable or re-discount some of its paper, and shall show the true amount of borrowed money on its books and in all reports and published statements under these heads."

In handling certificates of deposit taking the usual course of business at the usual rate of interest, where the money is actually deposited in your bank, it is my opinion that they should be shown in the report under the heads of certificates of deposits, and it will not be in violation of the law. But where money is borrowed by the bank, as I take it it is where as you say your stockholders in Utah are willing to buy your certificates of deposit, and where in the course of business, as I understand it, the money is not actually deposited in your bank but credit is given in some other banking house, the money so raised or credit secured is borrowed money, and must be shown by bills payable.

I am rather of the opinion that certificates of deposit issued in this manner are bills payable, as the Courts have in a number of instances decided that a certificate of deposit is nothing more than a promissory note. And if your report shows to the bank examiner these items which are for money actually borrowed for the bank under the heads of bills payable and withdrawn from the heads of certificates of deposits, that you would not then be liable to the charge of making false reports.

This section of the statutes was undoubtedly inserted in the banking law for the protection of bona fides depositors for the reason that in case of liquidation or failure of the bank, the depositors are entitled to the first consideration, and must be paid before the holders of claims against the bank for borrowed money are taken care of. In case of liquidation, of course, the holders of these certificates of deposit referred to and which have been actually issued for money borrowed, would no doubt endeavor to make the claim that they were bona fide depositors of the bank and, therefore, entitled to share with the other depositors who have no bills payable.

The difficulty which might arise would come under Section 57 of the same Act if a charge were made that the report does not show the amount of money borrowed in accordance with Section 45.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

August 20, 1912.

Hon. Arthur Hart, Preston, Idaho.

My Dear Hart: I have your letter of August 15th in which you state that a joint committee of Democrats and Republicans wish to get my opinion on the legality of the use of "stickers" on election day in order to elect or vote for Clinton Mecham for representative.

I have given this matter very careful consideration. You ask me for a plan that is absolutely safe, and I have briefed the matter with this in view. Our Court has never passed on the proposition of whether stickers could be used in a case of this kind, but the proposition has been passed upon in other states, under statutory provisions similar to ours, and the attaching of stickers in a case like the one before you has been held to be a mutilation of the ballot. Hence by using stickers in this case, this danger would be encountered.

The only safe way that occurs to me is to have your voters write in the name of Mecham on the blank ballot at the right, or any place else on the ticket under the head of representative. This would be entirely regular, and while it would not be as handy as the use of stickers, and perhaps would not

bring in the votes you could influence by the use of stickers, still I consider the use of stickers in a case of this kind extremely dangerous for the reasons above stated.

The use of stickers in this state is countenanced where a vacancy is created after the tickets are printed, and the stickers are then used by the clerk. All the ballots are then identical. But where a sticker is used, you understand, the ballot upon which it is used is easily identified. I doubt that our court would countenance the use of stickers in this way.

Yours truly,

D. C. McDOUGALL,
Attorney General.

September 12th, 1912.

W. J. Herwig, Esq., Boise, Idaho.

Dear Sir: Replying to your inquiry of the 4th inst. regarding the construction of Senate Joint Resolution No. 13 known as the Initiative, it is my understanding of the resolution that legislation thus submitted requires the approval of a number of voters equal to the majority of the votes cast for the Governor at the election at which the legislation is adopted, and that the requirements as to the number of voters who must sign the petition to submit such legislation is a matter to be determined by legislative action.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

November 15, 1911.

Hon. I. C. Hattabaugh, Insurance Commissioner, Boise.

Dear Sir: In reply to your letter of November 14, 1911, basing my conclusions upon the facts stated to me therein, I have to say that I believe that you were justified in refusing a certificate to the Independent Order of Puritans.

The reasons therefor are, first that from said facts it does not appear that said order is organized and conducted for the mutual benefit of its members, but that on the contrary, from what you say in regard to the membership fees paid by the members being turned over to the president and secretary of said lodge together with seventy per cent of the fees and assessments of said members, it would seemingly appear that said order is conducted for the financial benefit principally of the president and secretary.

Our statutes provide that such organizations as this, desiring admittance to our state must not only be organized for mutual benefit of the members of said organization, but prohibits the organization of those doing business for profit. On both the grounds, therefore, of doing business for profit and lack of mutual benefit to the members, it seems that you were justified in refusing the certificate because your department has the control and interpretation of whether these orders are for the mutual benefit of the members and as to whether or not they are doing business in the way of profit.

I observe from the list of special deputies appointed for Colorado, Kentucky, Ohio, Pennsylvania, Texas, West Virginia aggregate the very large total of 1,067, and that this list does not include the State of Utah, Nevada, Montana, Arizona, New Mexico and Idaho. This undoubtedly at a proportionate rate would largely increase the said total of special deputies. It would appear that these deputies are receiving a certain commission for services which they may or may not render, and that in effect it would mean that if they were sold policies that they are allowed to receive what they paid for the policy in the way of premiums, assessments or membership dues, a compensation equal to the amount paid. This would mean that the order was being conducted for the benefit of these individual deputies as well as the president and secretary, and that by reason of the large pay-

ments of money made them, other members not special deputies would not be mutually and equally benefited.

This conclusion is based, as hereinbefore stated, upon the facts and papers submitted by you to this office.

I herewith return copy of your letter of June 24, 1911, sent to the Independent Order of Puritans at Pittsburg, Pa.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

February 8, 1912.

Hon. I. C. Hattabaugh, State Examiner, Boise.

Dear Sir: In compliance with your request, I have carefully examined the questions submitted in your recent letter, which questions are propounded at the instance of the County Auditors of the State, and with a view to settling certain matters concerning the official duties of such officers. I shall answer the questions in the order in which they are presented.

1. How should jurors and witnesses in a criminal case before the district, probate or justice court, and witnesses and jurors at coroner's inquest be paid?

Section 8339 provides in part:

"Witnesses before examining magistrates and in criminal cases in the probate court, and jurors and witnesses in a coroner's inquest are entitled to \$2.00 per day for each day actually engaged in the trial of the case, and 25 cents per mile one way, which must be paid out of the county treasury. * * *"

Section 6138 provides:

"Jurors in civil and criminal cases in the probate and justice courts are entitled to receive \$2.00 per day for each day actually engaged in the trial of the case, and 25 cents per mile one way. Such mileage and per diem in all civil cases must be entered and taxed up as costs against the losing party, and in all criminal cases must be paid out of the county treasury of the county where such probate or justice court is held, upon the certificate of the probate judge or justice before whom such case was tried, to be audited and paid as other claims against the county."

With regard to fees of jurors in the district courts, Sec. 6137 provides:

"At the end of every term of the district court the clerk must make out a certificate to each juror entitled thereto, certifying the number of days such juror has attended court, and the amount remaining due to him for per diem and mileage. Each juror must state on oath to the clerk the number of miles traveled for which he is entitled to pay; but no juror must receive mileage for going to or returning from court more than once during the same term, and no person summoned as a juror and excused at his own request must receive any per diem or mileage."

It will thus be seen from the above quotations that in all cases the compensation herein enumerated is fixed by law, and Sec. 2052 of the Codes provides that,—

"The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed and ordered paid by the board of commissioners; also for all debts and demands against the county when the amounts are fixed by law, and which are directed to be audited by some other person or tribunal."

Certainly there is jurisdiction in the Board of County Commissioners to examine all claims of this class, not with the idea of fixing the compensation, because the law has already accomplished that, but to ascertain whether the

service has in fact been rendered. This, in most cases would be a perfunctory proceeding because the certificate of the clerk would in most cases be taken as absolute evidence of the rendition of the service. But on the other hand, it is within the power of the county commissioners to examine these claims, and it is a proposition of jurisdiction and power which I am now discussing. Therefore, it would seem clear that all claims of this class should be presented and allowed by the Board of County Commissioners before the Auditor is justified in drawing his warrants.

2. How should court orders providing for the defense of criminals be paid?
Sec. 2086 of the Codes provides that,—

“Whenever upon the trial of a person in the district court, upon an information or indictment, it appears to the satisfaction of the court that the accused is poor and unable to procure the services of counsel, the court may appoint counsel to conduct the defense of the accused, for which service such counsel must be paid out of the county treasury, upon order of the judge of the court as follows: In all cases of misdemeanor, the sum of \$10.00; in all cases of felony, other than murder, the sum of \$25.00; and in cases of murder, the sum of \$50.00.”

Under the reasoning employed in answer to question No. 1, it seems clear that these bills should also be presented and allowed by the Board of County Commissioners.

3. In case property is sold to the county for delinquent taxes, can redemption thereof be made by any person other than the one having an interest in said property?

Unquestionably, redemption may be made by anyone, on the same principle that one man may pay another man's debts or taxes. However, the redemption would not carry with it any lien under the circumstances mentioned in said question.

4. Can redemption be made after three years from date of certificate, although county has not acquired tax deed to the property?

In answer to this question, attention is called to Sec. 1773, as amended by Chap. 10, Session Laws 1911, page 27, which is as follows:

“In all cases where real estate has been or may hereafter be sold for delinquent taxes, and the county has become the purchaser and a tax deed has issued to the county, and the time for redemption, as hereinbefore provided, has passed and the county has not disposed of such real estate, the person whose estate has been or may hereafter be sold or his heirs, executors, administrators, or other successors in interest, at any time after the time of purchase thereof by the county, and before the county has disposed of the same, has the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate is situated the amount of taxes thereon due at the time of said sale, with interest thereon at the rate of ten per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also for each year since the sale for which taxes on said land have not been paid, an amount equal to the percentage of state and county tax for that year, upon the value of said real estate to be assessed at time of redemption by the assessor and collector for each year subsequent to the year of sale, with interest from the first day of January of each of said years respectively, at the same rate; and also all costs and expenses, which may have accrued by reason of such delinquency and sale, and the costs and expenses of such redemption, as hereinafter specified. The County Auditor must, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and must give him duplicate certificates, specifying the several amounts thereof, one of which certificates must be delivered to the county treasurer, together with the money; and the county treasurer must execute a deed to the redemptioner. The county treasurer must settle for the moneys received

as for other state and county moneys. The treasurer and auditor must be paid by the redemptioner, for making out said estimates and deed, the sum of two dollars each. Upon the payment of the money specified in said certificate, and the giving of the deed aforesaid by the treasurer, any deed or certificate of sale that may have been made to the country becomes null and void, and all right, title, and interest acquired by the county under or by virtue of the tax sale ceases and determines. Whenever property sold to the county, pursuant to the provisions of this chapter, shall be redeemed, the moneys received on account of such redemption shall be distributed between the state and the county, and to the respective funds in the same manner as if the same had been paid in the first instance to the tax collector.

It seems that the amendment here quoted was intended to cover the very question which is asked. Of course, where a tax deed has actually issued to the county, then the case becomes clear, and redemption may be made under this statute if the property has not passed out of the hands of the county.

Section 1755 of the Codes provides in part:

"At the expiration of the time in which the county is entitled to a deed for any such property (sold to the county for delinquent taxes), the assessor shall immediately execute a deed therefor, and file the same with the recorder for record."

It thus appears that there is a duty placed upon the assessor immediately upon the expiration of the time allowed for redemption, to immediately execute a deed, and if the assessor performs his duty in this regard, the condition presumed in the question could not arise. And I am of the opinion that the proper course to be followed in case one desired to redeem after the expiration of the redemption period where a deed had not issued in conformity with the above section, would be to request the execution of a deed before the redemption is had or payment is made. It would be the duty certainly of the assessor to execute such a deed upon the request of the person desiring to redeem.

From the language used in the latter part of Sec. 1775, herein quoted, however, this course, while undoubtedly the safe one, I do not think is absolutely essential, and I think our court would hold that redemption may be had even upon certificate where deed has not issued. The statute says:

"Upon the payment of the money specified in said certificate and the giving of the deed aforesaid by the treasurer, any deed or certificate of sale that may have been made to the county becomes null and void."

It would seem that this section contemplates cases where the assessor had neglected his duty and deed had not executed, as directed.

5. Can the auditor sell a certificate over three years old where the county has not obtained its deed?

This question again anticipates that the assessor has failed to perform his duty. Any one interested might compel the issuance of a deed at any time, and while no doubt, the auditor has the power to dispose of a certificate which has outlived the three year period, I apprehend no purchaser could be found for such certificates. I doubt if any purchaser would run the risk of such an investment, where the certificate had clearly outlived its statutory age. So far as the power of the auditor to sell these certificates is concerned, there is nothing in the statute to interfere with it.

6. Are clerks of the district court entitled to fifty per cent of naturalization fees?

While there are some cases,—notably the case of Eldridge vs. Salt Lake County, a Utah case, reported in 106 Pac. page 939, in which it is held under a statute similar to ours, that the clerk is entitled to such fee for his own use, and that he need not account to the county therefor,—the theory upon which this case was decided has not been held to in this state. It seems to me the case of Rhea vs. Board of County Commissioners, 12 Ida. 455, is decisive of this question. In that case it was held:

"The clerk of the district court, ex-officio auditor and recorder, under the provisions of Sec. 7, Art. 18 of the constitution and the law carrying that section into effect, must pay to the county treasurer all fees which may come into his hands from whatever source, over and above his actual and necessary expenses. This includes all fees for services rendered by virtue of said offices.

"Under the provisions of Sec. 2294 of the Revised Statutes of the United States, as amended by the Act of March 11, 1902 (32 U. S. Stat. at Large 64), the clerk of the district court who takes homestead and other land proofs, must do so in his official capacity, and all fees collected by him for such services, whether preparing the deposition and administering the oath and affixing the jurat are provided for by the statute, and are collected by him in his official capacity, and by virtue of his office, and must be accounted for, and paid over to county."

It might be said with equal force that services rendered by the clerk in naturalization matters are performed by him in his official capacity, because if he were not the clerk of the county, he could not perform the service. therefore, under the Rhea case, above cited, he must remit to the county treasurer all fees coming to him from such source.

See also *In re Rice*, 12 Ida. 305.

7. Is the auditor required to keep an account with the various school districts so far as finances are concerned?

Under Sec. 68 of the School Code, Session Laws 1911, page 512, the county treasurer must keep a separate account with each school district in the county. Under the provisions of Sec. 69 of the amended law, the county superintendent must keep a separate account with each school district in the county. Section 70 of this law prescribes the duties of the auditor, and does not require that he keep these accounts separate. As a practical matter, I can see no reason why the auditor should in addition to the other officers who are compelled to do so, keep accounts with these various districts. The law does not prescribe it, and the doing so would seem to me to be unnecessary and a needless task. He must, however, keep the controlling or general account as between the districts, and the other officers above named must do the bookkeeping.

8. Where an action is commenced in one county and afterwards transferred to another county for trial, what fees are to be collected from the parties, by the clerk of the latter county?

Session laws 1909, page 22 prescribe the fees to be paid the clerk of the court for services rendered by him. The statutes make no provision for a less fee in cases where matters come to his office by reason of change of venue proceedings. This being true, the auditor of the second county must charge for cases received through change of venue proceedings the same as though such cases were originally filed with him.

Trusting this answers your inquiries, and with personal regards, I am,

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

March 9, 1911.

Hon. James H. Hawley, Governor, Building.

Dear Sir: Replying to your verbal question of this morning as to your power, under the constitution of this State to scale down and veto parts of items contained in the appropriation bill, and approve the other part, I would say, Sec. 11, Art. 4 of the Constitution of the State is as follows:

"The Governor shall have power to disapprove of any item or items of any bill, making appropriation of money, embracing distinct items, and the part or parts approved shall become a law, and the item or

items disapproved shall be void, unless enacted in the manner following * * * * *

The State of Pennsylvania has identically the same provision in its constitution, Art. 4, Sec. 16, and it would seem that the same provision prevails in Alabama, Arkansas, Louisiana, Colorado, Maryland, Montana, Nebraska and South Dakota. This provision of the Pennsylvania statute was construed in the case of the Commonwealth vs. Barnett, State Treasurer, 199 Pa. 161, 55 Lawyers Rep. Annot., page 882. In this case the court sustained the action of the executive in a veto to a portion of an item, and laid down the principal that the constitutional power to veto separate items in an appropriation includes the power to cut down an item. This question has not been before the court in very many cases, but the L. R. A. editor in note to the Barnett case, above cited, has collected such authorities. The reasoning, if followed by our court, as set out in the case above cited, would seem to authorize the executive to exercise his discretion in cutting down any part of any item and approve the remainder.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

March 2, 1911.

Hon. James H. Hawley, Governor, Building.

Sir: Replying to yours of recent date asking for an opinion on the question of whether or not a new county created by reason of the division of another county in which local option prevails is a prohibition territory as a matter of course or is it under the license system until a special election has been had to decide whether or not liquor can be sold within its boundaries under the provisions of the local option law, I beg to say, Sec. 28 of the Act, approved March 20, 1909, known as the local option law, is as follows:

"A prohibition district within the meaning of this Act is any district or territory in the State of Idaho in which the sale of intoxicating liquor is prohibited by law."

By virtue of this law, the county is made the unit, and, therefore, a prohibition district as a result of the vote of the local option law must mean in each instance a county of the State.

Section 7 of the same act provides among other things, if the majority of the votes cast at such election shall be in favor of the proposition submitted, it shall thereafter be unlawful for the Board of County Commissioners of the county to grant a license, until at a subsequent election held under the provisions of this Act the majority of the legal voters of the county voting at such subsequent election, shall vote against prohibiting the sale or disposal of intoxicating liquors.

This question has been before the courts in a large number of instances in other jurisdictions, and it seems to be settled that where a new district or a unit is carved out of territory which was prohibition territory prior thereto, that the new district takes the same status in regard to the sale of liquor as the unit from which it came until such a time as an election had been held in the new unit.

Woolen and Thornton, Intoxicating Liquors, Vol. 1, page 937, and cases cited.

Joyce on Intoxicating Liquors, page 435, Sec. 579, and cases cited.

I am of the opinion in view of the foregoing authorities that on the division of a county in this state, which prior to the division had voted in favor of prohibiting the sale of intoxicating liquor, that the new county as well as the parent county will both be prohibition districts under the local option law until such time as a new vote is had under the law.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

July 11, 1911.

Hon. James H. Hawley, Governor, Building.

Dear Sir: Replying to the within letter addressed to you by Dr. O. F. Page of Sandpoint in which he asks whether the County Commissioners may pass a resolution appropriating \$25,000 for the Kootenai road fund and use one-half for the year 1911 and the other half during the year 1912, and thereby make available one-half of the state appropriation this year and the other half next year, we have to say that the doctor evidently refers to the Act of the last Legislature providing bonds for the building of a wagon road between the Kootenai Idaho Montana state line near Cabinet (p. 134, Session Laws 1911). Sec. 15 of this Act provides:

"No part of this appropriation shall be expended or disbursed for the construction of said wagon road until after the sum of \$25,000 shall have raised for this purpose by the county of Bonner, or by private subscription, or otherwise than by the State; and when said sum is made available, the Governor of the State shall be appraised thereof, and he shall certify to the State Treasurer that such sums have been raised."

This section undoubtedly contemplates that no part of the \$25,000 appropriated by the State shall be available until the entire \$25,000 shall have been raised by the county, and that makes the plan which Dr. Page outlines impossible. A resolution passed by the commissioners would not in any sense raise the money as that term is used in Sec. 15, above quoted.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

October 24, 1911.

Hon. James H. Hawley, Governor, Building.

Dear Sir: We have yours stating that Senator Kerns of Wallace has written you with regard to the right of the State Hay, Grain and Scale Inspector to charge a fee for the inspection of scales in private stores, and in which you ask for the Attorney General's views of this law. I take it the inquiry is directed not so much to the matter of the collection of the fee, as to the matter of the jurisdiction of the department referred to over the scales in question, because we have never thought there was any doubt of the right to collect the fee prescribed by statute, if the department inspecting the scales had jurisdiction over the inspection.

Section 1493h, Session Laws 1911, Chapter 49, provides:

"All scales used in public warehopses, depot scales, street scales, or scales used in stock yards, for the weighing of grain, hay, wool, coal, livestock, or other farm commodities shall be under the control of the State Hay and Grain Commission, and subject to the inspection and correction at least once a year by the State Hay and Grain Inspector or his deputies, and shall be exempt from the jurisdiction of the Sealer of Weights and Measures. They shall be inspected at the request of any person interested in any hay, grain, wool, coal, livestock, or other commodities, weighed or to be weighed thereon. If found incorrect, the cost of inspection shall be paid by the owner thereof, otherwise by the person requesting inspection. No scales found incorrect shall be used until re-examined and found correct."

Section 1514, Revised Codes vests in the Sealer of Weights and Measures general jurisdiction to inspect all scales, measures and weights, and the provisions of Sec. 1493h, above quoted, therefore operate as an amendment of said section of the Revised Codes, and any scales used for the purposes indicated in said Section 1493h are under the control of the State Hay and Grain Commission.

It will be observed that the two statutes were not drawn with special reference to each other, and that they do not exactly harmonize and make absolutely clear the scales under which the sealer still maintains jurisdic-

tion, and those which it was intended the commissioner should exercise control over. We have therefore been compelled to promulgate a rule which we thought embodied the spirit of this legislation, and carried into effect the intent of the Legislature.

In the first place the jurisdiction of the two inspectors is not marked by the style or character of the scale, but we believe the true criterion is the purpose and object for which the scales are used, and that under this theory, the Hay and Grain Commission has jurisdiction over the heavier kinds of scales, and in fact all kinds of scales used by warehousemen and others in the purchase of produce, live stock, etc., from the producer. The smaller and lighter scales usually used by the middleman in his retail business, we believe are still under the control of the Sealer of Weights and Measures.

As stated above, the law is uncertain and it is difficult to lay down any hard and fast rule which would apply in all cases, but we believe the application of the above theory to the law will reveal the duty devolving upon the inspector or the sealer in individual cases, and that it carries out the evident intent of the Legislature.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

February 13, 1911.

Mr. George G. Hedrick, City Attorney, Hailey, Idaho.

Dear Sir: In reply to your letter of February 6, 1911, in respect to manner of filling a vacancy where your total council membership consists of four members, one of whom has recently died, and another being at present in California, I have to say as follows:

In my opinion, any appointment made at this time, under the existing conditions would be illegal, and that nothing can be accomplished by appointment and confirmation until your third member has returned from California.

If you will examine Sec. 2275, Revised Codes of Idaho, you will find the method of filling vacancies in the council set out, and any other method cannot be followed.

In the matter of the vote necessary to fill a vacancy of this kind, you must have a majority of all the councilmen elected. You will find in said Sec. 2275, Revised Codes of Idaho, the clause: "A concurrence of a majority of the whole number of members elected to the council or trustees shall be required." Had this statute read otherwise the two members could have undoubtedly filled the vacancy, but I find from a thorough search of the authorities that a majority of the courts hold, under a statute similar to ours, that it requires a majority of the whole number elected, and a majority of those present and voting is not sufficient.

McQuillan on Ordinances, page 167, Sec. 106, says:

"Under a provision requiring a vote of the majority of the members elected, it would be apparent that the act specified may not be done legally by a bare majority of a quorum."

McQuillan is one of the best authorities on the procedure of municipalities. Supporting this view set out by McQuillan, we herewith cite a few of the cases that have been found upon this matter:

Edgerly vs. Emerson, 23 N. H. 555.

Pimental vs. San Francisco, 21 Cal. 351.

McCracken vs. San Francisco, 16 Cal. 591.

State vs. Dickle, 47 Ia. 629.

Atkins vs. Phillips, 26 Fla. 281.

People vs. Hearing, 71 Pac. 413 (Col.)

City of Evanston vs. O'Leary, 70 Ill. App. 124.

Cascaden vs. City of Waterloo, 106 Ia. 673.

Blood vs. Beal, 100 Maine, 30.

This view is also supported by Abbott on Municipal Corporations, Vol. 2, Sec. 507.

In the cases of Pimental vs. San Francisco, McCracken vs. San Francisco, and San Francisco vs. Hazen, 5 Cal. 169, the Court held:

"Where vacancies occur, the whole number entitled to membership must be counted and not merely the remaining members."

There are a few dissenting authorities in this view, but they are so limited in number that it would be extremely hazardous for your municipality to fill the vacancy therein existing in any other manner than by a majority of the whole number of trustees elected.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

April 7, 1911.

Dwight E. Hodge, Esq., County Attorney, Lewiston, Idaho.

Dear Sir: In reply to your letters of April 4 and April 6, 1911, we have to say:

1. In re publication of notice for bids for transcription in records. In our opinion, inasmuch as no time of publication is provided for in the bill, it would necessarily follow that a reasonable time should be allowed. There might be some question as to whether ten days would be a reasonable time. However that is for those advertising for the bids to determine, and it would not be interfered with unless the same was unreasonable. There was an attempt made at the last Legislature by newspaper association to get a bill through providing a minimum time for publication of everything that was required by law to be published. This bill, I have understood was defeated, but I also understand a good many portions of it were taken into other laws. It seems to me in this case to be absolutely certain that it might be well to advertise for at least two weeks or twenty days. There certainly could be no interference with this done.

2. In re salaries of county officials, we would advise the following procedure: That each county officer at the end of the month swear to his salary bill upon the usual claim blank and file the same with the County Auditor. The County Auditor will then issue the warrant to each of the county officers, and at the regular session of County Commissioners following, will present a certified statement of all bills presented. It will not be necessary for the County Commissioners to meet every month to pass upon these bills. Section 2115, House Bill 400 provides that this itemized statement of the County Auditor shall be presented at the regular session. These sworn bills of the county officers should be attached to the itemized statement of the salary act, to be transmitted by the Auditor at the regular session of County Commissioners. Care should be taken by the county officers in submitting their bills to put in only their salary account. Expenses are not to be paid monthly, but only at the regular meetings and in the regular way.

3. In regard to the Sheriff spending money for detective hire, while the same has not been expressly passed upon by the Supreme Court, yet we are inclined to believe that such account or bill presented by the Sheriff is not legally authorized by our law. In my judgment, the proper way to proceed under the old law, if the Sheriff desires assistance for detective or other work in his office was to apply to the Commissioners in the regular way as provided by statute, or apply to the district court during the session of the Court.

4. In the matter of the County Attorney's contingent fund,—while the law provides that the appropriation shall be made in January in each year, in my judgment, in the first year it is merely directory, since under the law, it would be impossible to perform the same, and, therefore, the interpretation

of the law should be as to the year 1911, that it should be made as soon as possible after the passage of the law.

5. In regard to the status of school districts which have been cut by a newly created county line, our Legislature in some instances has provided in regard to the disposition of the same and in others has not. The Clear-water bill being silent upon this matter, it necessarily follows that some rearrangement of the school districts must be made for the reason that said districts so cut are not joint districts, and cannot be made so except under the procedure provided by our statute. Therefore, it would be necessary for districts so cut by a newly created county line, if they wish to retain their same boundaries, to apply for the establishment of a joint district, under the provisions of Sec. 618, Revised Codes of Idaho. This would be necessary for the reason that the assessment, levy and collection of taxes would be impossible unless arranged as provided for in said Sec. 618. Should they not desire to have a joint district, which in my opinion is not desirable, in most instances, inhabitants of the said school districts and their respective counties should apply to their respective county clerks for change of boundaries under Sections 615 and 616, Revised Codes of Idaho.

The bills which duly provide for the establishing of such school districts declare that said districts so cut shall be unorganized territory, and it shall be the duty of the County Commissioners, to annex them to adjacent school districts.

This office has written Miss Shepherd, the State Superintendent, a letter taking up this question in detail, and of which she will no doubt inform your County School Superintendent.

With best regards,

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

August 29, 1911.

Hon. Dwight E. Hodge, County Attorney, Lewiston, Idaho.

Dear Sir: In reply to your letter of August 21, 1911, in regard to division of rural high school district by county lines.

I have to say our office has had analagous matters under consideration and have determined it is of very doubtful legality to organize a rural high school comprising parts of two counties. This for the reason that the rural high school law was undoubtedly intended for rural high schools in one county, and in the said law adequate machinery has not been provided for either creating or carrying on a rural high school when it covers parts of two counties.

Therefore, it necessarily follows in the case which you present, that the machinery for carrying on the rural high school district, to-wit: For the collecting of taxes and bond, etc., is not sufficient to provide for the maintenance of said rural high school district, and that, therefore, it is of most doubtful legality.

This is further emphasized by the fact that the Lewis county division bill differed, as it does, from other division bills of the 1911 legislature, providing in Section 16, commencing with line 9, that when a county line is run through a school district, the parts of the district cut by such line shall be deemed organized territory and shall be added by the County Commissioners to other districts.

The only way, in my judgment, that you could maintain a rural high school district of which you speak with any degree of safety would be to have an election under the joint district plan, which would, in that event, provide the machinery for taxes necessary to provide for the revenue of the school district. You would thus have a joint rural high school district. This is merely a suggestion as an expedient, but personally I do not deem it advisable in any case to have a rural high school district lying in two districts.

The law contemplates a one-county rural high school district, and when it comes to matters of bonding, I doubt whether under any circumstances the state of any buyer of bonds would wish to buy bonds of a rural high school district divided by a county line.

Trusting that everything is going nicely in your county, and with best regards for yourself, I am,

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

May 5, 1911.

Robert Helm, Esq., City Clerk, Marysville, Idaho.

Dear Sir: Replying to your letter of May 3, 1911, in the matter of the road poll taxes, we have to say as follows:

1. The new road law applies to incorporated villages and cities. Incorporated villages and cities are separate road districts, but the law applies nevertheless.

2. All moneys collected within the limits of a city or village under the road poll tax levied by the county goes into the county road fund, and the Commissioners of the county are not by law compelled to pay any part of the same back to the city from which it was collected. In the matter of property tax and special highway tax levied by the County Commissioners, twenty-five per cent of both of these collected within the city or village must be repaid to the city or village. The village in addition to this may by ordinance levy a road poll tax for its own particular benefit and may levy other property taxes. All of which will be explained in the latter part of this letter.

3. Section 900 provides for a property road tax and has not been repealed, but was amended by the 1911 law. The following road taxes may now be put upon the inhabitants of a city or village:

I. County road poll tax. See Sec. 894 as amended by the 1911 laws.

II. County road property tax. See Sec. 900 as amended by the laws 1911.

III. County special highway property tax. See Sec. 901, as amended by the laws of 1911.

IV. City and village computation road poll tax. See Sec. 2240, Revised Codes of Idaho. If the city council or board of trustees of a village desire to levy this particular tax, an ordinance must be passed fixing the same.

V. Two mills of the city and village general tax may be expended on the streets. See Sec. 2238, Subdivision 3.

VI. Property owners whose property abuts on the streets may be assessed. See Sec. 2238, Subdivision 5 and 6.

VII. Bonds may be levied by the inhabitants for the improvement of streets. See Sec. 2323 Revised Codes.

4. Replying to your question in regard to exemption from road poll taxes, will say that under and by the provisions of Sec. 874, the Board of County Commissioners may levy upon each adult person. That means that nobody is exempt except persons below the age of twenty-one years. However, the 1911 laws have provided for the exemption of the state militia. So you, therefore, have to exempt the militia and parties below the age of twenty-one years.

5. Road overseers may demand the road poll tax, and if the same be not paid, they may seize and sell any property owned by the person refusing payment. The sale may be made after five days' notice of the time and place of such seizure and sale; providing the road overseers return to the clerk of the Board of County Commissioners delinquent lists of persons refusing to pay the road poll tax, the same may be collected the same as other

poll taxes are collected. That would mean in case of persons having property that it would become a lien upon the property.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

September 11, 1911.

Hon. William Higgins, County Attorney, Weiser, Idaho.

Dear Sir: In the matter of your telephone call concerning the right of the treasurer to withhold from school districts the amounts due them from the school funds of the county by reason of the failure of said school districts to hold the annual school meeting, and also concerning the duty to have four, six and nine months school, I have to say as follows:

If the school districts have failed to make any levy at all in April, and they find that they need a levy, the only thing that can be done is, now that the cash valuation has been determined, to hold the said annual school meeting and fix the levy, and certify the said levy in to the county officials as is provided by law. Session Laws 1911, page 504, Subdivision C, holds that not more than one special tax can be levied in one year. Inasmuch as you have not levied any, there is no doubt in my mind but that you are entitled to levy one. This levy, in addition to what the district will receive from the county ought to be able to provide for the terms of school in Subdivision D on the same page.

As to the second question in regard to the terms, it will be the duty of the electors at the annual meeting to determine these school months, and all of them should determine that at least four months' school should be taught during the term from September to June, which is the annual school year as nearly as it can be ascertained, provided that they have made this determination, and have made their levy as set forth in this letter. There will be no doubt that they will be entitled to their proportion of the school moneys, as provided in the educational bill, and the treasurer, of course, would not under such circumstances desire to retain said moneys from the said school districts.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

August 9, 1911.

Miss Marie Irwin, Secretary, Idaho State Humane Society, Boise, Idaho.

Dear Madam: Replying to your verbal inquiry as to whether you as secretary could appoint State humane agents to act in conjunction with your society for the enforcement of laws relating to the cruelty to animals:

I beg to say I note from your articles of incorporation that your society is formed "to promote and carry on such movements as may be proper to bring about a more stringent enforcement of the laws of the State of Idaho relating to cruelty to animals; to provide for the care of animals and disposal of lost and abandoned animals; to provide for the care of animals left without proper feed, drink, or shelter from the weather; to aid in procuring evidence against violators of the State of Idaho and report such violations to the proper officers of the State and furnish aid in the prosecution thereof;—"

Section 7153 of the Revised Codes of Idaho and the sections in addition thereto made by the 1909 Revision make it the duty of the sheriff, constable, police or peace officer to prosecute any violators of the section relating to the cruelty of animals, and confer on them certain powers. The same law also confers the same power on any officers of an incorporated association qualified as provided by law.

It is my opinion that your society can appoint any such agents as you deem

proper under your articles of incorporation to carry out the purposes and objects of the association, which, from the articles above quoted among other things, is to procure evidence and report the same to the proper officers of the State. These proper officers are the sheriff, constable, and peace officers. I find no authority in the statutes for the officers or agents of the company to exercise police powers, and they, therefore, would not be authorized to make arrests unless they were deputized by some regularly qualified officer, in which event they would be peace officers as well as officers of the association.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

November 15, 1911.

J. N. Larson, Esq., Chairman Village Trustees, Preston, Idaho.

Dear Sir: In reply to your letter of November 9th as to whether the wife of a husband who is owner of realty has a right to vote at a municipal bond election, I have to say that Section 2316, Revised Codes of Idaho, provides that all qualified electors who are taxpayers of such city or town may vote at a municipal bond election. If the real property standing in the name of the husband or wife has been acquired after marriage, in other words if it is community property, husband and wife both would have the right to vote for the reason that the husband pays the taxes on said property, not only for himself, but also for his wife, who is in a technical sense of the law a part owner thereof.

In regard to the wife of a husband where the husband owns separate property, to-wit, property acquired before marriage or by inheritance, and there is no community property, in all probability the wife would not be allowed to vote. But as a usual rule, you will find in cases like this, that the husband and wife have something assessed to them in the way of community property, as for example, horses, cattle or machinery, which were the products of or the increase of said separate property, and if this be true, they both would have the right of voting.

I might say generally that there are but few instances where the wife would not have the right to vote, and as I understand it, the general custom of cities and villages voting municipal bonds is to allow both husband and wife to vote without question.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

May 15, 1911.

T. Bailey Lee, Esq., Prosecuting Attorney, Albion, Idaho.

Dear Sir: In reply to your letter of May 10, 1911, asking as to the interpretation of certain questions therein set forth, enumerated, we desire to say that our opinion upon the same is as follows:

1. **The division of independent school districts.** It has been held by this office that school districts are capable of being divided after bonds have been issued. This would apply to an independent as well as an ordinary school district, and the division would be made in the same manner as provided in the law for the changing of any territory of any school district. It does not mean that the security will be necessarily lessened if the district be divided for the reason that all the property of the school district as it was constituted at the time of the bonding would be just as much liable after the district has been divided. The divisions of such school districts, however, are very confusing and are not satisfactory, and should be avoided unless there is the greatest necessity therefor.

2. In the matter of levying road poll taxes, it is the opinion of this office

that the Commissioners have the discretion to levy road poll taxes upon all persons above the age of twenty-one years, and this regardless of the facts as to whether they are male or female. There is only one exception which is provided by law, and that is the exemption of militiamen, for which see Revised Codes, under the heading of Road Poll Tax. There is no exemption in regard to women, old men, etc.

3. In the matter of error in the description of property where the same occurs by the assessor in assessing, we have to say in the case cited that the Commissioner would have no power to attempt to go back and correct old errors in description. That the description is a material matter in our judgment, and the tax deed should follow the description as it was originally set forth. If no action lies at all, it would be in the way of a quit claim title or rejection, and we are inclined to believe that such an action could not be satisfactorily brought in this case.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

December 13, 1910.

W. M. Lynn, Esq., Payette, Idaho.

Dear Sir: Replying to yours of the 10th inst. in which you ask my opinion as to whether churches and church property used for religious purposes, for which no rent is derived, is liable for special city tax or assessment for costs of improvements, to be levied as other property to defray such city assessments, it is my opinion that the property would be liable for the special assessments for improvements, but not for any special city tax other than for improvement of the property itself, or the streets or sidewalks abutting it.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

January 20, 1911.

D. G. Martin, Esq., State Engineer, Boise.

Dear Sir: Replying to yours of the 18th inst. in which you submit the following questions:

"In the matter of proof of completion of works can a protest lie and be considered by this office, protesting against the issuance of the certificate as provided by our irrigation law? Is a person holding a decreed water right on any of the natural streams of this State a proper person to protest against the issuance of such certificate?"

I beg leave to say, there is no provision of law for protest against proof of completion of work. I see no reason why a person holding decreed water right could not make any proper protest under the statute. The law would presume and require the doing of an act in the matter of these proofs which ought to be done by the officer, and where proof was suspended without notice to the party, and no actual decision in the matter, either rejecting the offer or affirming it, it is my opinion that your office should at this time take the matter up and make the order and issue the certificate if you find the works were complete at the date of the proof, and the proof thereof was sufficient, as of that date, and permit the applicant to submit the proof of beneficial use, and upon proper proof showing the completion of the works, and the beneficial use within the time allowed by the original permit to issue the claimant a license as of the date when the same should have been issued in the original proceeding.

I do not think that the State Engineers's office would have the right to ignore the proof submitted on an application for a permit and by neither accepting nor rejecting, require the applicant to refile upon the water, thus losing his priority. The office should act upon such applications either one

way or the other, and notify the applicant of its decision.

Yours very respectfully,

D. C. McDUGALL,
Attorney General.

March 20, 1911.

Hon. Chas. P. McCarthy, County Attorney, Boise.

Dear Sir: Replying to your letter of the 17th inst. in which you ask whether water masters may construct weirs or measuring devices under Sec. 3282 of the Codes in case the water users refuse to do so, and charge the expense of such construction to the county, will say it has been our construction that Sec. 3282 applies to parties diverting water from the streams, that is the first diversion.

The water masters under Chapter 4 of the Codes beginning with Section 3284, however, it would seem are water masters who have charge of the sublaterals.

We have thought it possible that Section 3286 would apply to the case you have in mind. Of course, the person, persons or corporation by whom the water master is employed, under Chapter 4 referred to, would have power to enforce such rules as he might desire with relation to the establishment of weirs or measuring devices.

Yours very respectfully,

D. C. McDUGALL,
Attorney General.

April 11, 1911.

Hon. Chas. P. McCarthy, County Attorney, Boise, Idaho.

Dear Sir: In reply to your letter of April 8, 1911, in re,—first, procedure in laying out county roads when a subsequent law has changed such procedure; second, waiver of notice of hearing by land owner, I have to say as follows:

In regard to the first question indicated above, I desire to say that I have made rather a complete investigation of said matter, and find the general rule of law to be that if the later statute is a repealing one, the proceedings already had previous to the enactment of the new law become void. If the new law be an amending statute, then the general rule is that the procedure will follow the new law from the time of its enactment. For instance, if the procedure under the old law had been followed up to the appointment of road viewers and the new law had provided for four viewers instead of three as was provided by the old law, then four viewers should be appointed under the new law, and should proceed in all particulars as specified in the new law. Wherever vested interests are not affected by the new law, but simply the remedy and procedure, then the new law is to be followed. You will find a full discussion of this matter in Sec. 358, 2d Ed. Elliott on Roads and Streets.

See also 1 L. R. A. (NS.) 431 Sec. 380, Lewis on Eminent Domain, City of San Francisco vs. Keirman, 98 Cal. 614; 33 Pac. 720.

However, I do not think that the new emergency pertaining to roads, as set forth on pages 64 to 74 inclusive of the printed pamphlet of emergency laws, has any effect in your particular case for the reason that in said emergency laws no different of contradictory mode of procedure is set forth in regard to procedure of laying out and condemning roads. Section 928 B therein set out does not in any way change the practice, referring as it does to the Code of Civil Procedure in the same manner as Sec. 926, Revised Codes refers to condemnation of public roads. In regard to the order of the board mentioned in said Section 928 B, it has always been customary to set out the fact that said road is necessary for a public highway, and in the same order to instruct the County Attorney to bring suit. I believe that if you will examine this emergency law very carefully and in connection with

the procedure as set forth under the old laws, you will find that they are substantially one and the same, and that the said statute does not add or detract from the law as it was before the passage of this Act.

In regard to the second question, as above indicated, to-wit, waiver of notice by land owners, I have to say that all the authorities that I have been able to find hold that when the land owner has received notice, and even when he has not received notice, if he comes in and makes an appearance sufficient to give the Commissioners jurisdiction, that it is a waiver of notice. So in the case you cite, although the time of the notice was ten days, yet the fact that the land owner agreed to come in in two days and did come in in two days, and was personally present before the Board of County Commissioners, and the record so shows, was a sufficient waiver of notice, and his personal presence gave the Commissioners jurisdiction. For authorities upon this point, see Lewis on Eminent Domain, Sec. 580.

Elliott on Roads and Streets, 2d Ed., Sec. 321.

Kimball vs. Supervisors, 46 Cal. page 19.

Howard vs. Schmidt, 70 Kansas 640, 79 Pac. 142.

Towns vs. Klamath County, 53 Pac. 604 (Ore.)

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

November 17, 1911.

Chas. P. McCarthy, Esq., Prosecuting Attorney, Boise.

Dear Sir: Replying to yours of the 16th inst, inquiring as to the procedure necessary to obtain a wholesale license, I beg to say, it is my opinion that an application must be filed before the Board of County Commissioners, and the license issued by the Commissioners before the Sheriff may issue the same.

Our Court in the case of West vs. Commissioners, 14 Ida. 354-358 says:

"It was clearly the intention of the Legislature to place the issuing of a license for the sale of intoxicating liquors not to be drank in, on or about the premises where sold, with the same authority as was vested the authority for the sale of intoxicating liquors, to be drank on the premises where sold."

The Court in this case held that the Board could grant or refuse a license according to whether or not such sale would be conducive to the best interests of the community and that the Court would not interfere with their discretion in the matter. Upon this it would follow naturally that an application must be made to the Commissioners, and Sec. 1507 is the only section relative to applications which go before the Board of County Commissioners, and provides:

"All applications for license * * * * * to be drank or handled, etc."

This is applicable to the procedure for all licenses under our present law.

The Lewiston case referred to raises the question of whether or not drug stores may sell alcohol in wet territory without filing the affidavit of the purchaser required by the local option law. As I understand it, it is to settle the rights of druggists in local option territory. The case was tried by Mr. Hodge, the County Attorney, and was taken direct to the Supreme Court. The transcript has not as yet reached this office, so I am not advised as to what the phases of the case are. The decision has not yet been rendered.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

July 10, 1912.

Mrs. D. W. McFadden, Arrow Rock, Idaho.

Mr. Dear Mrs. McFadden: We have your favor of July 9th, in which you

state that you are the registrar of Arrow Rock precinct; that the precinct is on both sides of the river, the main camp on the Boise county side. You ask as to whether you can register men in Elmore. I am of the opinion that the residence of these men is a matter of intention and that no question could be raised in registering in either precinct. The register in Boise county would show intention of residing there and I think would be entirely legal and in every way safe.

With best regards, I am,

Very truly yours,

D. C. McDOUGALL,
Attorney General.

October 29, 1912.

Mrs. Lettie J. McFadden, Arrow Rock, Idaho.

Dear Madam: In reply to your letters of October 28, 1912, asking what is the procedure and law relating to a person who has registered in a precinct in one county, and at a later time, and thirty days before the election, takes up his residence in another county, I have to say that the law in this regard is that while there is no direct and specific provision allowing a transfer from one county to another, and while there is a specific part of the elector's oath that alleges he is not registered or entitled to vote in another county, yet it is not the sense of the law that the elector should be deprived of his or her vote, if after registration in one precinct in one county and within thirty days prior to a general election, he has established his residence in another precinct in another county. In such cases as this, I recommend the following procedure, and by following it, the elector will be entitled to vote in his new place of residence.

Such elector when he has changed his place of residence from one county to another should ask the registrar of the precinct in which he has registered to provide him with a transfer certificate as set out in Sec. 399, Revised Codes of Idaho. This transfer certificate having been granted by the Registrar of the first precinct, the registrar of said precinct should then cancel the name of the elector upon his register. The elector should then take the transfer certificate so granted, and in which it is specifically stated that his name has been erased from the first registrar's register, and present the same to the registrar of the new precinct in the other county in which he has established a new residence. He should then state to the registrar of said precinct that he desires to register anew, and to sign a new elector's oath. This oath he can conscientiously sign because at the time of the presentation of said transfer certificate to the registrar, he is not registered or entitled to vote in any other place in the State of Idaho. When the second registrar has registered the elector anew, he will then be entitled to vote. The transfer certificate in this case is simply evidence that the elector's name has been cancelled in another precinct.

It should be borne in mind in all these cases that the new residence must have been established by the elector in the county to which he has moved thirty days before the holding of the election.

This procedure should be followed in both cases that you cite in your letters.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

August 15, 1911.

Dr. James A. McLean, President, University of Idaho, Moscow, Idaho.

My Dear Dr. McLean: We are in receipt of your letter of August 1st enclosing copy of resolution of the United Brotherhood of Carpenters and Joiners of America, relative to the application of the eight-hour law (Chapter

131 Session Laws 1911) to manual labor performed on behalf of the University by farm laborers, janitors and the like, and we note your inquiry whether the law was intended to and does apply to this class of labor performed for the University.

Owing to the importance of this matter, we have given it very careful consideration, and while we have thoroughly briefed all phases of the case, we deem it necessary to advise you only of our conclusions. In the first place, the act referred to is undoubtedly constitutional and valid. This has been determined in a great number of cases.

Manual labor, broadly speaking, is labor performed with the hands, and there is no question but that the class of labor referred to in your letter, namely farm laborers, janitors, gardeners, firemen and the like are included within this class.

The University is an arm and adjunct of the State of Idaho, and one employed by the University is an employee of the State of Idaho, so the Act in question would apply to the University and its employees.

The terms of employment, that is, by the week, by the month or by the day, is immaterial so far as the application of the act is concerned, the only exception being that the act shall not be construed to violate contracts existing at the time the act went into effect, which was sixty days after the adjournment of the Legislature, or May 6th, 1911.

The Act applies to employees of contractors as well as to persons employed directly by the Regents.

It has been suggested that the provision being made in the interest of and for the protection of the laborer, he may waive the statute. In other words, that an agreement may be made between the University and the employee whereby the employee agrees to labor more than eight hours a day. This position is untenable, as stated by the Supreme Court of Rhode Island regarding the ten-hour law for State railroad corporations, 61 L. R. A. at page 616:

"And it undoubtedly follows that if the corporation cannot require as of right from the employee longer service than this, the employee cannot make a valid contract with the corporation for such longer service; for a contract must be mutually enforceable to be binding on the persons to it."

The Supreme Court of Kansas in the case and in re Dalton 59 Pacific at page 338:

"The terms of employment are by this statute publicly proclaimed, and if persons insist upon working more than eight hours a day, he must seek other employment."

The language of the Act itself precludes an interpretation that it leaves the employee at liberty to labor for a longer period than eight hours. In Section 2 of the Act it is provided:

"And it shall be unlawful for any such corporation, person or persons to require or permit any laborer, workman, mechanic or other person to work more than eight hours per calendar day in doing such work"

So far as contractors are concerned, they are presumed to have submitted their bids with a knowledge of the provisions of this statute, and cannot be heard to complain against the provisions thereof.

I trust we have been sufficiently plain in this matter. If we may be of further service to you, please call upon us.

Yours very truly,

D. C. McDOUGALL,
Attorney General.

September 6th, 1912.

Miss Julia Matthews, Bellevue, Idaho.

Dear Madam: Replying to your verbal inquiry concerning the formation of

new districts, permit me to say: You state that your County Commissioners have created the new district in Blaine county by taking part of the territory of two old districts and forming them into a third without securing a petition of two thirds of the parents or guardians and heads of families, residents of the old districts, whose boundaries were changed by the formation of the third district.

Section 47 of the School Code, as adopted by the 1911 Session, found at page 500 of the Session Law of that year, is quite explicit regarding the formation of new districts. Under the said section, the Board of Commissioners may create new districts or change boundaries of existing districts or attach to one or more districts the territory of any district which shall have lapsed.

All petitions shall be presented to the County Superintendent at least twenty days before the Board meets.

Such petition must contain map showing not only the district formed, but the boundaries of the other districts that are effected by the change.

Where the petition proposes to change the boundaries of an old district, at least two-thirds of the heads of families to be effected must sign a petition.

The County Superintendent, upon receipt of the petition must mail to each trustee in all the districts affected, notices of the petition and must cause to be posted three notices, one of which must be posted at least one full week on the door of the school house in each district affected.

These matters are all required to be done in order to confer jurisdiction upon the Board of Commissioners, and unless these very steps are taken as set forth in the statute, the County Commissioners have no jurisdiction to change the boundaries of any district or to create a new district, and any action which they may have taken will be void and of no effect.

I understand that this matter has been submitted to your County Attorney who is of the opinion that the action of the Board was void in the creation of the district to which you refer

Very respectfully yours,

D. C. McDOUGALL,
Attorney General.

April 4, 1911.

John T. Molloy, Esq., Assessor, Orofino, Idaho.

Dear Sir: In reply to your letter of April 1, 1911, in re assessment of timber and timber lands, I have to say that where the timber and the land are owned separately, and there is no question in regard to the ownership, that the land, if not exempt, will be assessed to the owner of the land, and the timber will be assessed to the owner of the timber. For example, in State lands, the timber would be assessed to that person to whom it has been sold by the State, although the land itself was still owned by the State. In such a case, assessment against the timber would not be a lien against the land, and in most cases, it would not, there being only a few particular cases in which an assessment of this kind could be considered a lien.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 22, 1911.

Mr. Fred E. Monnacott, County Assessor, Coeur d'Alene, Idaho.

Dear Sir: In reply to your letter of March 8, 1911, we have to say as follows:

First, if the \$16,000 of which you speak in your letter as belonging to the contractors really belonged to them on the second Monday in January, 1911, and was subject to check or to be drawn out by them at any time, freely and without any limitations whatsoever, and the same as money in any bank is

subject to be freely drawn by any depositor, then in that event, the said money would be taxable. It is only a question of evidence as to whether or not said money really belonged to the said contractors free from all limitations and restrictions.

Second, in relation to your other question as to widow's exemption, said widow residing in Boise and asking exemption in Kootenai, I have to say that a resident widow in our judgment means a resident widow of the State, and she is entitled to \$1,000 exemption wheresoever her property may be situated. In other words, she is entitled to an exemption in any number of counties so long as said exemption so claimed does not reach a sum total over \$1,000.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

February 13, 1911.

Will F. Morgareidge, Esq., Moscow, Idaho.

Dear Sir: In reply to your letter of January 31, 1911, it is the opinion of this office that the money of the State that you have now on hand should be paid into the State Treasury according to the provisions of Section 5645 and 5692, Revised Codes of Idaho. You will observe under Sec. 5645, in the explanatory sections, that immediately precede the same, that an agent is to be appointed in cases of personal property that needs to be sold. As I take it, the property that you have on hand is not personal property that needs to be sold, but is already cash. That being true, it would not be necessary to appoint an agent, but all cash in your possession belonging to the various estates should be turned into the State Treasury, and when you have so done, obtain from the State Treasurer duplicate receipts, one of which you will file with the State Auditor, and the other in your own Court. Then, should anyone appear at any future time to claim this money, it can be obtained for them under Sec. 5648, Revised Codes.

I think it best to distribute all the property of which you have spoken in your letter, except the watch, and property found on dead people, under section 5645. The excepted property mentioned in the preceding sentence could be handled very well under Section 5692. This property could be turned over to the public administrator, and under the statute regarding the duties of public administrators, the same can be very easily distributed.

Trusting that we have answered your questions as set forth in your letter, I am,

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 25, 1912.

J. V. Nash, Esq., Assessor and Tax Collector, Grangeville, Idaho.

Dear Sir: Yours of the 15th inst. in which you ask the opinion of this office as to whether or not the owners of bank stock are entitled to deduction for debts, under the new Revenue Law passed by the Special Session of the Legislature is at hand.

The method of assessing bank stock, as provided by the Special Session of the Legislature in Sec. 7 of House Bill 35, is that all shares of bank stock shall be listed and their value ascertained for assessment purposes on the second Monday of January, by adding to the face value of such shares the surplus and undivided profits, which total sum is to be taken as its actual value on said day. From this total a deduction is made of all the capital stock that is on that day actually invested in real estate, and forty per cent of the remainder is the assessed valuation.

Section 9 of the same act, amending Section 1683, Revised Codes, which is

the section provided for the deduction of credits, the closing provision is as follows:

"Provided, however, that no deduction for debts shall be allowed from the shares of stock of any State Savings or National Bank or Surety or Fidelity company, nor from monied capital used in competition of banks, within the meaning of Section 5219 of the Revised Statutes of the United States."

The last clause of Section 7 of the same Act is as follows:

"Such shares of stock shall not be assessed at a higher rate than any other property, and shall be subject to the deduction allowed to other monied capital."

There does not appear to be any reason for the insertion of these three lines in this section, but it does not in my opinion conflict with the provision above quoted for the reason that the same permits of no deduction from any monied capital used in competition with banks within the meaning of the Federal Banking law.

I am, therefore, of the opinion that there is no credit allowed on account of debts against the forty per cent assessed valuation of the shares of capital stock.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 8, 1912.

W. L. Phelps, Esq., Court Stenographer, Boise.

My Dear Phelps: I have carefully examined the provisions of our statute with reference to the question as to whether court stenographers' books, papers and incidental materials used in his work is a county charge, and I am convinced that such expense is a county and not a State charge. Such expenses are surely incident expenses of the trial, and under Sec. 7909 should be paid by the county. Sec. 1931 also provides that the Board of County Commissioners must provide all necessary books of record for the County Auditor and Recorder. These books become county records and must be filed and are the property of the county, and while the statute is not absolutely clear, the inference is very strong that the expense of their purchase should be borne by the county. Aside from this, the intent of the Legislature is certainly clear that the county should bear this expense because no state appropriation is available for such purposes. If it had been the intent of the Legislature to compel the state to bear this expense, an appropriation would certainly have been made to compel the same.

With best regards, I am.

Yours very respectfully,

J. H. PETERSON,
Assistant Attorney General.

June 17, 1912.

Hon. Thomas Preston, Weston, Idaho.

Dear Senator: Replying to yours of the 8th inst. asking for a construction on Section 2315, Revised Codes, as amended by the Session Laws of 1909, page 174, and amended in the 1911 Session Laws, page 65, I have to say as follows:

The effect of an amendment upon a section of the Code is to rewrite that section as amended, and if the amendment takes, the original section will then read as it appears from the amended act. The original section of the Revised Codes reads as follows:

"Every city or town incorporated under the Territory of Idaho, or of the State of Idaho, shall have power and authority to issue municipal coupon bonds, not to exceed at any time in the aggregate 15 per cent

of the real estate value of said city or town, according to the assessment of the preceding year, for any or all of the following purposes:

1. To provide for construction and maintenance of the necessary water works and supply the same with water, and to provide lights for streets, public buildings and grounds."

This section has also eight subdivisions.

By the Act approved March 13, 1909, page 174 of the Session Laws of 1909, this section was re-enacted in the following language:

"Every city or town incorporated under the laws of the Territory or State of Idaho shall have power and authority to issue municipal coupon bonds, not to exceed at any time in the aggregate 15 per cent of the **assessed valuation of all property of every kind** of said city or town according to the last preceding assessment for any or all of the following purposes:

1. To provide for the construction and maintenance of necessary water works, etc."

This section also added to the purposes named in the original bill No. 9, which authorizes the establishment and equipment of a telephone system.

This section was again rewritten by an act approved March 13, 1911, page 66, Session Laws 1911, so as to read as follows:

"Every city or town incorporated under the laws of the Territory of Idaho, or of the State of Idaho, shall have power and authority to issue municipal coupon bonds, not to exceed at any time in the aggregate 15 per cent of the **real estate value of said city or town** according to the assessment of the preceding year for any or all of the following purposes:

1. To provide for construction and maintenance of necessary water works, etc."

This action made some changes in the other subdivisions, but this section was rewritten and passed as above set out, the principal part of the section returning again to the language used in the original Code.

The emergency clause makes this act effective from and after March 13, 1911, and the section should be read after that time for construction so as to authorize from that date bonds to be issued thereunder as if the amendment of 1909 had never been written. For as you understand, the effect of both these sections is simply to rewrite the original section which the Legislature intended to amend.

Cities and villages would, therefore, from the 13th day of March, 1909, to the 3d day of March, 1911, be authorized to bond for said purposes to amounts not to exceed 15 per cent of the assessed valuation of all property of every kind. After March 3, 1911, towns and villages or cities and villages would be authorized to bond in a sum not to exceed 15 per cent of the real estate value of said city or town.

I have no doubt in my mind but what the law of 1911 will apply and you will be limited to the sale of bonds in an amount equal to 15 per cent of the assessed value of the real estate within the corporate limits of your village.

Should you desire to have this matter tested quickly, you could do so by having a friendly suit instituted upon the agreed statement of facts. That is, have a written statement of the facts agreed upon and signed by your attorney and the attorney representing some one who is testing the validity of the bonds, and agreeing that it may be submitted to the District Court at chambers, and that appeal may be taken to the Supreme Court upon the stipulation of facts and the judgment of the District Court. You could no doubt obtain a decision very quickly from Judge Budge, and appeal from his judgment to the Supreme Court.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

May 16, 1911.

E. J. Phelps, Esq., Deputy Insurance Commissioner, Boise.

Dear Sir: In reply to your letter of May 13, 1911, asking as to the interpretation of the word "Month" in Section 42, New Insurance Laws, I desire to say that our statute provides "one month," and while the definition of "one month" is given in our statute as a "calendar month" meaning thirty days, to save all trouble and doubtful interpretation, it might be best for the insurance company to insert the words "one month" in their policy.

However, I will say that it is my opinion that if they should fail so to do and should have only the words "thirty days," that it would have no effect upon the policy holder's obtaining his money whatever might be the interpretation of the Supreme Court upon the wording "one month." Personally, I am inclined to think that thirty days' grace would be sufficient although, as hereinbefore stated, it is open to two interpretations.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

Boise, Idaho, March 20, 1912.

Messrs. Robinson, Ramstead & Purcell, Boise, Idaho.

Dear Sirs: I am in receipt of yours asking for a construction and definitions of a number of terms and sections of the present revenue law, which I have taken up and answered in the order in which you have propounded them.

1. What is an orphan, as used in subdivision D, Sec. 1644, page 22, of the Extraordinary Session Laws, which provides that property of resident widows, orphan children, and honorably discharged soldiers and sailors, etc. are entitled to an exemption not to exceed the amount of \$1,000 to any one family?

The Courts have construed the word "orphan" to mean a fatherless child in a number of cases. Webster's dictionary and Bouvier's Law Dictionary define "orphan" as being a minor child who has lost both parents. Within the meaning of the section referred to, it is my opinion that the first definition,—to-wit, a fatherless child, who is a minor,—is the definition intended by the Legislature.

2. Define "residents," as applied to resident widows, orphan children, etc.

It is my opinion that the words resident widows, etc., means those residing with the State and having property within the State, and does not refer to residents of the county wherein the property lies.

3. What funds are included within the 150 cent levy provided by Sec. 1647, page 24, Extra Session Laws?

So far as the levy authorized by this section is concerned, it does not vary or change the original Section 1647, as found in the Codes. This section authorizes the Commissioners to levy tax for county expenditures, inclusive of the amount required to be paid as state taxes, the sum of 150 cents on each \$100.00 * * * and such additional and special taxes as are in this chapter or other laws of this State authorized.

This levy of 150 cents includes only the current expenses of the county, and the county's portion of the general State taxes. The Commissioners are authorized to levy in addition to that amount school, road, bond redemption, interest and sinking fund taxes, authorized by the several special statutes relating to said subjects.

4. What is meant by the first sentence of Sec. 1672, to-wit,—“All the shares of stock in a bank, whether issued or not, etc.?”

What is unissued stock? This section requires the cashier or officer of the bank to furnish the Assessor with names of its stockholders, and the amount of their shares, etc., when the Assessor shall assess the shares to the person owning them. It is my opinion that the Assessor can only

assess such stock as has been actually sold and delivered and such stock as is subscribed for. If stock is subscribed or contracted for, it is assessible, notwithstanding that the certificate has not been made out and delivered. Or should all the stock be held in one pool, it is still assessible. I do not think that this can apply to unsubscribed capital stock for which the bank has no assets and which has no voting power, merely being the unsold portion of the original capital stock.

5. Is a widow entitled to \$1,000 exemption, under subdivision D of Sec. 1644, and also to \$200 exemption on improvements provided for by subdivision M, same section? Answer, Yes.

6. Does not the law provide for a subsequent roll? If not, what must be done with property discovered after the county board of equalization has adjourned?

The law does not in terms provide or authorize a subsequent assessment roll. It directs that all property in the county be assessed and placed on the original roll, and if this were complied with prior to the turning over of the roll to the Auditor, there would be no necessity or use of the subsequent roll. A practice has grown up in the State for the Assessors to leave off of the original roll, migratory stock, and whatever other property that he has not had time to reach, with the idea of placing it upon the subsequent roll. This is absolutely wrong. All property assessed, or known to the Assessor at the time he turns over the roll to the Auditor must be shown upon the original roll. There are, however, other provisions of the statute which would seem to imply that he must make up a roll after the original roll has been turned over. For instance, the law authorizes the Assessor to assess all property which has escaped taxation up to the time the law requires him to turn over his roll to the Auditor, and it is his duty to make such assessment, and at a time when he has not the original roll in his possession. He would, therefore, have to open a subsequent roll for that purpose, and under the present law which requires the State board to apportion the amount of State taxes to the various counties in proportion to their assessment roll for the present year, this becomes highly important. Last year a number of counties turned over half a million dollars of assessed valuation, and an examination of the items shows there are items that should have appeared upon the original roll such as sheep, merchandise, quartz mills, saw mills, lumber, cash and almost every item. I suggest that you call each Assessor's attention to this change in the law, and the necessity for them showing all the property in their county upon the original roll.

7. Does not Sec. 1763, as found on page 43, Extra Session Laws, require notice to be given to the person in possession of real estate that has been sold for taxes to the county before the county is entitled to a deed?

Said section provides, among other things, that hereafter no purchaser, or assignee of such purchaser, of any land, town or city lots, etc., sold for taxes of any kind * * * shall be entitled to a deed * * * until such purchaser or assignee shall have served or caused to be served a written or printed notice of such purchase to every person in actual possession or occupancy of the land, etc. In my opinion, this applies to the county as a purchaser as well as to the individual, and that a deed issued without this notice is a nullity.

8. Should the County Auditor in his abstract of assessment report full cash value, or assessed value to the State? Answer, both.

Yours respectfully,

D. C. McDOUGALL,
Attorney General.

March 23, 1912.

Gen. George H. Roberts, Boise, Idaho.

Dear Sir: Your favor of the 22d inst. is at hand. You ask me for an

opinion upon the coming primary election held in Ada county on the 28th inst. as to whether or not there is a new law in the statute books governing or regulating the holding of such election and the qualifications of voters thereat, and if so of what such regulation consists.

There is no law upon the statutes governing such election as I understand is about to be held here for the purpose of selecting delegates to the Lewiston convention. There was prior to the Session Laws of 1909 in force in this State a primary election law governing the election of delegates to a county convention, which law was found in Sections 371 to 381 inclusive, in the Revised Codes. The Legislature repealed this Chapter and enacted the direct primary law. The Legislature of 1911 amended this law of 1909, and inserted a provision in the amendment evidently intended to cover the selection by the respective parties of delegates to attend the national convention, and is found on page 578 of the Session Laws of 1911, and is as follows:

"The State central committee is hereby empowered to call State conventions for the election of delegates to attend national conventions of the respective parties, and to provide the manner of electing delegates to such convention."

The Republican State central committee which met in Boise some time ago was by the said law authorized to call the convention at Lewiston and did so. They were also authorized to provide the manner of electing delegates to such convention. They did not adopt any uniform manner, but by resolution delegated to each county central committee the power to provide the manner of electing delegates to the Lewiston convention. I have no doubt that had they had the right to delegate this power to the county central committee, and any reasonable regulation or rule which the central committee may adopt would be valid. Also there is no statute directing or authorizing or prescribing the manner of holding such a primary as I understand is contemplated or prescribing the qualifications of voters thereat.

Upon the same page referred to above, among the powers and duties of a county central committee, it is provided that,—

"The county or state central committee * * * may perform all other functions inherent to such organization by virtue of law or custom, not inconsistent with the terms of this law, the same as if this law had not been enacted."

I am, therefore, of the opinion that the State central committee may adopt the rules and continue the custom of holding the said election that prevailed in the party prior to any law upon the subject.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 7, 1912.

Hon. Chaney St. Clair, Idaho Falls, Idaho.

My Dear Senator: We have your recent letter in which you ask the opinion of this office relative to the transcriptions of designation of agent and articles of incorporation in cases where the company is qualified and is doing business when the county is divided, and the company finds itself by reason of such division in a new county.

The Act creating Bonneville county, as you are aware, provides (Sec. 8):

"As soon as practicable after the passage of this Act, the County Recorder of Bingham county shall transcribe or cause to be transcribed from the records of his office, in neat and proper manner, and clearly written with pen and ink, or with a typewriter with indelible ink, into permanent records all instruments, papers and other matters and things relating to or affecting property in the territory included in said county of Bonneville. * * *"

It occurs to us that this section is broad enough to cover not only articles

of incorporation, which certainly relate to and affect property, but also designations of agent, which have a true bearing upon and affect the right of the company to sue in the Courts and relate immediately to its standing in all actions. This is certainly a right of property.

Under the provisions of Sec. 2792, Revised Codes, it would seem that a corporation has no standing until these "filings" have been made, and we conclude, therefore, that it is the duty of the auditor, not only to transcribe articles of incorporation, but designations of agent. The corporation has complied with our law and has done everything the law requires of it, and by an act of the Legislature its county has been moved away from it. I think clearly under these circumstances, the intent of the Legislature is plain, that without further act on the part of the corporation, the county itself should qualify the corporation as it is qualified in the old county.

With personal regards, I beg to remain,

Yours very truly,

D. C. McDOUGALL,
Attorney General.

March 6, 1912.

J. C. Spoonemore, Esq., R. F. D. Box 39, Cambridge, Idaho.

Dear Sir: Yours of the 3d inst. asking if the provision of the school law which requires a two-thirds vote to move a school house already built means two-thirds of those voting, or two-thirds of all the votes within the district is at hand. Replying, I beg to say this particular question has never been decided by our Courts, but it has been before this office a number of times for consideration, and we have held that at such election two-thirds of those voting is sufficient to carry the question in the affirmative.

The Supreme Court of this State in construing a section of the constitution relative to amendments to the constitution, which is in almost the same language, held that the amendment was adopted if two-thirds of those voting on that question voted in the affirmative, and that it did not require two-thirds of the voters who actually voted at that election on state or national ticket, but only two-thirds of those who voted upon the question of the amendment to the constitution. Upon the authority and reasoning in that decision, I am of the opinion that they would so hold in the matter of school elections.

I call your further attention to Sec. 54 of the School Law as passed by the 1911 session which provides that the notice for the annual school meeting must be posted in three places in the district, and also published for two issues in a newspaper published nearest the place of holding of the election, and it is my opinion that since the passage of this law, all meetings either for special or general elections or bond elections must be called by publication as well as posting notices. If this is done, it will give ample notice to all parties interested within the district.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 13, 1912.

Rev. A. J. Sullens, Boise, Idaho.

My Dear Sir: At your suggestion, I have carefully considered the proposition as to whether the business of the Congregational Church Building Society is such business as would compel it to comply with our foreign corporation law before it could avail itself of the Courts of this State for the purpose of enforcing its contracts, etc. In other words, whether a failure to comply with the provisions of our statute with relation to foreign corporations doing business in this State would subject it to the penalties prescribed in Sec. 2792, Revised Codes.

The business of this society is to extend aid to this and other states in the erection of church houses and parsonages, the business being conducted on a margin of profit so extremely small as to lead inevitably to the conclusion that the society intends to pay out of its profits merely the expenses of its principal office in New York. In other words, it must be admitted that the society is not doing this eleemosynary work for profit. It does not, as I understand, solicit patronage or business, but endeavors to assist new and struggling churches in erecting their buildings in various parts of the country.

Now the term "doing business," as applied to foreign corporations, has received construction at the hands of very many Courts. The Supreme Court of Tennessee has said,—

"A foreign corporation having no agent or place of business within the State, which loaned money on applications sent to it by loan brokers, who were agents of the borrowers, was not doing a business of loaning money in the State." Norton vs. Union Bank and Trust Co., 46 SW. Tenn. 544.

The matter of the Congregational Church Building Society presents a much stronger case than was before the Court in the above cited case, because in this case the element of profit does not enter. Many other cases could be cited holding to the same doctrine, and after a most careful survey of the law, I am firmly of the opinion that should the matter be presented to the Supreme Court, they would hold that the business of the Congregational Church Building Society, if business it might be called, is not a class or kind of business intended to be covered by our foreign corporation act.

I think I may safely say that this would apply to all past transactions of this society, but as a matter of extreme caution, I would suggest that the society in the near future comply with our foreign corporation law with reference to eleemosynary corporations. I am sending you, under separate cover, pamphlet copy of such law, and it will be noted the fee in such cases is nominal, and the inconvenience to the society would certainly be very slight.

With best regards, I am,

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

November 8, 1911.

Miss Grace Shepherd, State Superintendent Public Instruction, Boise.

Dear Miss Shepherd:

In reply to your query in the matter of letter of Miss Grace Carleton as to whether or not it is allowable for a teacher to employ another teacher to assist her, where the second teacher does not have a certificate, I will say that the law does not contemplate any proceedings of this kind, and that the very fact that requirements are made in the matter of teachers' certificates shows that the law is for the protection of the pupils.

You will observe in Sec. 54 of the School Laws a clause that reads as follows:

"The district officers shall see that school is actually taught therein by a licensed teacher, etc."

This would be a prohibition of teaching by unlicensed teachers. Sec. 58, subdivision a, says the trustees shall employ teachers on written contract, and it shall be the duty of the teachers to exhibit their certificates or permits to teach to the board of trustees. Sec. 87 says that no teacher shall be entitled to receive any compensation for teaching without a certificate. The fact that a compensation of \$100 is paid to one teacher, and she pays part of this to another does not do away with the law in this respect, for it is really the district paying to the first teacher the whole amount with the understanding that she is to pay to the second.

As hereinbefore said, the whole policy of the law is for the protection of the pupil, and that is why licenses are required for teachers. Any policy that tends to change this rule of law would be contrary to the spirit and intent of the law as intended by the Legislature.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

July 3, 1911.

Miss Grace Shepherd, Superintendent of Public Instruction, Building.

Dear Miss Shepherd: The office has carefully investigated the question that you place before it in regard to the claim of schools of this State to all forfeitures and fines arising under the penal laws. We are of the unanimous opinion that the school fund is entitled to all forfeitures and fines under the penal laws, except those forfeitures and fines which are directed by special laws to be paid into some particular fund. The rule of law in regard to acts passed by the Legislature at the same session is as follows:

"All Acts passed at the same session of the Legislature should be so construed if possible as to harmonize, and force and effect should be given to the provisions of each."

It was undoubtedly the intention of the Legislature when they passed the various pure food and sanitary acts, that these various bills should be made to sustain themselves, and they had specially in mind that this maintenance should be primarily made from fines and penalties in each of the said acts, and it was undoubtedly not their intention to give to the educational fund all the fines and penalties of said Act, or by so doing they would destroy the pure food and sanitary laws which they were especially desirous of creating, and which they did create.

There is also another rule of law, which is substantially as follows:

"Where there is one statute dealing with a subject in general and comprehensive terms, and another, dealing with a part of the same subject, in a more minute and definite way, the two should be read together, and harmonized if possible with a view to give to a consistent Legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute."

Applying this rule to the statute that we have under consideration, it will be readily observed that in the educational bill, there is a general provision in regard to fines, and in the other bills, there are special provisions. Therefore, the special provision would prevail over the general provision. Moreover, by the passage of the new sanitary bills, there has not been taken away from the educational fund anything that existed previously to the passage of said bills. By the passage of these sanitary bills new penalties were created and new fines were made and disposed of, all of which were not in the statute before, and had never been under control of the school fund, and, therefore, the educational fund has derived no loss from the enactment of the new bills.

So the ruling of this office is, in brief, that the educational fund will be entitled to all fines and penalties except those that are otherwise disposed of by special bills.

Yours very respectfully,
D. C. McDOUGALL,
Attorney General.

June 9, 1911.

Miss Grace Shepherd, State Superintendent.

Dear Madam: Replying to your verbal inquiry this morning relative to the situation of the school district and matters now pending at Mountain Home,

I beg to say. Your first question as to whether the County Superintendent would be authorized and required to withhold this year's apportionment from said district for the reason that the report of the said district as provided in Section 61 page 509 of the last Session Law and of the amendment of Section 628, page 191 of the 10th Session Law, had not been published as required by said acts for the year 1909-10; I understand the facts to be that the clerk of said school district prepared an itemized statement in detail showing the amount of money received and from what sources and the amount expended and in what manner and for what purpose expended and amount of money remaining in the district at the date of her report and that said report contained items of expense and the name to whom the payments had been made; that this report was read at the annual meeting and a copy filed in the office of the clerk; that said report was approved by the directors and the County Superintendent and the apportionment for last year was credited to the district. I understand there is no question about the report for this year and the question now is, is the County Superintendent required by law to withhold the apportionment until this 1909-10 report is made out and published. Section 68 of the last Session Law page 512 provides that "it shall be the duty of the County Superintendent whenever any board of trustees fails to comply with the provisions of the chapter or any subsequent act, to notify the County Treasurer in writing that there has been a failure upon the part of such board to comply with the law; thereupon it shall be the duty of the County Treasurer to withhold all moneys apportioned to the district by said board of trustees, etc."

It would seem that the County Superintendent at the time of the receiving of this report was satisfied with it and at least did not so notify the Treasurer and the money was credited to the district. It is very doubtful in my opinion whether the present Superintendent would be justified in withholding the money for this year upon a proper report which complies with the statutes for the failure of some previous board to make a proper report.

It is my understanding that a suit is about to be brought against the district or the County Superintendent to compel her to withhold this money for this year. It would seem to me that it would be of less expense, and more satisfactory to the trustees and to the citizens of the district that the report should be now made out and posted as required by the law of 1909 and this regardless of whether or not the Courts would compel such a procedure or require the County Superintendent to withhold her approval for this year. I understand there is a copy of the report on file in the office of the secretary, and as a matter of practical settlement of this difficulty would advise that this information be given in this shape.

In the conversation referred to it appears that it has been the practice of this district to permit its superintendent and janitor to pay small accounts, such as telegram, express, small items of repair and substitute teachers designated by the Superintendent upon the occasion of the illness of the teachers in school, and thereafter the party who paid these items out of their own pocket to present the receipted bills to the board and the board, thereupon allowed a warrant to reimburse the money paid out by such employees. It is my opinion that there is no violation of the law where the principal or the janitor or anyone else on behalf of the district pays the legal claims, such as the board would be legally authorized to pay directly to the parties furnishing the service and thereafter that the board audits and allows the said claims and makes the warrant payable to the person advancing the money to reimburse him therefor.

As long as the board of trustees in the exercise of their good sound business judgment pay only for items that are procured by the district for school purposes, it matters little to the district to whom the warrant is drawn and if the board has authorized those parties to make such purchases

or to pay for such services, then as a matter of law these parties would be entitled to be reimbursed for the money expended.

Very respectfully,

D. C. McDOUGALL,
Attorney General.

November 16, 1911.

Miss Grace Shepherd, State Superintendent, Boise.

Dear Miss Shepherd: In reply to your letter of November 14, 1911, asking our opinion upon the attached letter of Mrs. M. A. Driscoll as to whether or not at a school election voting for the removal of a school house, it is necessary that a two-thirds of the voters voting shall vote affirmatively before the school house may be removed, or whether it is necessary that two-thirds of the electors so vote, I have to say that our office has interpreted this to mean two-thirds of the electors voting at said election.

Herewith enclosure.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

April 6, 1911.

Miss Grace M. Shepherd, Superintendent of Public Instruction, Building.

Dear Miss Shepherd: In reply to your letter of April 5, 1911, in the matter of the effect upon school districts of newly created county lines, I have to say that the cutting of an ordinary school district in existence at a certain time by a county line afterwards laid out, would not of itself make the said school district a joint one. Joint districts can only be created under and by virtue of Sec. 618 of the Revised Codes.

I have carefully examined the Bonneville county bill and find therein no provision in regard to school districts cut by newly created county lines. It is usual in bills of this nature to make provision for such cases, and provision is made in the way of declaring all such school districts so cut to be unorganized territory, and giving the County Commissioners the power to attach said parts of districts so severed to other adjoining districts. School districts so cut as in the case of Bonneville county school districts cannot remain in their present condition owing to the fact that they are not joint districts, and the means of assessing, levying and collecting taxes, which are necessary to the proper support of any school district cannot be properly carried out under the law. Therefore, the only thing that can be done in order to put said school district upon a strictly legal basis is to either, as provided by Sec. 618, referred to above, make the same into joint districts in the ordinary way, or attach them under the provisions of changing boundary lines to other districts within their own respective counties. Joint districts to say the least, are at all times cumbersome, and in my judgment, it ought to be the policy of the school superintendent to allow only those to exist where the most extreme exigencies demand their formation and continuance.

In one part of your letter, you speak of amicable exchange of territory between the trustees of the district and the County School Superintendent. I do not quite understand by this whether you mean territory in one county, or territory in one county with that of another county. In either case, however, it would be necessary to follow the provisions of Sections 615 and 616, Revised Codes of Idaho, where the full procedure is set out for a change of boundaries, and no change of boundaries can be made in any other way except as therein indicated.

In relation to your query in regard to deductions from teachers' pay,—first on account of the closing of schools by trustees by reason of contagious disease, and secondly, on account of the closing of the school by rea-

son of legal holidays, I would say that in both or either case, it is not the law that the trustees have a right to deduct said time from the teachers' pay. In the first instance, the closing is made necessary by the action of the trustees, and if the teacher is there, ready and willing to teach the school, if need be, she is entitled to her pay. In the second instance, the holiday is made by the Legislature and its recognition is required by the Legislature, and, therefore, the teacher is not at fault so long as she stands ready and willing to teach if need be, and no deduction can be made from her wages. This rule applies, of course, to all those contracts where teachers are employed by the month and not by the day, and my understanding is all teachers in this state are employed at monthly salaries.

The list of holidays now observed in this State as given in Sec. 10 of the Codes, amended by the 1909 Session Laws, is as follows: Every Sunday, the First Day of January, the 22d of February, the 30th of May, known as Decoration Day, the 4th of July, the first Monday of September, known as Labor day, the 25th day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving or holiday. The last session of the Legislature added at least one day to this list, but I am not sure as to just what day or days were added.

The information herein given you in relation to the formation of joint districts is based upon the Revised Codes and the Session Laws of this State previous to the enactment of the educational bill. In my conversation with you, I had understood that the new educational bill made no change in the old laws. If there is any change made in the formation of joint districts or in the matter of the effect to be produced upon school districts by new created county lines in the new educational bill, the advice herein given may differ. I have had no opportunity so far to examine said bill in detail, but my understanding is that there were no changes that in any way affect this opinion.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

September 26, 1911.

Miss Grace Shepherd, State Superintendent of Public Instruction, Boise.

Dear Miss Shepherd: In the matter of the letter of Miss Bertha H. Black pertaining to the division of property in divided school districts, I have to say that the County School Superintendent, nor any other officer of this State has any power to make any division of the bonded indebtedness. The only authority given to her is by Section 51, which specifically excludes bonded indebtedness, and allows her to apportion to each district its due per capita of money or indebtedness, as the case may be. That means that if there is some money on hand in the old district, exclusive of indebtedness and outside the bonded indebtedness, that she will apportion it to the divided districts. If there is any indebtedness outside of the bonded indebtedness, she will apportion this indebtedness.

The rule of law in regard to bonded indebtedness is that in the absence of a provision in the statutes of the State dividing this bonded indebtedness, the debt will remain upon the original debtor, and the property and school house within the original district belong to the original district. It is well settled that when the boundaries of a school district are changed, either by forming a new district out of the territory of the original one, or by transferring a portion of the territory to another district, in the absence of any provision on the subject in the laws of the State, the old district will be entitled to all the property, and be solely liable for all the obligations, and that the territory taken therefrom will not be entitled to any of the corporate property, or liable for any of the obligations of the old districts.

See Hughes vs. Ewing, 93 Cal. 414; Pass School District of Los Angeles

County vs. Hollywood City School District of Los Angeles County, 156 Cal. 416. Other authorities upon this point are Town of Depere vs. Town of Bellevue, 31 Wis. 120; Laramie County vs. Albany County, 92 U. S. 307; Dillon Municipal Corporation, Sec. 188; Johnson vs. San Diego, 109 Cal. 477; Board of School Directors vs. Ashland, 87 Wis. 533; Bayview vs. Linscott, 99 Cal. 27; Mt. Pleasant vs. Beckwith, 100 U. S. 535; McGovern vs. Fairchild, 2 Wash. 419; Board of Education vs. Board of Education, 30 W. Va. 424; 20 Am. Eng. Corporation cases, page 11; Allen vs. School Town of Macey, 109 Ind. 599; New Point District vs. School Town of New Point, 138 Ind. 141; Prescott vs. Town of Lenox, 100 Tenn. 591; Bloomfield vs. Glen Ridge, 54 N. J. Eq. 280; 33 Atl. 925; 15 An. & Eng. Law, page 1023; City of Wellington vs. Wellington Township, 46 Kans. 213; 26 Pac. 415.

In regard to the postscript in Miss Black's letter, I have to say that I see no reason or law that requires a school superintendent to keep an assistant unless she desires one. The provision in regard to County School Superintendent's assistants is found in subdivision e, Sec. 37, page 16 of the pamphlet school laws of 1911. You will observe that the County School Superintendent may employ an assistant if she needs one. This being true, it is a matter that rests solely with her, and the opposite would therefore also be true that she may dismiss one if she does not need him.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

December 12, 1911.

Miss Grace E. Shepherd, State Superintendent, Boise.

Dear Miss Shepherd: In reply to your letter of November 21, 1911, in the matter of the division of special school tax moneys at Post Falls, Kootenai county, I have to say that I have very carefully gone over all the letters in the file that you sent me pertaining to this matter, and have in addition examined the letter of the County Attorney of Kootenai county wherein he speaks of division of special tax in independent districts. He does not mention the Post Falls district, but by reference to letter of Emma A. Rauch, Superintendent of Schools, dated November 16, 1911, I have reached the conclusion that the letter from the Post Falls people and Miss Rauch and letter of Mr. Wernette, County Attorney, refer to one and the same question.

I find by reading them all in connection that the district divided was an independent one, which was something that had never been brought to my attention before, in regard to the particular Post Falls district, and which is an important factor in determining the division of the moneys. Under ordinary conditions, that is, if this district had been an ordinary school district, and not an independent one, it is quite possible that a construction might have been made as to the apportionment of special tax moneys, but the fact that it is an independent district altogether changes the situation. In the one case, to-wit, of the ordinary district, the school moneys of the district are deposited with the County Treasurer, and are particularly under the control of the County School Superintendent, and in the other case, to-wit, the independent district, the school money is deposited in a bank, and is in the possession of that particular district, and over it the County Superintendent has no power. It is not in her possession and not under her control.

Section 51 pertaining to the division of moneys, among newly formed school districts, or where one is formed out of another, was enacted by the Legislature with the particular intent that it should apply to ordinary school districts, and that in such cases, the ordinary moneys set aside by the County Superintendent for the use of the district might be divided in the way therein indicated. Even in such a case, there might arise some question

as to the division of special taxes for the reason that when an old district is divided, either by the Legislative act, or by act of the County Commissioners, unless there is some provision in the laws in regard to bonded indebtedness, the old district is compelled to assume all the liability, and to provide for the sinking fund and the payment of interest, and inasmuch as special taxes are for the greater part in most instances levied for the payment of the bonded indebtedness, very properly all such special taxes should be retained by the old district.

The reasoning in regard to independent districts would be the same to this extent, but the reasoning in regard to independent districts is even stronger, for the reason that Section 51, aforesaid, in my judgment, was not particularly intended for independent districts, but is classified separate and apart from the law in the Educational Code pertaining to independent districts for the further reason that the school moneys paid into the treasury of independent districts are not under the power of County School Superintendents, and for said reason she has no right or power to apportion something which is not in her possession.

Therefore, for the reason aforesaid, I cannot see that the County School Superintendent of Kootenai county would have the right or power to insist upon the division of special tax moneys in the case mentioned.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

February 15, 1912.

Miss Grace Shepherd, Superintendent of Public Instruction, Boise.

Dear Miss Shepherd: In reply to communication which you sent enclosing letter from T. Bailey Lee, Prosecuting Attorney of Cassia county, dated February 8, 1912, I have to say that, technically construed, under our statutes, it is necessary to have two-thirds vote to **move the school house**, but I believe that so far as fixing a site is concerned, there is no question but that if a site has never been permanently fixed, the two-thirds will not be necessary, but only a bare majority. There are many things to be taken into consideration as to what constitutes permanent site, but in this case, if site has never been permanently fixed, a two-thirds vote will not be required. Then if it was desired to move the old school house to a new site, which has not been removed but was only being permanently fixed by a majority vote, this **moving** of the school house structure could be had by a two-thirds vote, or it could be allowed to remain where it was.

I will say this, however, that if it is desired to make any change of the site, either by way of moving to a new site, or by permanently fixing a new site whenever there is a question as to whether or not a permanent site has been originally fixed, and if it is desired to change the site, the only safe plan is to get a two-thirds vote. This for the reason that bond buyers are very cautious and will not take the bonds of school districts unless every legal question that has a bearing upon the advancement of money by the bond buyers has been disposed of in such a way that there could be no question as to the validity of the bonds.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

March 1, 1912.

Miss Grace E. Shepherd, State Superintendent, Boise.

Dear Miss Shepherd: Replying to the questions submitted by you as contained in the letter of Asher A. Getchell of Silver City, I have to say:

In answer to the question as to whether or not a rural high school board has control over the various districts that constitute it, that it does not in regard to common school matters. This board simply has control over the rural high school district as a whole in regard to all things pertaining to

high schools, and not in common school matters. The various districts constituting the rural high school district still maintain their organization and identity, and are controlled and operated in the same manner as before.

In answer to the question as to whether separate school organization would have to be maintained, I would say that the rural high school law contemplates that a separate school organization should be maintained and teachers hired for that purpose.

Relating to the payment of a rural high school district teacher, I have to say that teachers could not be paid out of the funds of the common schools, but out of the special fund provided for rural high schools.

In answer to your question as to whether or not a school that had less than five pupils, but which had not been declared by the County School Superintendent to have lapsed be a constituted part of the rural high school district, I would say that it would be possible, but certainly would not be advisable, as the County School Superintendent might at any time declare the said district lapsed. However, if there were more than two districts combined, in that event little or no harm could result as there would still be two districts constituting the rural high school district.

In answer to question No. 5, asking what is the limit of the rate of taxation in rural high school districts, I have to say that in the rural high school district law itself there is no limit of taxation, but under Sec. 54, Subdivision C, pertaining to districts, I have to say that in the rural high school district law itself there is no limit of taxation, but under Sec. 54, Subdivision C, pertaining to districts other than independent districts and the levies of taxation therein, we find that at the annual meeting a levy may be made of not to exceed 15 mills. I think by reasonable construction that we have a right to apply this to rural high school districts, and that, therefore, the maximum rate of taxation for rural high school districts would be 15 mills.

Yours very truly,

D. C. McDOUGALL,

Attorney General.

June 22, 1912.

Miss Grace Shepherd, State Superintendent of Public Instruction, Boise.

Dear Miss Shepherd: Replying to your question as to whether or not the compulsory education law applies to deaf and blind children of the State, I beg to say, Sec. 160 of the School Code provides that all parents and guardians, or persons having care of children between the ages of eight and eighteen years, shall instruct them, or cause them to be instructed in some public, private or parochial school, unless such children are over the age of fourteen and have completed the eighth grade, or where for good cause shown it shall be to the best interest of the child to be released; and the same chapter makes it the duty of the superintendent of school districts and County Superintendents to hear and determine all applications of children for any cause mentioned to be exempted from the provisions of this chapter. Penalties are provided for parents or guardians who fail to comply with said section.

It is my opinion that this section applies to deaf and blind children within the State. Such children may be exempt from attending any school upon hearing before the proper officers only.

By Chapter 3 of the same Code, the State Board of Education is empowered and authorized to prepare and make necessary arrangements for the education of deaf and blind children, and all children between the ages of six and twenty-one years who are too deaf and too blind to be educated in our public schools are deemed deaf and blind within the meaning of the law.

It also makes it the duty of the Board of Education to ascertain the number of deaf and blind persons in the State, and take necessary steps for their education, as provided by law. The same Code also makes it the duty of

the census marshal of each school district in the State, when he shall enumerate the children of school age, to ascertain what children in said district are deaf and blind, and report the same together with the names of the parents or guardians, or other person having legal or actual charge of such child or children, to the County Superintendent of Public Instruction, who shall immediately report the same to the State Superintendent of Public Instruction.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

September 5, 1911.

Miss Grace E. Shepherd, Superintendent of Public Instruction, Boise.

Dear Miss Shepherd: In reply to the letter of Catherine T. Bryden, County School Superintendent of Latah county, asking what the qualifications are for voters entitled to participate in a bond election in an independent district, I have to say as follows:

One in order to be entitled to vote must be a citizen of the United States, must have resided within the State six months, and within the county thirty days previous to the date of the bonding election, and in addition to these qualifications must be at the time of the election, either a resident freeholder or a resident householder of the district. As to freeholders, there is no question or doubt that husband and wife may both vote if the property which they own is community property.

As to householders, the question is more difficult and in the light of our indefinite and uncertain statutes, an opinion cannot be rendered with the same degree of certainty and definiteness. "Householders" as defined by the various legal dictionaries and decisions of the Courts covers a more or less indefinite area, but the general and accepted definition of a "householder" is one who is the head of the family. Black's Law Dictionary, 2d Ed., defines "householder" as,—

"The occupier of a house; more correctly one who keeps house with his family. The head or master of a family. One who has a household."

The following decisions hold that a householder is the head of a household: Greenwood vs. Maddox, 29 Ark. 655.

Shively vs. Lankford, 174 Mo. 535; 74 SW. 835.

A householder is defined to be a master or chief of a family which family occupies a dwelling house.

Hutchinson vs. Chamberlain, 11 N. Y. Leg. Ops. 248, 249.

Carpenter vs. Dame, 10 Ind. 125, 130.

A householder is the master of a household, and a household is a family living together. However, not necessarily wife and children, but it must be a family, small or large, for which he provides. Fink vs. Fraenkle, 14 N. Y. Supp. 140, 141.

The term "householder" when used in statutes shall be construed to mean a person of full age and owning or occupying a house as a place of residence, and not as a boarder or lodger. General Statutes Kansas 1901, Sec. 7342, Subd. 25.

The term "householder" means the occupier of a house being the head or master, and having and providing for the house. It implies in its terms the idea of a domestic establishment and the management of the household.

Kastzenberg vs. Lehman, 80 Ala. 512, 514.

Lane vs. State, 15 S. W. 827.

It will be seen by the foregoing definition that a householder is regarded by most of the Courts and compilers of law dictionaries, as the head of a family. That is one who is the chief, and upon whom a family depends. Strictly construed, therefore, it would follow that wives of householders in

independent districts would not be qualified to vote. However, I am constrained to think that the Legislature undoubtedly meant to include the wives of householders as voters in independent districts. There is, however, a question that is debatable, and there will be doubt concerning it until the question has been decided by the Court of last resort of this State. Therefore, if the utmost safety is desired, and there is a fear that the bondholders buying the bonds of that particular district, will be inclined to be capricious, it would be the safer plan for the wives of householders to refrain from voting.

Now in regard to the particular case which the County Superintendent mentions, to-wit,—her mother being the owner of the freehold and herself the wage-earner and provider, it does not necessarily follow that the mother is the head of the family, but that altogether depends upon who does the most in providing for the family, and as to which one depends the most upon the other. Conservatively and strictly construed, the School Superintendent in this case would not be properly the householder, and if it is desired that there should be no question as to the validity of the bonds, it would be advisable for her to refrain from voting.

You will observe by one of the definitions set out by one of the Courts above, that roomers and boarders are not householders, and do not fall within the definition. Therefore, people of this kind, located in hotels and rooming houses would not be qualified electors at a bond election in an independent district.

Trusting that this will answer your inquiry, I am,

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

October 5, 1911.

Mr. W. F. Sherwood, Payette, Idaho.

Dear Sir: In reply to your inquiry as to whether or not the office of school director is unlawfully filled by reason of a person having been elected thereto without having the qualification of being a freeholder at the time of election, I would say that the rule of law, as laid down by the Idaho Courts is as follows:

That a person is qualified to hold an office for which he was disqualified at the time of election, if between the time of said election and the time that he qualified in such office, he has acquired the qualifications in which he was deficient. This has been decided by our Supreme Court in the case of Bradfield vs. Avery, wherein a school teacher ran for the office of County School Superintendent in Owyhee county and was elected. At the time she was elected, she did not have the proper grade of certificate, but before she qualified in the office, she removed the disqualifications by obtaining a proper grade certificate. The Court held that she was then qualified, and that the qualification related not to the time of election, but to the time of qualification.

Other cases upon this matter are: Hay vs. State 168 Ind. 506; 81 N. E. 509; Privett vs. Bickford, 26 Kan. 52; 4 Am. Rep. 301; State vs. Smith, 14 Wis. 497; State vs. Murray, 28 Wis. 96; 9 Am. Rep. 487.

Yours very respectfully,

D. C. McDOUGALL,

Attorney General.

April 11, 1911.

Hon. G. W. Suppiger, Prosecuting Attorney, Moscow, Idaho.

Dear Sir: In reply to your letter of April 8, 1911, we answer the questions asked in the order that they are set out in your said letter.

1. Extension of rolls of special property tax levied in January, 1911. In

reply to your question, we desire to say that under section 901 of the Highway Act passed by the Legislature of the 1911 Session, special property tax should be levied not on the assessed valuation of the previous year, but on the assessed valuation of this year. Section 901 aforesaid amends Section 901, Revised Codes in such a manner as to do away with the assessed valuation of last year as a basis for the said levy. Moreover, the means provided for collecting the said special property tax has been done away with, and, therefore, the levy as now fixed would be useless and void. What should be done in this instance by your county if it is desired to levy a special tax is to have your County Commissioners enter an order in their meetings rescinding the old levy and fixing a new one.

2. Time of special property levy. There being no time provided in Sec. 901, as amended, for the making of the said special property tax levy, it, therefore, follows that said levy may be made at any time after the highway law became effective, and before or at the time the usual county levy is made for county and State purposes.

3. Delivery of resolution fixing special property tax to road overseers. Under the new law, as set out in Sec. 901, it is quite evident that it is not any longer necessary to deliver a certified copy of said resolution to the various road overseers of the county for the reason, first, that Sec. 901, as amended, says that the same shall be transmitted to the County Assessor. Secondly, there could be no proper service by delivery to the road overseers for the reason that they are no longer entitled to collect the same in money or have the same worked out upon the roads. The principal purpose of the old statute instructing the delivery of this resolution to the road overseers was to furnish the road overseers with data and authority to have the property tax worked out at the usual time of working the roads, if the property owner desired to do so.

4. Collection of January levy in cash. Under the law, as amended, the January levy should not be collected in cash nor should it be worked out. In fact, no attention at all should be paid to the January levy for the reason that the new law makes it void to all practical purposes by reason of the means of collection having been taken away. Therefore, as before stated in this letter, should your County Commissioners desire a special property levy, they should rescind the old and fix the levy anew, and then proceed to collect the new levy under Sec. 901.

5. Abolition of the officer or road overseer. House Bill 357 aforesaid abolishes entirely the office of elected road overseer, and it will be necessary for the Commissioners to appoint new ones or reappoint the old. The decisions hold that persons elected to office have no fixed right or property in the office and that the same may be abolished at any time by the Legislature unless there are provisions in the constitution of the State forbidding the same. We have no such provision in our constitution. For authorities upon this question see:

29 Cyc. page 1368 II A Subdivision 2.

Also Taylor vs. Beckham, 178 U. S. 548.

Also 37 Century Digest, title Officers, Sec. 5.

We would respectfully recommend that in the matter of these appointments that all elected overseers should be reappointed wherever practicable and desirable to the Commissioners, thus saving friction, and effecting harmony in the operation of the new law. In such cases, new bonds and oath should be provided and taken.

6. Time of appointment of road overseers. The road overseers above named may be appointed at any time. A vacancy now exists in all the positions of road overseers, and the same should be filled.

7. Meaning of "within included municipalities." This phrase evidently means included within municipalities, referring as it does to persons within incorporated cities. The words have simply been transposed, and under the reading context of the bill, it will make very little difference in its in-

terpretation, particularly in view of the facts that I am about to set forth in the next succeeding paragraph.

8. Collection of road poll taxes within incorporated cities. In reply to this question, I desire to say that road poll taxes shall be collected in incorporated cities, villages and towns as well as all other places in the county. This is the uniform collection from all persons subject to such tax, and no persons are exempt from it except those particularly specified by law. The enrolling clerk in enrolling this bill from the engrossed bill made an error in the enrolled bill in the way of prefixing the letters u n before the word "incorporated." I have carefully examined these bills, to-wit, the original bill, as introduced, the engrossed bill, as engrossed by the engrossing clerk, and the enrolled bill, and find that in the original bill and the engrossed bill that the reading of the statute is "incorporated cities" and not unincorporated. You will thus observe that road poll taxes must be collected from all citizens of the county not exempt.

9. Constitutionality of the salary act. Under this heading, I desire to say that it is the opinion of this office that said salary act of 1911 is not unconstitutional and that it in no way controverts Sec. 7, Art. 18 of our constitution. We take it that the provision in our constitution in regard to quarterly payment was a limitation fixed upon the county for the protection of the individual, and that the county may pay monthly if they so desire. In other words, said constitutional provision is mandatory in regard to the maximum time of payment and directory only in regard to the minimum time.

Trusting that your questions have been answered as fully as you desire, I am,

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

February 29, 1912.

George W. Wedgewood, Esq., Chairman Board of County Commissioners,
Gooding, Idaho.

Dear Sir: Yours of the 28th inst. is at hand. You state that the assessed valuation of your district in the year 1911 was \$1,626,493.00. That on January 24, 1912, your board passed a resolution calling for a bond election, to be held on the 10th of February, 1912, for the purpose of voting to authorize the district to issue \$60,000 bonds, and that notice of this election was posted and published as required by law, and that at the election so held there were 277 votes in favor of the bond issue and 30 against it. You state that the question has arisen as to the amount of bonds that you are authorized to issue under the present law.

Section 76 of the School Code adopted by the session of the Legislature of 1911 provides:

"The board of school trustees or any school district may, whenever a majority so decide, submit to the qualified voters of the State of Idaho who are resident freeholders or householders of the district and their wives, who are qualified electors, the question whether the board should be authorized to issue coupon bonds to a certain amount, not to exceed 12 per cent of the taxable property in said district, etc."

There has been no legislation since that time in my judgment which in any way decreases or alters the amount which the board may be authorized to issue.

At the extra session of the Legislature, just closed, House Bill 35 was passed, which makes some changes in our revenue system, but does not affect the section above quoted. Section 3 of said act, found on page 24, of the extra session law, subdivision E, is as follows:

"The terms 'value,' 'par cash value' and 'full cash value' mean the value of property in the market, in the ordinary course of trade. The term 'assessed value' means the percentage of the full cash value at

which the property is to be assessed, as provided by law, and the term 'valuation' means the assessed value."

The definitions of these terms are inserted to make definite and more certain the meaning of the terms used in the bill, particularly to Section 6, which amends Section 1652, Revised Codes, to read as follows:

"All taxable property must be valued at its full cash value, which shall be extended opposite each item, and shall be assessed at 40 per cent of the full cash value. Such assessed valuation shall be extended in a separate column, opposite each item, and is to be taken and considered as the taxable value of such property, and the value for which it shall be listed, and upon which levy shall be made and extended

* * *

From this last quoted section, it appears that it is not intended, and does not in fact, under any construction, reduce the taxable property of the district. It will rather tend to increase it. It is intended, however, and it does reduce the taxable value of the property to 40 per cent of the value of all taxable property, and in making your levy for the interest and sinking fund, you make the levy upon the taxable value, which will be collected from the owners of all taxable property within the district.

I, therefore, conclude that you are authorized to issue \$60,000 bonds, notwithstanding, that you already have \$35,000 bonds upon that district.

Yours very respectfully,

D. C. McDOUGALL,
Attorney General.

August 27, 1912.

Hon. N. D. Wernette, Coeur d'Alene, Idaho.

Dear Sir: We have your letter of August 16, 1912, in re compelling a railroad company to construct a subway under its road for passage of the public.

If the railroad line was in existence prior to the construction of the public road over the same, it would, of course, follow, in my judgment, that the railroad company could not be compelled to build a subway for the reason that the people of the county were assumed to know the dangerous conditions, if any existed, and therefore, it would be the fault of the county rather than that of the railroad.

On the other hand, if the public road was in existence first, and the railroad was constructed over it, it was the duty of the railroad company to provide a reasonable and safe crossing. I think it would not necessarily follow from this that the railroad company could be compelled to make a subway unless the subway was the only reasonable and safe crossing that could be made.

Section 2796, subd. 5, Revised Codes, provides that the railroad company shall construct its crossing and the road over it in such a manner as to afford security to life and property, and that the railway shall restore the highway to its former state of usefulness as nearly as may be.

Section 2808, Revised Codes provides that a highway crossing may be carried over or under the track, or in case of other changes made of embankments or cuttings, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line.

I am inclined to think that the railway would have a right in such case as the one you mention to change the place of crossing to a reasonable extent and connect said crossing with the existing public road. In my judgment, it would be indeed questionable as to the right of any person to say as to what particular mode should be taken by a railroad company to make the crossing safe. I believe, however, the remedy would lie, particularly in case where the road was in existence prior to the railway, in the way of enjoin-

ing the railroad from operating cars over the said dangerous crossing. If such an injunction should be obtained, or if the railway felt that it was in danger of being enjoined, it would probably make some changes in the crossing. What that change should be, I think, however, would have to be left to the railroad company.

Yours truly,

D. C. McDOUGALL,
Attorney General.

INDEX

A

	Page.
Abstracts passed upon.....	12
Anti-trust law, recommendations.....	15
Appropriation Bill, right of Governor to veto parts.....	59
Assessment of banks and bank stocks.....	43
Of Carey Act land.....	34
Of money in bank.....	73
Of land before patent.....	34
Of live stock.....	38
Assessment roll.....	78

B

Balderston vs Brady.....	9
Ballots, use of stickers.....	54
Banks and banking—Certificates of deposit.....	53
Banks and bank stocks—Assessment of.....	43
Bank stocks.....	77
Owners not entitled to deduction for debt.....	74
Bonds—Dating of must correspond with publication notice.....	53
Bond Elections—Right of wife of property owner to vote.....	53, 67
Bond Elections—(see School Bond Elections).	
Bonds—Municipal, cannot exceed 15 per cent of real estate value.....	75
Bond issue under House Bill 275.....	33
Building and loan companies, recommendations.....	16

C

Carey Act Projects, recommendations.....	14
Carey Act Land—	
Assessment of.....	34
Patent to.....	11
Certificates of deposit.....	53
Church Building Society.....	80
Church property—Liable for special assessment.....	68
City council—Vacancies in.....	62
Civil appeals.....	23
Classification of unsurveyed State land in forest reserves.....	8
Compulsory education applies to deaf and blind children.....	88
Convicts—Trial of for offense committed before sentence.....	44
Corporations—	
Articles filed in county which is later divided.....	79
License fee, required.....	37
Tax, payment of.....	50
County—Division of a prohibition county.....	60
County Attorneys.....	3
Contingent fund.....	63
County Auditors—Questions concerning official duties.....	56
County Commissioners—Right to employ counsel to assist County Attorneys, recommended.....	17
County health officers—Jurisdiction of.....	45
County officials—Salaries.....	63
County Roads—(See Roads, county).	
County Seat—Location of.....	38

	Page.
Court orders providing for defense of criminals, payment	57
Court stenographers, district—Expense of materials a county charge	75
Criminal appeals.....	19

D

Detective hire—Right to spend money therefor.....	63
District judges.....	3
"Doing business"—Definition of.....	37

E

Eight hour law—Applies to labor performed for University.....	71
Elections—	
Names written in to be counted.....	42
Same officers in Primary as provided for General.....	48
Use of "stickers" on ballots.....	54
Writing in of names on ballot.....	40
Elections Primary—(see Primary Election.)	
Placing of name on ballot where nomination was not filed in time	34
To select delegates to convention.....	79
Exchange of unsurveyed for surveyed lands in forest reserves.....	8
Expenditures, State—Recommendations.....	16
Express companies required to pay license fee.....	33

F

Federal cases.....	26
Fees—	
Collected in case an action is transferred to another county	59
Under Vital Statistics law.....	46
Forest reserves.....	7
Exchange of unsurveyed for surveyed land.....	8

G

Grain Commission, State—	
Jurisdiction over scales and measures.....	51, 61
To collect license fee from all persons in grain business.....	51

H

Health officers, jurisdiction of county.....	45
Heirs of Irwin vs. State.....	7
Highway Act	90
Humane Society, State—Right to appoint agents.....	66

I

Independent Order of Puritans, certificate refused.....	55
Insurance law—Interpretation of word "month".....	77
Irwin, Heirs of vs. State.....	7

J

Jurors in criminal cases—Payment of.....	56
Justices of Supreme Court.....	2

K

Kootenai road fund.....	61
-------------------------	----

	Page.
L	
Land, State—	
Cases involving.....	26
Departments, changes recommended.....	13
License fee—	
Required to be paid by express companies.....	33
To be paid under the Grain Law.....	51
Liquor license, wholesale.....	70
Local Option—In case local option county is divided.....	60

M

Marble Creek Cases.....	9
Miscellaneous cases.....	25
Money belonging to estates, disposition of.....	74
"Month," interpretation of under Insurance law.....	77
Municipal bonds—Cannot exceed 15 per cent of real estate value.....	75

N

Naturalization fees.....	58
Notice of tax collectors for taxes due.....	45

O

Opinions.....	33
"Orphan," definition of.....	77

P

Patent to Carey Act land.....	11
Property sold for delinquent taxes.....	57
Prosecuting attorneys.....	3
Primary Election—	
Same officers in primary as provided for general.....	48
To select delegates to convention.....	79
Withdrawal of acceptance of candidate.....	48
Public institutions, recommendations.....	15
Publication of bids for transcription of records.....	63

R

Railroad, assessment of.....	42
Railroad company must construct crossing.....	93
Recommendations.....	13
Redemption of property sold for delinquent taxes.....	57
Registration.....	70
Transfer from one county to another.....	71
"Residents," definition of.....	77
Revenue law—Construction of terms under.....	77
Roads, county—Procedure in laying out.....	69
Road poll taxes.....	65, 67, 92
Rural high school districts.....	64
Rural high schools (see Schools, rural high)	
Scales and measures—	
Jurisdiction of State Grain Commission over.....	51, 61
Schools—	
Bond Elections:	
Qualifications of voters.....	89
To what amount bonds may issue.....	92
Compulsory education applies to deaf and blind children.....	88
County Auditor not required to keep account of finances.....	59
Director can qualify after election.....	90

	Page.
Districts:	
Changed by newly created county lines.....	64, 84
Dissolution of joint.....	38
Division of.....	47, 67
Division of property in divided.....	85
Formation of new.....	72
Right of county superintendent to withhold money.....	82
Division of special tax.....	86
Entitled to fines.....	82
Lands, State's title to.....	10, 11
Right of treasurer to withhold funds.....	66
Vote necessary to move school house.....	80, 84, 87
Warrants need not be advertised.....	53
Schools, rural high.....	64, 87
Senate Joint Resolution No. 13, construction of.....	55
Special property tax.....	90
State Land Board, right to relinquish State land.....	9
State selections—	
Conflict with forest reserves.....	7
Title secured to land in forest reserves.....	7
State's Attorneys General.....	2
"Stickers," use of on ballots.....	54
Supreme Court Justices.....	2
Provisions for submitting questions to, recommended.....	15
T	
Tax Collector—Notices of for taxes due.....	45
Teachers—	
Not permitted to employ assistants without certificates.....	81
To be paid in case school is closed during term.....	84
Territorial Attorneys General.....	2
Timber and timber lands—Assessment of.....	73
Trial of convicts for offense committed before sentence.....	44
U	
United States cases.....	26
United States District Judge.....	2
V	
Vital Statistics, fees.....	46
W	
Water rights and irrigation—Proof of completion of works.....	69
Weirs or measuring devices.....	69
Widow's exemption.....	74
Witnesses in criminal cases, payment of.....	56