

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO
FOR THE
YEARS 1913 - 1914



J H. PETERSON
ATTORNEY GENERAL

J. J. GUHEEN,
T. C. COFFIN,
E. G. DAVIS,
Assistants.

MARTHA HEUSCHKEL,
LEO HAMILTON,
Stenographers.

Territorial Attorneys General.

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

State 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
Joseph H. Peterson.....	1913-1916

*Deceased.

Justices of the Supreme Court, 1913-1914.

* James F. Ailshie, Chief Justice.....	Grangeville
** Isaac N. Sullivan, Chief Justice.....	Hailey
*** George H. Stewart, Associate Justice.....	Boise
**** Warren Truitt, Associate Justice.....	Moscow
***** Alfred Budge, Associate Justice.....	Pocatello

* Resigned July 20th, 1914.

** Became Chief Justice upon resignation of James F. Ailshie, July 20th, 1914.

*** Died September 25th, 1914.

**** Appointed to succeed James F. Ailshie, resigned.

***** Appointed to succeed George H. Stewart, deceased.

Justices of the Supreme Court, 1915-1916.

Isaac N. Sullivan, Chief Justice.....	Hailey
Alfred Budge, Associate Justice.....	Pocatello
William M. Morgan, Associate Justice.....	Moscow

United States Judge.

Frank S. Dietrich	Boise
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Idaho District Judges.

District	1913-1914	1915-1916	Address
First.....	W. W. Woods.....	W. W. Woods.....	Wallace
Second.....	E. C. Steele.....	E. C. Steele.....	Moscow
Third.....	Carl A. Davis.....	Carl A. Davis.....	Boise
	Chas. P. McCarthy.....	Chas. P. McCarthy.....	Boise
Fourth.....	Edw. A. Walters.....	James R. Bothwell....	Shoshone
	Chas. O. Stockslager ..	William A. Babcock...	Twin Falls
Fifth.....	Alfred Budge *	John J. Guheen.....	Pocatello
	John J. Guheen **		
Sixth.....	James M. Stevens *** ..	Frederick J. Cowen....	Salmon City
Seventh.....	Ed. L. Bryan.....	Ed. L. Bryan.....	Caldwell
Eighth.....	R. N. Dunn	R. N. Dunn	Coeur d'Alene
	John M. Flynn.....	John M. Flynn.....	Coeur d'Alene
Ninth.....	James G. Gwinn.....	James G. Gwinn.....	St. Anthony

*Resigned November 28th, 1914, to become Justice of Supreme Court.

**Appointed November 28th, 1914, to succeed Alfred Budge, resigned.

***Residence Blackfoot.

Prosecuting Attorneys of the Various Counties of Idaho.

	1913-1914	1915-1916	Address
Ada.....	R. L. Givens.....	R. L. Givens.....	Boise
Adams.....	B. J. Dillon.....	L. L. Burtenshaw.....	Council
Bannock.....	C. D. Smith.....	C. D. Smith.....	Pocatello
Bear Lake.....	J. P. Rich.....	T. L. Glenn.....	Paris
Bingham.....	J. E. Good.....	R. W. Adair.....	Blackfoot
Blaine.....	*R. M. Angel.....		
	P. K. Perkins.....	P. K. Perkins.....	Hailey
Boise.....	D. L. Rhodes.....	D. L. Rhodes.....	Idaho City
Bonner.....	W. J. Castleton.....	A. P. Asher.....	Sandpoint
Bonneville.....	R. S. Meyer.....	J. S. Byers.....	Idaho Falls
Canyon.....	B. W. Henry.....	H. A. Griffiths.....	Caldwell
Cassia.....	**L. A. Bauman.....		
	S. T. Lowe.....	Chas. A. Johnson.....	Albion
Clearwater.....	A. A. Holsclaw.....	F. S. Smith.....	Orofino
Custer.....	A. J. Higgins.....	S. B. Clark.....	Challis
Elmore.....	W. L. Harvey.....	D. McLaughlin.....	Mountain Home
Franklin.....	A. C. Smith.....	A. W. Hart.....	Preston
Fremont.....	A. A. McConnell.....	G. H. Lowe.....	St. Anthony
Gooding.....	P. T. Sutphen.....	P. T. Sutphen.....	Gooding
Idaho.....	M. R. Hattabaugh.....	M. R. Hattabaugh.....	Grangeville
Jefferson.....	W. P. Henninger.....	A. C. Cordon.....	Rigby
Kootenai.....	N. D. Wernette.....	N. D. Wernette.....	Coeur d'Alene
Latah.....	John Nisbet.....	F. L. Moore.....	Moscow
Lemhi.....	*G. W. Padgham.....		
	W. H. O'Brien.....	J. E. Rees.....	Salmon City
Lewis.....	F. E. Fogg.....	S. O. Tannahill.....	Nez Perce
Lincoln.....	H. D. Heist.....	H. D. Heist.....	Shoshone
Madison.....	O. C. Dalby.....	T. W. Smith.....	Rexburg
Minidoka.....	H. B. Bedford.....	H. C. Mills.....	Rupert
Nez Perce.....	M. S. Johnson.....	H. S. Gray.....	Lewiston
Oneida.....	T. E. Ray.....	S. D. Davis.....	Malad
Owyhee.....	C. E. Melvin.....	R. G. Adams.....	Silver City
Power.....	O. R. Baum.....	S. L. Baird.....	American Falls
Shoshone.....	C. Fox.....	J. H. Wixom.....	Wallace
Twin Falls.....	A. G. Hicks.....	J. E. Davies.....	Twin Falls
Washington.....	James Harris.....	James Harris.....	Weiser

*Resigned.

**Deceased.

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ERRATA.

Page 4. Line 9, "W. J. Castleton" should be "W. J. Costello."

Page 5. Line 3, "Sate" should be "State."

Page 41. Assessment line 9, "retained" should be "redeemed."

Assessment lines 9-10, "retention" should be "redemption."

Report of the Attorney General

Boise, Idaho, December 1, 1914.

To His Excellency, John M. Haines, Governor:

I have the honor herewith to submit my report for the biennial term of 1913 and 1914, covering my official acts as Attorney General.

Of necessity I can offer but a brief synopsis of the work done by my department. Consonant with the duties enjoined upon me by law, and those which custom and a due regard for the obligation of the office have created, a great bulk of time has been taken up with answering inquiries of individuals, school districts, irrigation districts and the like. While the Attorney General, by statute, is made the adviser of certain state officials and boards only, nevertheless the fact that individual and corporate rights depend to so large an extent upon matters with which this office is conversant has seemed to justify the custom which has become established of making this department a clearing-house for a great mass of moot questions. The unsettled condition of the school law, the irrigation law, the insurance law, the untried condition of the so called "Blue Sky Law" and its effect upon so many private interests, the many individual and corporate rights depending upon the banking law, the questions of public and governmental policy arising by reason of the new, and in some respects revolutionary revenue law, the necessity for establishing a sound policy as regards the new Public Utilities law, and the new Highway Commission, and Automobile License Law, and the new departure in educational matters in the creation of a State Board of Education which supplants many boards heretofore entrusted with the management of the State educational institutions and the supervision of the schools in general, coupled with the necessity of defining the authority and jurisdiction possessed by these officers and boards entrusted with the execution of these several new laws, and the manifold questions arising under the Pure Food and Drug Act, still in its formative stage, have contributed in varying amounts to the work of the office.

It is apparent that no report in detail can be made touching the activities of this department in advising with the different boards and officers just enumerated, or answering the inquiries of citizens whose rights are affected by these laws.

I have been called upon almost daily to advise with the different executive boards and officers touching upon the duties of their respective offices. In addition to the purely advisory relation which the Attorney General bears to all state boards and officers, he is, by statute, made a member of twelve administrative boards, ranging in importance from the State Land Board which is in almost continuous session to the State Library Commission.

From the nature of the work which it will thus be seen this department is called upon to perform it follows that the greater portion thereof can receive but cursory mention in a report such as this although not less important than those matters which are here treated at length.

In connection with the farm loans made by the State Board of Land Commissioners, of which there are now outstanding, in the aggregate, some three million dollars of State funds, the Attorney General is called upon to examine the abstracts submitted. During the past two years there have been examined in this office some five hundred such abstracts, many of which have been long and complicated, and in some instances more than one examination has been necessary.

In 1913 the Legislature in creating the Public Utilities Commission made the Attorney General the chief prosecuting officer of, and adviser to, the Commission, and enjoined upon him the duty of appearing in all judicial proceedings wherein the Commission as such was a party. While the Public Utilities Commission is new and has not yet fully defined the field over which it can take jurisdiction, the work has nevertheless been exceptionally heavy, and, in accordance with the act creating the Commission I appointed an additional assistant and employed one more stenographer to attend to the duties thus imposed.

In addition to the duties just outlined, this office is called upon to prosecute all criminal appeals in the Supreme Court and all civil cases wherein the State, county, or any officers

thereof are parties, together with all proceedings affecting the State and state officers and boards in the Federal Courts, before the Department of the Interior, and the local land offices. As will appear from the docket of cases herein, there have been one hundred and twenty-seven civil and criminal appeals, habeas corpus matters, and trials, aside from the cases before the local land offices and the Department of the Interior at Washington, in which this office appeared officially for one of the parties. We have been called upon to appear in the United States Supreme Court, before the Interstate Commerce Commission, before the Department of the Interior and the Commissioner of the General Land Office, and before all local United States and State Courts and land offices. During the preceding two years there were but fifty cases upon the court docket of this office. The astonishing increase from fifty to one hundred and twenty-seven cases is due to a certain extent to the cases involving the Public Utilities Commission and before the Commission, but even when these are eliminated, the work has a little more than doubled and can probably best be explained only as a natural increase. The entire time of myself, two assistants and one stenographer has been required for the work of the office, and during the past year, owing to the additional duties and responsibilities imposed upon me by the Public Utilities Act, and the increase in work, I have increased my office force to three assistants and two stenographers.

The most important civil matters in which this office has been called upon to appear during the past two years were cases affecting the Public Utilities Commission and the Idaho Tax Commission, in both of which cases the Supreme Court sustained the views of this office, in the one case holding the act creating the Public Utilities Commission and defining its powers, constitutional, and sustaining the right of review of the orders of the Commission, as to their reasonableness, by the Courts, and in the other, limiting the powers of the Tax Commission to an advisory and not a final and exclusive nature.

Another fruitful source of litigation has been in matters pertaining to revenue. The acts of the State Board of Equalization have been several times attacked by large interests over whose property the State Board has exclusive jurisdiction as

regards assessments, and a large amount of the revenue of the state and of the different counties has been involved. The acts of the Board, however, and the valuations made by them, have been uniformly upheld.

During recent years an epidemic has become general among large interstate corporations throughout the country to attack the constitutionality of all corporation license laws, they being very similar in practically all the states, upon the ground that under the Federal Constitution, and particularly the commerce clause, corporations engaged in interstate traffic are exempt from such exactions. The Northern Pacific Railway Company questioned the validity of the Idaho Corporation License Tax Law upon this ground, and the law was sustained by the Supreme Court. The case is now on appeal to the United States Supreme Court and will probably be heard in the course of the ensuing two years, in connection with similar cases arising from no less than a dozen states. It is worthy of note that Massachusetts and Idaho are probably the only states whose Supreme Courts have unqualifiedly sustained such laws, and as the Massachusetts law has recently been before the Supreme Court of the United States, and the decision of the Supreme Judicial Court of Massachusetts affirmed, there is every reason to hope that the Idaho law will also be sustained and this large source of revenue saved to the state.

The State of Idaho has struggled harder I believe than any western state to adjust its public land grants, and to obtain for the benefit of the various institutions the income intended to be received by them from the federal government. So far as the quantity grants are concerned, the State of Idaho has filled all such grants and has been able to select land that is bringing in a reasonable revenue for the benefit of the institutions affected, but so far as common school land grants are concerned, the forest reserve policy of the federal government has interfered materially with the development of this property and its application to institutions it was intended to benefit. Sections sixteen and thirty-six (common school sections) in forest reserves, are practically valueless.

It has been the undoubted holding of the Interior Department in a long line of cases that grants made in the language

used in the Idaho grant for common school purposes, where such grants are later included in a federal reserve, might be used as base for lieu selections but if such lieu selections were not had upon the extinguishment of the reserve, title would pass absolutely to the state. This holding was of great importance and benefit to the State of Idaho as well as to all western states; and in pursuance thereof, and having perfect confidence in its integrity and correctness, the State of Idaho adopted a policy of exchanging its school sections in forest reserves for a compact body of land of approximately equal value and area. This was conceded to be of benefit to the Forestry Department and was admittedly of vast benefit to the State. But recently suspicion has been thrown upon the correctness of the Department's ruling as above stated, and as we understand the attitude of the Interior Department, they are now in doubt as to whether such an exchange of lands is valid. There exists in the mind of the writer no doubt as to the validity of such exchange, and its benefit to all parties concerned has never been questioned.

The State school land question of the state of Idaho and all other western states will never be definitely settled until a uniform policy is adopted with reference to the treatment these grants shall receive, and, if necessary, federal legislation must be had to permit western states to select lands in lieu of school sections included in national forest reserves.

The Marble Creek cases, so called, which have been reported in the last four biennial reports of the Attorney General of this state, are practically unsettled at the present time. They will not be settled until the State is permitted to select lands in a forest reserve of equal area and approximately equal value with the Marble Creek lands. This policy would result in no loss to the Federal Government, provided the bona fides of the settlers on the Marble Creek lands in question is reserved for the Federal Government to pass upon, and at the same time, justice would be done the state.

I desire to acknowledge the very efficient and faithful services rendered the Department by my assistants during the biennium just closed. J. J. Guheen, T. C. Coffin, and E. G. Davis, my assistants, have applied themselves to the work of

the Department with a personal interest, have worked long hours and are entitled in a large measure to any credit that may be reflected by the results this report may show have been attained.

I have been able to conduct my office upon the appropriation given me by the 1913 Legislature and will be able to turn back into the State Treasury a substantial surplus, probably a little more than five thousand dollars. It is only fair to add, however, that had the necessary expenses of the department been as heavy during the first year of my incumbency as during the last it would have been impossible to have shown a surplus. When the additional duties given me by the Legislature and the increase in work I have mentioned, made it imperative, I secured the services of an additional assistant and an additional stenographer, and had it been necessary to maintain, during the entire two years, the office force maintained during the last year, my appropriation would have been inadequate.

RECOMMENDATIONS.

The anti-trust law of the State of Idaho should be strengthened. As it exists now, it is of no practical use upon the books.

A vital "Blue Sky Law" is essential. The Legislature at its last session passed a law which, if put into operation, would have some beneficial effect, but unfortunately the Legislature failed to make an appropriation to carry out the purposes of the Act. This "Blue Sky Law" should be strengthened and an appropriation made sufficient to enforce its provisions.

The influence of the Legislature should be exerted upon the Federal Congress to pass an act which will remove the question as to the legality of the exchange agreements which have been had by the State of Idaho and the Federal Government of school land in forest reserves for compact bodies of land. This recommendation is touched upon briefly in another place in this report.

The question of taxes has become a question of great importance and concern in this State. Taxes may be reduced by the Legislature's limiting the power of levying bodies to raise taxes; by simplifying our form of government; by the state's being put into possession of its own resources and being em-

powered to handle them; by a more systematic and scientific method of levying, collecting and expending tax money. Especially should there be some power in the State to check expenditures and to oversee levies made by various taxing officers.

State lands should be sold more rapidly and a longer term of payment should be permitted purchasers. This course would benefit the school and other endowment funds and would have a beneficial effect upon the tax situation of the State by placing upon the rolls taxable property which is now bearing no part of the burdens of government.

In connection with the Land Board work of the State much time and effort has been spent on the various Carey Act propositions which were inherited by the present State Land Board, and the solution of which requires tremendous application. The Carey Act was and is a new and untried law, and as Idaho was one of the pioneers in its adoption, Idaho was among the first by practical application to encounter imperfections in the statute, which led to difficulties in the application of the law. Companies were permitted to float projects practically upon the investment which the settler himself put into the project, and sometimes without adequate investment upon their part. Engineering difficulties were encountered which could not reasonably have been foreseen, and the worst blunder of all in the application of the law was the compelling of the settler to pay for his land in the first ten years that water was applied thereto. This distribution of payments worked great hardship upon the settler and in fact made it impossible for him to pay for his water out of the profits of the land. Land was permitted to be sold before the practical feasibility of the project was demonstrated. But all these difficulties we are carefully, although slowly, working out, and mistakes that have been made have been and are being corrected as experience has taught us the wiser course, and it is the firm conviction of the writer that within a few years the difficulties encountered by all concerned in the working out of Carey Act projects will be overcome, and great benefit will flow into the State by reason of its adoption of the law which fundamentally is based upon a correct principle.

It is to be hoped that the Federal Government may see its way clear to assist those projects in the State of Idaho which if worked out otherwise would entail further hardship upon the settler.

There is probably no department of government of more vital importance as regards the individual rights of citizens than the legal department. While this is true of the State Government, it is even more so as to the counties, as the individual citizen is brought in closer touch and more nearly affected by the actions of the smaller municipalities. Since the admission of Idaho to the union, we have had a provision in our constitution limiting the salary of the Prosecuting Attorneys to \$1500.00 a year. This limitation was probably justified in 1890 but it is hardly to be expected that corporations of the magnitude to which some of our counties have now grown, can acquire such legal assistance as they need for any such sum. The anomaly is particularly striking when we consider that the Prosecuting Attorney of Ada County, whose entire time, as well as that of two deputies, is required in attending to the duties of his office, receives the same remuneration as the County Attorneys of some of the smaller counties whose legal work is covered by two short terms of court and who receive very few requests for opinions from their county officers. It is noticeable also that the county attorney is the only officer whose salary is limited by the constitution. I would strongly urge that a constitutional amendment be submitted abolishing this limitation and that the matter of compensation of the county attorney, like that of other county officials, be left to the discretion of the Board of County Commissioners. In the same connection, I would recommend legislative action allowing the county attorney to employ deputies, and a provision as to their salaries. As the law now exists, the County Commissioners are allowed to appropriate a certain amount each year as a contingent fund for the county attorney, and several county attorneys have made use of this fund for the employment of deputies. While there can be no question as to the legality of such procedure, nevertheless, it is an indirect way of supplying a want which has long been recognized.

I would also recommend a slight modification of the laws

regarding criminal appeals. As the law now exists, when a party has been convicted and judgment pronounced, in the District Court, and appeal taken, a certificate of probable cause may be granted by the trial judge staying the execution of the judgment until the Supreme Court has passed on the case. In cases where the death penalty has been imposed an appeal automatically stays the execution of the judgment and a certificate of probable cause is not necessary. In all other cases it has had the effect of keeping the defendant in the County jail or he has been released upon bail and has been allowed to be at liberty for from 6 to 18 months after his conviction, and before he began the service of his term in the penitentiary. The practical effect of the granting of certificates of probable cause in Idaho has been demoralizing and I know of no reason which justifies its longer continuance as a part of our criminal code.

Respectfully submitted,

J. H. PETERSON,
Attorney General.

Docket 1913-1914

STATEMENT OF CASES ARGUED IN THE SUPREME COURT OF THE STATE.

Criminal Appeals.

State vs. George Winter 24 Idaho 749; 135 Pac. 739.—The defendant was convicted in the District Court of the Fifth Judicial District, Bear Lake County, of the crime of wilfully resisting an officer engaged in the discharge of his duty, and sentenced to serve a term of thirty days in the County jail and to pay a fine of \$3,000. The judgment of conviction was affirmed, but modified to the extent of imposing a fine of \$1,000 only. October 17, 1913.

State vs. Emil Carlson 23 Idaho 545; 130 Pac. 463.—The defendant was convicted in the District Court of the Ninth Judicial District, Bonneville County, of the crime of maintaining a common nuisance under the provisions of the Search and Seizure Act of 1911, and sentenced to serve a term of four months imprisonment in the County jail. Affirmed March 12, 1913.

State vs. August Vogel 23 Idaho 786; 132 Pac. 107.—The defendant was convicted in the District Court of the Ninth Judicial District, Bonneville County, of the crime of grand larceny, and sentenced to serve a term of imprisonment of from one to fourteen years in the State Penitentiary. Reversed May 9, 1913. (Sullivan J. dissenting).

State vs. Charles H. Allen and Reece C. Clevenger, 23 Idaho 772; 131 Pac. 1112.—The defendants were convicted in the District Court of the Fourth Judicial District, Blaine County, of the crime of murder in the first degree, and sentenced to imprisonment in the State Penitentiary for life. Affirmed May 8, 1913.

State vs. Arthur B. Cutts 24 Idaho 329; 133 Pac. 115.—The defendant was convicted in the District Court of the Fourth Judicial District, Blaine County, of the crime of making a false report concerning the condition of the Idaho State Bank of Hailey, and was sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than six months, nor more than ten years. Affirmed June 28, 1913.

State vs. John Sayer 23 Idaho 536; 130 Pac. 458.—The defendant was convicted in the District Court of the Sixth Judicial District, Bingham County, of the crime of abortion, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than two nor more than five years. The Attorney General confessed error and the case was reversed March 11, 1913.

State vs. J. R. Downing, alias Cyclone Burns, 23 Idaho 540; 130 Pac. 461.—The defendant was convicted in the District Court of the Seventh Judicial District, Washington County, of the crime of attempt to commit rape, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than one nor more than five years. Affirmed March 11, 1913.

State vs. William A. Fondren 24 Idaho 663; 135 Pac. 265.—The defendant was convicted in the District Court of the Eighth Judicial District, Kootenai County, of the crime of murder in the second degree and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than ten nor more than twenty-five years. Affirmed September 29, 1913.

State vs. Sidney J. Hart (Not reported).—The defendant was convicted in the District Court of the Third Judicial District, Ada County, of the crime of receiving money under false pretenses. The trial court granted a new trial and the State appealed. Appeal dismissed June 26, 1913.

State vs. Walter M. Willis 24 Idaho 252; 132 Pac. 962.—The defendant was convicted in the District Court of the Fifth Judicial District, Bannock County, of the crime of murder in the second degree and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than fifteen nor more than thirty-five years. Affirmed June 14, 1913.

State vs. B. F. O'Neil 24 Idaho 582; 135 Pac. 60.—The defendant was convicted in the District Court of the Eighth Judicial District, Kootenai County, of the crime of making a false report concerning the condition of the State Bank of Wallace, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than two nor more than ten years. Affirmed September 17, 1913.

State vs. Charles C. Smith 25 Idaho 541; 138 Pac. 1107.—The defendant was convicted in the District Court of the Fourth Judicial District, Elmore County, of the crime of manslaughter, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than six months nor more than ten years. Reversed February 7, 1914.

State vs. Archie Hall, 25 Idaho 107; 135 Pac. 1163.—The defendant was convicted in the District Court of the Fifth Judicial District, Oneida County, of the crime of murder in the second degree, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than ten nor more than forty-five years. Affirmed November 8, 1913.

State vs. Joseph Grigg, 25 Idaho 405; 137 Pac. 371.—The defendant was convicted in the District Court of the Eighth Judicial District, Bonner County, of the crime of assault with intent to commit murder, and was sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than three nor more than fourteen years. Affirmed January 5, 1914.

State vs. John Drury, 25 Idaho 787; 139 Pac. 1129.—The defendant was convicted in the Probate Court of Latah County of the crime of contributing to the delinquency of a juvenile person. Upon appeal to the District Court he was denied a trial *de novo*, and upon appeal to the Supreme Court the case was reversed, April 22, 1914.

State vs. Byrd Trego, 25 Idaho 625; 138 Pac. 1124.—The defendant was convicted in the District Court of the Sixth Judicial District, Bingham County, of the crime of rape, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than five nor more than twenty-five years. Reversed February 28, 1914 (Ailshie C. J., dissenting).

State vs. Sylvenus Gutke, 25 Idaho 737; 139 Pac. 346.—The defendant was convicted in the District Court of the Sixth Judicial District, Bingham County, of the crime of selling intoxicating liquors in a prohibition district, and judgment against him for a fine of \$100 was entered together with a sentence of imprisonment in the County jail for a term of six months. Reversed March 13, 1914.

State vs. Daniel R. Jones, 25 Idaho 587; 138 Pac. 1116.—The defendant was convicted in the District Court of the Sixth Judicial District, Bingham County, of the crime of embezzlement, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than one nor more than four-teen years. Reversed February 21, 1914 (Ailshie, C. J., dissenting).

State vs. L. L. Burtenshaw, 25 Idaho 607; 138 Pac. 1105.—The defendant was charged, in the District Court of the Seventh Judicial District, Adams County, with the crime of forgery. A demurrer to the information was sustained and the State appealed. Affirmed February 23, 1914.

State vs. Dwight E. Cannon and Ferdinand Schuster, 26 Idaho; 140 Pac. 963.—The defendants were convicted under two separate counts, in the District Court of the Fourth Judicial District, Twin Falls County, of the crime of selling liquor in a prohibition district, and their sentences, in the aggregate, fixed respectively at one year and nine months imprisonment, and their fines at \$1000 each. Reversed June 17, 1914.

State vs. Walter A. Grant, 26 Idaho; 140 Pac. 959.—The defendant was convicted in the District Court of the Fifth Judicial District, Bannock County, of the crime of arson in the first degree, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than twenty-five nor more than fifty years. Affirmed June 18, 1914.

State vs. L. Stafford, 26 Idaho; 143 Pac. 528.—The defendant was convicted in the Probate Court of Latah County of the crime of selling liquor without a license. On appeal the District Court of the Second Judicial District, Latah County, dismissed the action and the State took an appeal to the Supreme Court. Reversed October 21, 1914.

State vs. J. C. Johnson, G. F. Hartley and Joseph Irwin, 26 Idaho; 141 Pac. 565.—The defendants were charged in the District Court of the Third Judicial District, Ada County, with the crime of conspiracy to defraud the State by the presentation of certain claims upon the bounty fund. From a judgment of Not Guilty following an advisory instruction to acquit, the State appealed. Affirmed June 24, 1914.

State vs. William C. Janks (not reported).—The defendant was convicted in the District Court of the Fourth Judicial District, Twin Falls County, of the crime of receiving stolen property, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than six months nor more than five years.

State vs. S. F. Horn, John Eiler and John Calvin. (Not yet submitted to the Court).—The defendants were convicted in a Justice's Court in Custer County of the crime of permitting sheep under their control to graze on a cattle range. On appeal to the District Court of the Sixth Judicial District, Custer County, the defendants were found Not Guilty after an advisory verdict to acquit. The State appealed to the Supreme Court.

State vs. Emmett Hosford, Earl K. Dodge, William Peck, Joseph McGowan, and John Hodson. (Not yet submitted to the Court).—The defendants were convicted in the municipal Court of the Village of Challis, of the crime of gambling. They applied to the District Court of the Sixth Judicial District, Custer County, for a writ of certiorari, which being refused they have appealed to the Supreme Court.

State vs. John S. Jewett, George W. Walton, and A. G. Preston. (Not yet submitted to the Court).—Judgment in favor of the State in an action instituted to enforce the liability of the defendants upon a bail bond, forfeited by reason of the flight of the defendant. The case now stands upon the Respondent's (State's) motion to dismiss the appeal.

State vs. Swan Berg. (Not yet submitted to the Court).—The defendant was convicted in the Probate Court of Bingham County of the crime of obstructing a public highway. On appeal to the District Court of the Sixth Judicial District, Bingham County, the conviction was again had, and defendant has now appealed to the Supreme Court.

State vs. Daniel H. Hopkins. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the Ninth Judicial District, Fremont County, of the crime of assault with intent to commit rape.

State vs. Gust Johnson. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the Eighth Judicial District, Kootenai County, of the crime of assault with intent to commit rape, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than seven nor more than fourteen years.

State vs. Charles Driskill. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the Second Judicial District, Nez Perce County, of the crime of rape, and sentenced to an indeterminate term of imprisonment in the State Penitentiary of not less than five nor more than ten years.

State vs. John Bogris. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the First Judicial District, Shoshone County, of the crime of grand larceny, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than one nor more than fourteen years.

State vs. C. J. Clark. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the Fifth Judicial District, Power County, of the crime of incest, and was sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than five nor more than ten years.

State vs. Dan Cummins. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the Fourth Judicial District, Minidoka County, of the crime of unlawful transportation of intoxicating liquors.

State vs. Fong Loon. (Not yet submitted to the Court).—The defendant was convicted in the District Court of the Third Judicial District, Ada County, of the crime of manslaughter, and sentenced to serve an indeterminate term of imprisonment in the State Penitentiary of not less than five nor more than ten years.

Habeas Corpus.

In re Matt Miller, 23 Idaho 403; 129 Pac. 1075.—Writ quashed and prisoner remanded.

In re Daisy Davis 23 Idaho 473; 130 Pac. 786.—Writ quashed and prisoner remanded.

In re Emil Carlson. (Not reported).—Writ quashed and prisoner remanded with instruction to District Court to enter a proper judgment.

In re Gertrude Farrell. (Not reported).—Writ granted.

In re J. R. Farrell, Jr. (Not reported).—Writ granted.

In re Don Bennett. (Not reported).—Writ granted.

In re Ferdinand Schuster, 25 Idaho 465; 138 Pac. 135.—Writ granted.

Civil Appeals.

Jeffreys vs. Huston, Auditor, 23 Idaho 372; 129 Pac. 1065.—Application for a writ of mandate to compel the auditor to draw his warrant for the salary of the petitioner for the month of January, 1913. The question involved was whether or not the Legislature in 1911 had provided a continuing appropriation for the militia department. Writ granted February 11, 1913.

Cleary vs. Kincaid, 23 Idaho 789; 131 Pac. 1117.—Application for a writ of mandate to compel the Assessor of Ada County to turn over the books and records required by him as Tax-Collector, to the plaintiff, the County Treasurer. The question involved was as to whether the constitutional amendment adopted in 1912, making the County Treasurer, ex-officio Tax-Collector was self operative. Writ granted.

McPherson vs. Huston, 24 Idaho 21; 132 Pac. 107.—Application for a writ of mandate to compel the defendant, as State Auditor, to set aside and apportion \$2500 for the payment of Bee Inspectors. The question involved was as to whether the Legislature in 1913 had made any appropriation for bee inspection aside from the appropriation for the State Horticultural department. Writ denied.

Reed vs. Huston, 24 Idaho 26; 132 Pac. 109.—Application for a writ of mandate to compel the defendant, as State Auditor to draw his warrant in favor of the petitioner for his salary as State Immigration Commissioner. The question involved was as to whether the statute fixing the salary of the Immigration Commissioner, together with the Constitutional provision providing for such Commissioner, was sufficient to appropriate money for the payment of the salary. Writ granted.

Rich vs. Huston, 24 Idaho 34; 132 Pac. 112.—A companion case of Reed vs. Huston, affecting the salary of the petitioner who was the State Immigration Commissioner prior to the appointment of Reed. Writ granted.

Hyslop vs. Board of Regents of the University, 23 Idaho 341; 129 Pac. 1073.—Original action in the Supreme Court for a recommendatory judgment. Denied.

Shinn vs. Board of Regents of the University, 23 Idaho 344; 129 Pac. 1074.—Original action in the Supreme Court for a recommendatory judgment. Denied.

Falk vs. Huston, 25 Idaho 26; 135 Pac. 745.—Application for writ of mandate to compel the defendant, as State Auditor, to draw his warrant in favor of the petitioner for salary at the rate of \$200 per month, instead of \$150. The question involved the construction of Legislative enactments appropriating money for the petitioner as Secretary of the State Board of Health and Registrar of Vital Statistics. Writ denied.

Connolly vs. Probate Court, 25 Idaho 35; 136 Pac. 205.—Application for a writ of prohibition directed to the Probate Judge of Kootenai County to restrain him from considering the petition of the State of Idaho filed in the matter of the estate of John Corbett, deceased. The question involved in the case was one of construction of the escheat statutes of the State. Writ granted.

Hailey vs. Huston, 25 Idaho 165; 136 Pac. 212.—Application for a writ of mandate to compel the defendant, as State Auditor, to draw his warrant in favor of the petitioner for salary as Librarian of the State Historical Society in the amount of \$153. The question involved was as to whether certain enactments of the Twelfth Legislature operated as appropriations increasing the salary of the petitioner. Writ denied.

White vs. Huston, 25 Idaho 170; 136 Pac. 214.—Application for a writ of mandate to compel the defendant, as State Auditor, to draw his warrant in favor of the petitioner for salary as Commandant of the Idaho Soldier's Home in the amount claimed to be due under circumstances similar to those in the case of *Hailey vs. Huston*. Writ denied.

Northern Pacific Railway Co. vs. Gifford, 25 Idaho 196; 136 Pac. 1131.—Action by the plaintiff railway company to recover from the Secretary of State a license fee, provided for by the corporation tax law of the State, paid under protest. The plaintiff had judgment in the District Court of the Second Judicial District, Nez Perce County, and appeal was taken to the Supreme Court by the Secretary of State. The question presented to the Court involved the constitutionality, under the Federal Constitution, of the Corporation License Tax of 1912, laws very similar to which have been held unconstitutional in California and Washington. The Supreme Court sustained the constitutionality of the Act and reversed the District Court.

Blomquist et al vs. Board of County Commissioners, 25 Idaho 284; 137 Pac. 174.—Application for a writ of mandate by the State Tax Commission to compel the Board of County Commissioners, acting as a Board of Equalization, to change its equalization of certain property to conform to the ideas of the Tax Commission as to value. The Attorney General appeared on behalf of the Board of County Commissioners. The question before the Court involved a determination of the extent of the authority granted the Tax Commission by the Act creating it, as to whether it was granted power to review the action of County Boards of Equalization. Writ denied.

Achenbach vs. Kincaid, 25 Idaho 768; 140 Pac. 529.—Application for a writ of mandate instituted in the District Court of the Third Judicial District, Ada County, to compel the defendant as County Assessor, to assess for purposes of taxation, all motor vehicles in Ada County. The question presented to the Court involved a construction of the Automobile License Tax Law of 1913, and also whether the law was constitutional as regards the power of the legislature to exempt automobiles from taxation. The Attorney General appeared as *amicus curiae*. The lower Court sustained a demurrer to the petition, and the Petitioner appealed to the Supreme Court. Affirmed.

Rice vs. Rock (Not yet reported).—Application for a writ of mandate to compel the defendant, as County Treasurer of Power County, to issue tax deeds to certain property to the petitioner. The District Court of the Fifth Judicial District, Power County, granted the writ and the County Treasurer appealed. The question involved was the construction of the Revenue Act passed by the Extraordinary Session of the Legislature in 1912, requiring notice to interested parties before the issuance of tax deeds. Contentions of this office sustained and case reversed.

Beaver River Power Company vs. Blomquist et al, 26 Idaho....; 141 Pac. 1083. *Idaho Power and Light Company vs Same, ib.*—Original proceedings by the plaintiffs against the Public Utilities Commission of Idaho to determine the validity of orders requiring the plaintiffs to refrain from constructing proposed plants at either Twin Falls or Pocatello, on the ground that they had not obtained a certificate of public convenience and necessity requiring such service,

as required by the Act creating the Public Utilities Commission. The question presented to the Court involved the constitutionality of the Public Utilities Act, and the extent of review of its acts by the Courts. Order and action of the Public Utilities Commission affirmed.

Federal Mining and Smelting Co. vs. The Public Utilities Commission et al, 26 Idaho—Original proceeding in Supreme Court for a writ of review to determine the validity of an order of the Public Utilities Commission refusing to require the Washington Water Power Company to permit the plaintiff to examine all of its records, files and papers. The question presented to the Court involved a construction of the Public Utilities Act insofar as it gave to the Commission power to require the public utilities companies to permit inspection of their records. The order and action of the commission affirmed.

James A. Murray vs. Blomquist et al (Not yet submitted to the Court).—Original proceedings in the Supreme Court for a writ of review to review the action of the Public Utilities Commission fixing water rates to be charged by the Pocatello Water Company in the City of Pocatello.

Northern Pacific Railway Company vs. Clearwater County et al, 26 Idaho—Action instituted by the plaintiff railway company to enjoin the collection of certain taxes levied in Clearwater County for the year 1913, upon the ground of fraudulent discrimination against the plaintiff. A demurrer to the complaint was sustained in the District Court of the Second Judicial District, Clearwater County, upon the ground that fraud was not charged. Reversed.

Eldredge vs. Utter. (Not reported).—Original application in the Supreme Court for a writ of mandate requiring the defendant, as Auditor of Ada County, to place certain instructions on the official primary ballots. The question presented to the Court was whether it was mandatory upon the voter, under the non-partisan judiciary direct primary law, to vote for twice the number of candidates for the office of Justice of the Supreme Court and District Judge as there were places to be filled. The Court denied the writ but held that it was not mandatory upon the voter to so vote.

Great Shoshone & Twin Falls Water Power Co., vs. State Board of Land Commissioners et al., Idaho Power & Light Company, Intervenor. (Not yet submitted to the Court).—Condemnation of right of way, which right of way had been sold to the Beaver River Power Company, the predecessor in interest of the Intervenor, by the State Board of Land Commissioners, and which said deed was rendered of doubtful value by the decision of the Supreme Court in the case of Tobey vs. Bridgewood, 22 Idaho 566. Appeal by the plaintiff following judgment for defendant and intervenor.

Carter vs. State Board of Land Commissioners et al., Idaho Power and Light Company, Intervenor (Not yet submitted to the Court).—Application in the District Court of the Third Judicial District, Ada County, for a writ of review directed to the defendant board, to review its action in granting a deed to the Beaver River Power Company, predecessor in interest of the intervenor, to a certain right of way situated in Lincoln County, which right of way was the subject matter of the suit of Great Shoshone and Twin Falls Water Power Company vs. State Board of Land Commissioners. From an order sustaining a demurrer to the petition, interposed by the Attorney General, the plaintiff appealed.

Cheney vs. Minidoka County. (Not yet reported).—Action by the plaintiff instituted in the District Court of the Fourth Judicial District, Minidoka County, to test out the right of the State to tax lands held under the government irrigation project in Minidoka County, to which patent had not yet issued. On appeal the Supreme Court held such lands subject to taxation, sustaining the position taken by this office.

Allison et al, vs. Sommercamp et al. (Not yet submitted to the Court).—Test case involving the construction of the statutes of the State relative to Rural High School Districts, their organization, dissolution, and the right of one of the component School Districts to withdraw. Judgment in the District Court of the Seventh Judicial District, Washington County, in favor of plaintiff and appeal by defendant.

State ex rel Canyon County vs. Forch. (Not yet submitted to the Court).—Test case involving the liability of druggists under the "Haight Liquor Law" passed by the Twelfth Session of the Legislature, and particularly the liability of druggists upon the bond therein required to be furnished. Judgment in the District Court of the Seventh Judicial District, Canyon County, for defendant, and State appealed.

Budge vs. Gifford. (Not yet reported).—Original application for a writ of mandate directed to the defendant as Secretary of State, requiring him to issue a commission to the Petitioner as Justice of the Supreme Court for a term of four years, to fill out the unexpired term of Justice Stewart, deceased. The case presented two questions to the Court, first, for what length of time, the unexpired term of the late Justice Stewart or until the general election in 1916, could the Governor appoint the petitioner; and, second, could the vacancy caused by the death of Justice Stewart be legally filled at the election held on November 3rd, 1914, by writing upon the official ballot the name of the office to be filled and the person desired to fill it. In granting the writ the Court held that the appointee of the Governor was entitled to hold office until the expiration of the term for which his predecessor was elected, and that the vacancy could not be filled by special election.

The following cases are also pending in the Supreme Court, in which the Attorney General appears as attorney for one of the parties:

Idaho Irrigation Company vs. Lincoln County.

Wilson vs. Lincoln County.

Adamson vs. Board of County Commissioners of Custer County.

Fackrell vs. Bingham County.

Fisher vs. Bingham County.

Hull vs. Bingham County.

Wray vs. Bingham County.

CASES IN DISTRICT COURTS OF THE STATE.

Habeas Corpus.

Third Judicial District, Ada County.

In re Edward Allen—Writ quashed and prisoner remanded.

In re James Hanlon.—Writ quashed and prisoner remanded.

Civil Cases.

Idaho-Iowa Lateral and Reservoir Company vs. C. C. Fisher.—Action to quiet title to a reservoir site. The Attorney general was called upon to defend the title of the defendant who held title through a State patent. Judgment for defendant in the District Court of the Third Judicial District, Ada County, case now on appeal in Supreme Court.

State ex rel State Board of Land Commissioners vs. Kings Hill Extension Irrigation Company.—Action pending in the District Court of the Fourth Judicial District, Elmore County, for a forfeiture of the contract existing between the defendant company and the State.

Carter vs. State Board of Land Commissioners et al.—Application in the District Court of the Third Judicial District, Ada County, for a writ of certiorari directed to the defendant board to review the action of the board in deeding a right of way to the Beaver River Power Company. From an order sustaining a demurrer to the petition, the plaintiff appealed to the Supreme Court.

Rochstahler vs. State Board of Land Commissioners et al.—Action instituted in the District Court of the Fourth Judicial District, Twin Falls County, to restrain the defendant board from cancelling plaintiff's Carey Act contract. Now pending on demurrer to the complaint and motion to strike.

Stewart vs. White, State Veterinarian et al.—Action instituted in the District Court of the Sixth Judicial District, Custer County, for damages against the State Veterinarian for killing a horse inflicted with "glanders." Now pending on demurrer to complaint.

Oregon Short Line Railroad Co., vs. State.—Action instituted in the District Court of the Ninth Judicial District, Jefferson County, to condemn a right of way through state land.

Oregon Short Line Railroad Company vs. State.—Action instituted in the District Court of the Fifth Judicial District, Bannock County, to condemn a right of way through state land.

Nash vs. State.—Action instituted in the District Court of the Fifth Judicial District, Franklin County, to condemn a right of way through state land.

Stoutemeyer vs. State.—Action instituted in the District Court of the Seventh Judicial District, Canyon County, to condemn a right of way through state land.

Ada County vs. State.—Action instituted in the District Court of the Third Judicial District, Ada County, to condemn a right of way through state land.

Oregon Short Line Railroad Company vs. State.—Action instituted in the District Court of the Ninth Judicial District, Madison County, to condemn a right of way through state land.

Pettingill vs. State.—Action instituted in the District Court of the Ninth Judicial District, Fremont County, to condemn a right of way through state land.

Washington, Idaho and Montana Railway Company vs. State.—Action instituted in the District Court of the Second Judicial District, Latah County, to condemn a right of way through state land.

Clearwater County vs. State.—Action instituted in the District Court of the Second Judicial District, Clearwater County, to condemn a right of way through state land.

Lynch vs. State.—Action instituted in the District Court of the Fourth Judicial District, Elmore County, to condemn a right of way through state land.

United States vs. State.—Action instituted in the District Court of the Fourth Judicial District, Blaine County, to condemn a right of way through state land.

United States vs. State.—Action instituted in the District Court of the Fifth Judicial District, Power County, to condemn a right of way through state land.

Plummer Highway District vs. State.—Action instituted in the District Court of the Eighth Judicial District, Kootenai County, to condemn a right of way through state land.

Crane Creek Irrigation, Land and Power Company vs. State, et al.—Action instituted in the District Court of the Seventh Judicial District, Washington County, to condemn a right of way through state land.

Oregon Short Line Railroad Company vs. State.—Action instituted in the District Court of the Third Judicial District, Boise County, to condemn a right of way through state land.

Oregon Short Line Railroad Company vs. State.—Action instituted in the District Court of the Fifth Judicial District, Bannock County, to condemn a right of way through state land.

Oregon Short Line Railroad Company vs. State.—Action instituted in the District Court of the Third Judicial District, Boise County, to condemn a right of way through state land.

Utah Power and Light Company vs. State.—Action instituted in the District Court of the Fifth Judicial District, Franklin County, to condemn right of way through state land.

Intermountain Railway Company vs. State.—Action instituted in the District Court of the Third Judicial District, Ada County, to condemn a right of way through state land.

Power County vs. State.—Action instituted in the District Court of the Fifth Judicial District, Power County, to condemn a right of way through state land.

Alder Creek Railway Company vs. State.—Action instituted in the District Court of the Eighth Judicial District, Kootenai County, to condemn a right of way through state land.

UNITED STATES SUPREME COURT.

Twin Falls Canal Company, Plaintiff in error, vs. State of Idaho and H. T. West, defendants in error.—Writ of error to the Supreme Court of the State of Idaho. The question involved was the right of the canal company to refuse to sell further water rights to purchasers of State Lands, regardless of its contract to do so. Contentions of the State sustained and writ of error dismissed for lack of jurisdiction of the Federal Supreme Court.

Northern Pacific Railway Company, plaintiff in error, vs. W. L. Gifford, defendant in error.—Writ of error to Supreme Court of Idaho to review action of State Supreme Court in sustaining the constitutionality, under the Federal Constitution, of the Corporation License Tax of 1912, in the case of Northern Pacific Railway Company vs. Gifford 25 Idaho 196; 136 Pac. 1131. Now pending.

UNITED STATES DISTRICT COURT FOR IDAHO.

Murray vs. Peterson. (Pending).—Action instituted by James A. Murray, doing business as the Pocatello Water Company, to restrain the defendant as Attorney General, from instituting an action for penalties. Now pending on defendant's motion to dismiss.

People's Bank & Trust Co., vs. Fitzgerald et ux., and State of Idaho.—Action to foreclose a water contract. Now pending on State's motion to dismiss.

United States vs. Elias Marsters. (Now pending).—Action instituted by United States to restrain the defendant as Water Commissioner, from interfering with the headgates of the New York Canal, during the irrigating season. The United States claims the right to take through the New York Canal its full appropriation during the entire irrigation season, to the detriment of lower but prior appropriators. Pending and waiting trial.

United States ex rel DeMary vs. Lincoln County.—Action instituted by the United States at relation of DeMary to restrain the taxation of certain lands on the government Minidoka project. Motion to dismiss made by the Attorney General sustained and bill of complaint dismissed as to DeMary. Judgment for plaintiff United States by stipulation of Attorney General.

Continental and Commercial Trust and Savings Bank vs. Kings Hill Irrigation and Power Company, State of Idaho Intervenor.—Action instituted by plaintiff as Trustee to foreclose bonds issued by defendant company. B. P. Shawhan appointed Receiver.

Western Union Telegraph Company vs. Hawley et al.—Action instituted by Western Union Telegraph Company to restrain the collection of taxes levied for the years 1911 and 1912, upon the ground that the State Board of Equalization had illegally assessed the property of the plaintiff Company. The amount of taxes sought to avoid amounted to about \$30,000. Judgment in favor of State upon defendant's motion to dismiss after plaintiff's case had been submitted.

Idaho Railway Light and Power Company vs. Monk et al.—Action instituted by the plaintiff company to restrain the collection of certain taxes levied by Canyon County upon valuations made by the State Board of Equalization for the year 1913, upon the ground that the State Board of Equalization had illegally assessed the property of the plaintiff. Judgment for defendant upon hearing on bill and answer.

Idaho Railway Light and Power Company vs. Ward et al.—Companion case of Idaho Railway Light and Power Company vs. Monk, involving taxes levied in Owyhee County. Judgment for defendant.

Idaho Railway Light and Power Company vs. Cleary, et al.—Companion case to Idaho Railway Light and Power Company vs. Monk, involving taxes levied in Ada County. Judgment for defendant.

Idaho-Oregon Light and Power Company vs. Monk et al.—Companion case to Idaho Railway Light and Power Company vs. Monk, involving taxes levied in Canyon County. Judgment for defendant.

Idaho-Oregon Light and Power Company vs. Cleary et al.—Companion case to Idaho Railway Light and Power Company vs. Monk, involving taxes levied in Ada County. Judgment for defendant.

Twin Falls Salmon River Land and Water Company vs. Caldwell et al, and State Board of Land Commissioners, et al.—Action by plaintiff company to restrain State Board of Land Commissioners from relinquishing certain lands included within Salmon River segregation. Pending on bill and answer.

CASES PENDING BEFORE INTERSTATE COMMERCE COMMISSION.

The Public Utilities Commission of Idaho vs. The Oregon Short Line Railroad and Union Pacific Railroad.—Case instituted by the Public Utilities Commission of Idaho for the purpose of procuring an order reducing rates on coal from the Wyoming coal mines to territory in southern Idaho. Submitted to the Commission after argument at Washington, D. C., in October, 1914.

Boise Lumber Company vs. Pacific and Idaho Northern Railroad Co., and Oregon Short Line Railroad Company, State of Idaho and United States Intervenor.—Case brought to secure lower rate on logs from points on the Pacific and Idaho Northern Railroad in Adams County to Boise. Submitted to the Commission after argument at Washington, D. C., in October, 1914.

CASES PENDING BEFORE THE PUBLIC UTILITIES COMMISSION OF IDAHO.

J. H. Peterson, Attorney General, vs. Oregon Short Line Railroad Company.—Action instituted to compel the defendant company to erect a suitable passenger station for the use of its patrons at Pocatello. Action suspended by reason of promises of railroad company to begin construction at once.

Farmers' Union Co-operative Mercantile Company vs. Oregon Short Line Railroad Company.—Action instituted for purpose of obtaining order reducing passenger rates on Hill City branch of defendant railroad company. Rates ordered reduced.

J. H. Peterson, Attorney General vs. Oregon Short Line Railroad Company, Western Union Telegraph Company, and Mountain States Telephone and Telegraph Company.—Action instituted for the purpose of obtaining an order requiring the installation of telephones in all railroad stations. Telephones installed without action and case dismissed.

J. H. Peterson, Attorney General, vs. Oregon Short Line Railroad Company.—Action to compel uniform passenger rates. Decision pending.

Arthur Hodges, Mayor of Boise, vs. Capital Water Company—Action instituted for purpose of fixing water rates. Valuation of plant now under way preliminary to hearing.

J. H. Peterson, Attorney General, vs. Washington Water Power Company.—Action instituted for purpose of fixing and reducing water rates. Order issued by Commission to show cause why rates should not be reduced to rates designated by Commission.

Arthur Hodges, Mayor of Boise, vs. Boise Artesian Hot and Cold Water Company.—Action instituted for purpose of fixing water rates. Valuation of plant now under way preliminary to hearing.

J. H. Peterson, Attorney General, vs. Pacific Power and Light Company.—Action instituted at request of people of Lewiston who desire a reduction in gas rates. Valuation of plant and cost of service to be determined prior to hearing.

J. H. Peterson, Attorney General, vs. W. J. Faris, Receiver of Idaho-Oregon Light and Power Company.—Action instituted for the purpose of correcting alleged discriminatory and unlawful practices.

Land Cases.

State vs. Jacob Biemond.—Land in Twp. 52 N. R. 5 W. B. M. State selection held for cancellation.

State vs. Lyn Lundquist.—Land Twp. 44 N. R. 3 E. B. M. Pending.

State vs. Sigurd Simmons.—Land in Twp. 48 N. R. 6 W. B. M. Pending.

State vs. Thomas Hegna.—Land in Twp. 48 N. R. 6 W. B. M. Pending.

Edward E. Steele vs. State.—Land in Twp. 44 N. R. 2 E. B. M. Pending before the Secretary of the Interior.

State vs. Lee Setser.—Land in Twp. 45 N. R. 5 E. Pending.

William H. Thomas vs. State.—Land in Twp. 44 N. R. 3 E. B. M. Pending on petition to re-open case.

State vs. J. R. Ridley and Henry Ridley.—Land in Twp. 27 N. R. 1 E. B. M. Mineral contest. Pending.

State vs. Robert F. Brown.—Land in Twp. 38 N. R. 3 E. B. M. Pending.

Ivy June Curtis vs. State.—Land in Twp. 42 N. R. 6 E. B. M. Pending.

State, Heirs of C. E. Everson, and Martin Groundwater, Guardian of John Groundwater vs. Northern Pacific Ry. Co.—Involving Coeur d'Alene lists 02484, 02700, 02708, 02706, 02704, 02604, 02699, 02717 and 02540. Pending.

Union Phosphate Company vs. State.—Land in Twp. 14 S. R. 44 E. B. M. Mineral contest. Pending before Commissioner of the General Land Office.

In re H. E. of Morris Lobell.—Land in 46 N. R. 5 W. B. M. Homestead application rejected.

In re H. E. of Alex D. McDougal.—Land in Twp. 47 N. R. 4 W. B. M. Homestead application rejected.

In re H. E. of George F. Gamble.—Land in Twp. 47 N. R. 4 W. B. M. Homestead application rejected.

In re H. E. of John S. McIntyre.—Land in Twp. 44 N. R. 5. W. B. M. Homestead application rejected.

In re H. E. of William Briot.—Land in Twp. 44 N. R. 4 W. B. M. Homestead application rejected.

In re H. E. of John F. Cox.—Land in Twp. 44 N. R. 3 E. B. M. Homestead application rejected.

In re H. E. of Fannie Garvey.—Land in Twp. 44 N. R. 3 E. B. M. Homestead application rejected.

In re H. E. of John Judd.—Land in Twp. 45 N. R. 2 E. B. M. Homestead application rejected.

In re H. E. of Charles E. Schultz.—Land in Twp. 47 N. R. 3 W. B. M. Homestead application rejected.

In re H. E. of John W. Schofield.—Land in Twp. 44 N. R. 4 W. B. M. Homestead application rejected.

In re H. E. of Charles N. Black.—Land in Twp. 44 N. R. 4 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Casson Ferrel.—Land in Twp. 46 N. R. 5 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of David Campbell.—Land in Twp. 46 N. R. 5 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Charles Wetzel.—Land in Twp. 46 N. R. 5 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Simon M. Watson.—Land in Twp. 46 N. R. 5 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Thomas A. Rogers.—Land in Twp. 43 N. R. 4 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of James McGreevy.—Land in Twp. 44 N. R. 4 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Cornelius McGreevy.—Land in Twp. 46 N. R. 5 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of John C. Black.—Land in Twp. 43 N. R. 4 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Luther A. Thomason.—Land in Twp. 44 N. R. 5 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of Earle J. Atkins.—Land in Twp. 43 N. R. 4 W. B. M. Homestead application rejected. Pending on appeal.

In re H. E. of William H. Rudolph.—Land in Twp. 44 N. R. 4 W. B. M. Homestead application rejected. Pending on appeal.

Digest of Opinions Rendered

Appropriations.

1. PURPOSE OF EXPENDITURE.

Query: Can the seventeen thousand dollar appropriation for the maintenance of the North Idaho Sanitarium at page 642 of the 1913 session laws, or any portion thereof, be used for the construction of a building for said sanitarium?

Held: That the word "maintenance" as used in the general appropriation bill has a very well defined meaning but does not include the erection of a building. The seventeen thousand dollars appropriated therefore cannot be used for the erection of an additional building.

—State Board of Examiners, 4-29-13.

Attachment.

1. DUTY OF CLERK.

It is the duty of the Clerk of the District Court to issue a Writ of attachment in a proper case upon request being made therefore. The Clerk cannot refuse to issue such a writ until costs of publication of notice of attachment are paid.

—B. W. Henry, 2-8-13.

Banks and Banking.

1. POOLING AGREEMENT.

The Stockholders owning a majority of the stock of a certain bank transferred all their stock to the President, Vice-President, and Cashier, as trustees, with power to vote said stock for all purposes. Some of the directors of the bank were in the pooling agreement and had no stock standing in their own names upon the books of the corporation.

Held. That under the provisions of Section 36, of the State Banking Law, Laws of 1911, page 398, no person is eligible to serve as a director of a bank who does not own in his own right five hundred dollars worth of stock, and all directors in the pooling agreement above mentioned are ineligible to hold office, and must have, standing in their own name on the books of the bank, at least five hundred dollars worth of stock.

—A. E. Reid, 6-28-14.

Blue Sky Law.

1. APPLICATION OF LAW.

"Association" within the meaning of the Blue Sky Law, laws of 1913, page 454, does not include a partnership where individuals own undivided interests. The purposes of the law are to protect the public against the sale of bonds and stock of doubtful value and the only companies affected by the law are those having stock or bonds upon the market for sale.

—Robert N. Bell, 6-4-13.

Counties.

1. ROAD BONDS.

Under the provisions of Section 10, Chapter 179, Laws of 1913, page 565, counties which issued road bonds prior to the adoption of the Highway Commission and Automobile License Law, are entitled to 70% of the fees collected from the registration of automobiles within the county, for the purpose of paying interest on such bonds.

—W. L. Gifford, 5-25-14.

2. FUNDING BONDS.

Funding bonds issued prior to the taking effect of the Highway Commission Law for the purpose of taking up road bonds previously issued, do not come within the provisions of Section 10 and do not entitle the county to participate in the fund realized from the payment of licenses by automobiles.

—W. L. Gifford, 5-25-14.

3. APPROPRIATION FOR FAIRS.

Under the provisions of Section 3040 Revised Codes, the County Commissioners of the county have authority to make a donation of county funds for the purpose of agricultural fairs. This section is not in conflict with Section 3, Article 8 of the State Constitution.

—John Nisbet, 7-26-14.

4. COUNTY DIVISION.

Upon the formation of a new county, all officers of the old county, living without its boundaries, cease to be officials thereof unless they move their residences within its limits.

—John M. Haines, 11-21-13.

Elections.

1. BALLOTS—STICKERS.

An independent candidate cannot use stickers or printed slips upon which his name is written, to be attached to the official ballot by the individual voter. The Revised Codes, Section 392, provide for the use of stickers to be placed upon the official ballot by the election officers, in case a person, after the printing of the ballot, is nominated to fill a vacancy caused by the death or resignation of the original nominee, or by his certificate of nomination becoming insufficient, or inoperative for any other cause. Stickers can be used in no other cases than the ones specified by the statute.

—J. M. Butler, 9-29-14.

2. MUTILATED BOLLOTS.

At the general election in 1914 certain ballots appeared to have been voted upon which stickers had been affixed by the voter bearing the name of candidates for the office of Justice of the Supreme Court for the unexpired term of George H. Stewart, deceased, and the question arises as to whether such ballots are "mutilated" ballots and therefore invalid. Section 408 of the Revised Codes defines mutilated ballots to be such ballots as have any mark or other thing on the back or outside thereof whereby the same might be distinguished from any other ballot. This is the only section in the code defining mutilated ballots. Section 440 provides that when a ballot is sufficiently plain to gather therefrom

the voter's intention or any part of the ballot is sufficiently plain, the judges shall count such part. Ballots, therefore, upon which stickers have been affixed, as mentioned above, or names written in the same manner, are not "mutilated" ballots, but should be counted in all respects save for the candidate whose name appears upon the sticker.

—Miles S. Johnson, 11-10-14.

3. SUPPLIES.

Many inquiries have been made respecting election supplies for the primary election and the general election and for that reason it has been deemed necessary to acquaint the various county officials with the views of this office concerning the same.

The principal amendment to the existing election and registration laws made by the 1913 legislature was that affecting registration, and an entirely new method was provided. The amendment of the registration laws necessitated certain minor changes in the election laws as they previously existed but in view of the fact that the only intention of the Legislature was to provide a new system of registration, those amendments to the election laws rendered necessary by the amendment of the registration laws must be considered with this in view.

As regards election supplies, the most confusing part of the law is the indiscriminate use of the words "poll list" and "poll book." Section 7 of the Registration Laws, Laws 1913, page 375, describes what is termed a "poll list" which is made up in triplicate by the clerk of the board of county commissioners, and certified to the judges of the various precincts. This poll list bears the nearest analogy to the check list under the former registration laws described in Section 396, Revised Codes, and serves practically the same purpose as the check list formerly served. Section 438, Revised Codes, however, which was not amended in 1913, prescribes the form of "poll lists." These poll lists described in Section 438 are entirely distinct from the former check list and from the poll list described in Section 7 of the Registration Laws. The poll list described in Section 438, being hereafter in this opinion referred to as a poll book, still serves the same purpose as heretofore.

Keeping the foregoing in view, the following is the list of the election supplies and their uses which will be necessary in the forthcoming elections:

POLL LISTS. Three poll lists are made up by the clerk of the district court for each precinct. The poll lists giving in alphabetical order the names of the registered electors who are entitled to vote in the particular precinct at the election for which the list is made. These poll lists are made up by the clerk of the district court from the "elector's register" kept in his office, and the three lists are certified by the clerk of the district court to the judges of the election of the respective precincts. On this poll list, in addition to the names of the electors in alphabetical order should be a column in which to write the word "voted" as each elector votes, and in case the elector transfers, this column should contain the word "Transferred to Precinct No." Or two columns may be provided, the first in which to write the word "voted" and the second in which to note the transfer of the elector. At the close of the election, one poll list is placed in the ballot box, the second poll list is mailed to the clerk of the board of county commissioners, and the third poll list is mailed to the clerk of the district court.

The poll lists should be distinctly labeled "poll list," so that no confusion may arise.

POLL BOOKS. In each precinct there should be two poll books. These poll books should have a heading showing the date and the nature of the election and a column in which numbers are printed consecutively and opposite which numbers are spaces in which to write the name of each elector as he votes. In the front on the poll books may be placed blank forms for oaths of different election officers, and in the rear should be placed the certificate provided for in Section 438, Revised Codes. In short, the "poll book," as the term is used in this opinion, corresponds identically with the form prescribed by Section 438. After the election, one poll book should be placed in the ballot box and the other mailed to the clerk of the board of county commissioners.

TALLY LISTS. For the primary election two tally lists should be supplied for each political party, the non-partisan judicial candidates appearing on the tally lists of each party. The official returns of the election judges are combined with the tally lists.

The method just outlined is considered the clearest and most economical method to be adopted, but it is not considered contrary to the spirit of the law should separate tally lists be provided for non-partisan judicial candidates. After the count, the tally lists should be disposed of as follows: One tally list of each party (and in case separate tally lists are used for non-partisan judicial candidates, then also one of such tally lists) should be placed in the ballot box and the other mailed to the clerk of the board of county commissioners.

ELECTORS OATH BEFORE JUDGE OF ELECTION AND FREEHOLDERS OATH.

When an elector desires to register upon election day, he can do so by applying to any judge of election of the precinct in which he resides, and for that purpose is required to subscribe the elector's oath and be vouched for by a freeholder who takes an oath known as a "freeholders oath." The elector's oath should be in the form prescribed by Section 4, of the Registration Laws, Laws 1913, page 369, and attached to this elector's oath should be what is termed a "register's return," the form of which appears in said Section 4. There should be appended a freeholder's oath, the form of which is prescribed in the above section. Upon any elector so registering, the election judge should write in his name on each of the three copies of the poll lists in his possession.

TRANSFER OF REGISTRATION.

Any elector desiring a transfer of his registration after the poll lists have been placed in the hands of the election officers, may obtain one from any judge of election, and forms should be provided for the judges of the election as set forth in Section 6 of Registration Laws, page 372, 1913 session laws. Upon such transfer application being made to an election judge, he should fill out a transfer certificate in duplicate, and in each of the three poll lists in the column provided therefor, he should note the fact that the elector has transferred his registration and place therein the precinct to which he has transferred. Upon a transfer certificate being presented to a judge of election, if the judge is satisfied of the identity of the elector, he should write the elector's name in each of the three copies of his poll list, and note the fact that the elector has transferred from another precinct, stating the precinct from which the transfer was made. The election judge who grants a transfer certificate after giving one certificate to the applicant should mail the duplicate to

the clerk of the district court, and the election judge who receives a transfer certificate from an elector, after making the appropriate entries in his poll lists should mail the transfer certificate to the clerk of the district court.

Electors.

1. QUALIFICATIONS OF ELECTORS AT MUNICIPAL BOND ELECTIONS. Section 2316 of the Revised Codes, Laws of 1913, Page 299.

A person possessing all the qualifications of an elector, who pays taxes on personal property only, is qualified to vote at municipal bond elections.

Where property upon which taxes are paid is community property, both the husband and wife are entitled to vote if otherwise qualified; but, where the property is separate property, only the spouse holding the title thereto is qualified.

Stockholders of a corporation which pays taxes are tax-payers within the meaning of Section 2316 of the Revised Codes.

A widow whose exemption excuses her from the payment of any taxes is not entitled to vote.

—Gus Bertsch, 9-28-14.

Gaming.

1. SLOT MACHINES.

Slot machines whose rewards are paid in merchandise only, and card games played for merchandise only, are not prohibited by Section 6850 of the Revised Codes of Idaho.

—C. F. Reddock, 3-24-13.

Highway Districts and Road Districts.

1. MAXIMUM LEVIES.

An opinion of this office was requested as to the total amount of levies that could be made upon the hundred dollars of taxable property in a highway district.

Held: The Board of County Commissioners can levy a general property road tax upon all property in a county, including that in a highway district, not exceeding 25 cents on the hundred dollars for road purposes, and 10c on the hundred dollars for bridge purposes. Ninety-five per cent of the amount collected within the highway district must be paid to the highway district. Section 900, as amended, Laws 1913, page 524.

Upon petition of a certain number of residents of a road district, or highway district, the Board of County Commissioners are authorized to make a special levy for general road purposes not exceeding 25 cents on the hundred dollars. Section 901 as amended, Laws 1913, page 522.

The Highway Board can levy not to exceed 25 cents for general road purposes and 10 cents for bridge purposes, but the levy of the Highway Board is limited to the extent that when added to the levies made by the Board of County Commissioners under Section 900, as mentioned above, the levy for general road purposes shall not exceed 40 cents nor for bridge purposes 10 cents. Laws 1913, page 523.

The Highway District Board may levy a special property highway tax not exceeding 25 cents on the hundred dollars but this levy is limited by the levy made by the Board of County Commissioners under Section 901, above mentioned, so that when added to the levy made by the County Commissioners the total special highway tax shall not exceed 25 cents on the hundred dollars.

—W. H. Cobb, 10-20-14.

2. APPORTIONMENT OF COUNTY FUNDS.

The provisions of Section 1056, of the Revised Codes, as amended in 1909, Laws of 1909, page 172, give the County Auditor authority to apportion only such funds as may be raised by a general tax levied for road purposes. Special taxes levied under the provisions of Section 937, Laws of 1911, page 150, are not subject to such apportionment.

—James Harris, 9-20-13.

3. TIME OF MAKING LEVY.

The levy made by a Highway District Board for taxes must be made after the levy made by the County Commissioners. Laws 1913, page 523. The levy made by the County Commissioners is made on the second Monday of September. Laws 1913, page 202. As the levy made by the Highway District is limited to some extent by the levy made by the County Commissioners, the Highway District Board should ascertain, at the earliest possible moment, what the County Commissioners have levied, and then make their own levy without delay so that the County Auditor will not be delayed in extending his assessment rolls.

—Walter Forbes, 7-17-13.

4. DIVISION OF POLL TAXES.

When the County Commissioners levy a poll tax, 95% of the amount collected from the residents of a highway district should be paid to the highway district by the tax collector, as soon as he collects the same. Laws 1912, pages 20 and 8.

—Walter Forbes, 7-17-13.

5. JURISDICTION OF COUNTY COMMISSIONERS OVER ROADS WITHIN A HIGHWAY DISTRICT.

Under the provisions of Sections 15 and 17 of the Highway District Law, laws of 1911, pages 127 and 129, the County Commissioners have no jurisdiction over roads within the limits of a highway district.

—Walter Forbes, 7-17-13.

6. COUNTY ROAD BONDS.

The County Commissioners are not bound by any agreement to expend within a highway district the amount of the bond issue which the district will have to stand.

—Walter Forbes, 7-17-13.

7. APPORTIONMENT OF BENEFITS.

Section 16 of the Highway District Law, laws 1911, page 129, provides the only means by which the cost of improvements within either a highway district or the county may be apportioned according to benefits derived. The County Commissioners must expend the entire bond issue within that portion of the county over which they have jurisdiction of roads, which jurisdiction does not extend to roads within the boundaries of a highway district. Under the provisions of Section 16 of the High-

way District Law, the Highway Board on the one hand, and the Board of County Commissioners on the other, have power to contract each with the other for a division of the cost of the construction, maintenance, repair or improvement of roads, either within the district or outside of the district and in the county so that each will pay in accordance with the benefit derived from such construction, repair, etc. This section is broad enough to justify an apportionment in the case of money expended which has been realized from the sale of bonds by the county.

—Walter Forbes, 7-17-13.

8. CONSTRUCTION OF ROADS BY CONTRACT.

Query: Has a highway district, organized under the provisions of Chapter 55 of the 1911 session laws, page 121, the power to bid on the construction of roads for a state highway within its own boundaries?

Held: That the powers of a highway district are set forth in Sections 14 and 15, chapter 55 of the 1911 laws, and this power is not included therein. A consideration of the entire law shows that such a power would be directly contrary to the plain intent of the legislature and therefore highway districts do not have the power to bid on the construction of a state highway within their boundaries.

—Walter Forbes, 5-1-14.

Indeterminate Sentence Law.

1. DISCRETION OF COURT.

Under the indeterminate sentence law as amended in 1911 (Laws 1911 page 664) the Court in passing sentence can not change the maximum fixed by statute but has a discretion to fix the minimum at any term between the minimum provided by statute and half the maximum.

—R. L. Givens, 7-7-14.

Interstate Commerce.

1. JURISDICTION OF PUBLIC UTILITIES COMMISSION.

The Public Utilities Commission of Idaho does not have jurisdiction over shipments passing without the boundaries of the State, although both the point of origin and point of destination are within the State. The Public Utilities Commission does not have jurisdiction over rates between Boise and New Meadows, Idaho.

—J. A. Blomquist, 9-29-13.

Intoxicating Liquors.

1. PERSONAL USE.

The laws of the State of Idaho do not prohibit an individual from having in his possession in a prohibition county intoxicating liquors for his personal use.

—C. D. Smith, 8-23-13.

2. WEBB - KENYON ACT.

Neither the laws of Idaho, nor the Federal Act known as the Webb-Kenyon Act prohibit a common carrier from shipping, transporting, or delivering intoxicating liquors from points without the State of Idaho to an individual within a prohibition district where the individual desires to use such intoxicating liquors for his own personal use or for any other lawful object.

—C. D. Smith, 8-23-13.

3. NEAR BEER.

"Near beer" or "2%" is one of the beverages prohibited under local option law of 1909.

—O. R. Baum, 11-9-14.

4. STATUS OF NEWLY CREATED COUNTIES.

"New" counties created by the Legislature are "wet" counties until they have been voted dry in accordance with the terms of the local option law.

—Leo P. Grunbaum, 9-30-14.

Lewiston-Clarkston Bridge.

1. CITY ORDINANCE AFFECTING.

The Lewiston-Clarkston Bridge is operated under a franchise granted by the Federal Congress on February 15, 1898 (30 U. S. Stat. L. 245) and therefore is not subject to the limitations contained in the Lewiston ordinance of 1896 and will not become public property in the end of the 15 years provided in said ordinance.

—Walter H. Hanson, 2-28-13.

Primary Elections.

1. NON-PARTISAN JUDICIARY.

Under the provisions of Section 14, Subdivision 4, of the Direct Primary Law, Laws of 1913, Page 351, it is not mandatory upon the voter to vote for twice the number of candidates for District Judge and Supreme Court Justices as there are positions to be filled. The voter may, at his option, vote for double the number of candidates that there are positions to fill, or for any number less.

—G. F. Hansborough, 7-7-14.

(Sustained by Supreme Court in the case of Eldridge vs. Utter. Decided July 16, 1914.)

2. CANDIDATES' EXPENSES.

Within the meaning of Section 25 of the Direct Primary Law, Laws of 1911, Page 577, a person becomes a candidate for office prior to the time of filing his nomination papers and as soon as he decides to run for office.

Where one expects to be a candidate and appears at gatherings of his party, prior to his nomination and prior to the filing of his nomination papers, incidentally in furtherance of his interests as a candidate, he is required to include the expenses attendant thereon in the statement of expenses required by Section 25 of the Direct Primary Act.

—James H. Hawley, 7-17-14.

3. NOMINATION FEES.

Sections 8 and 9 of the Direct Primary Law, Laws of 1909, pages 198 and 199, provided a method whereby candidates at the direct primary election could avoid the payment of a nomination fee by filing a petition signed by a certain number of voters nominating them. Section 8 was amended in 1913, Laws of 1913, page 350, and section 9 repealed, and there is at present no method by which a person's name can be placed upon the official primary ballot by petition, it being necessary in all cases to file a nomination paper, signed as provided in Section 5 of the Direct Primary Law, and pay the fee provided in Section 7 thereof.

—H. L. Hoppes, 7-7-14.

4. STATE PLATFORM CONVENTION.

Under the provisions of Section 29 of the Direct Primary Law, Laws of 1913, page 356, the number of delegates to which each county is entitled in the state platform convention is three times the number of state representatives to be elected at the general election of that year from such county. "State representative" is used in this section in contradistinction to the term "State Senator" for which reason each county is entitled to three times as many delegates in the state platform convention as it has representatives in the lower house of the legislature.

—Jas. W. Briggs, 6-4-14.

Registration.

1. TRANSFER CERTIFICATE.

A voter desiring to transfer from one precinct to another within the same county must obtain a transfer certificate from the precinct in which he is registered. If registered in one precinct, a voter cannot vote in another precinct in the same county, nor register therein, without first obtaining a transfer certificate.

—E. J. Finch, 8-22-14.

2. MUNICIPAL ELECTIONS.

Special registration for municipal elections is not required.

—Gus Bertsch, 9-28-14.

Schools and School Districts.

1. MAXIMUM LEVIES.

The maximum levy in a common school district for special taxes is five mills on each dollar of taxable property. Section 54 "C" of the School Law as amended in 1913, Laws of 1913, page 363, is the law upon the subject, as section 54 of the school law as it appears at page 439 of the 1913 sessions laws was not intended to be amended in this subdivision but in another subdivision.

The maximum levy in an independent school district is ten mills for a special tax and four mills additional when the independent district maintains a rural route. Section 129 of the School Law, as amended in 1913, at page 528 of the 1913 session laws is controlling upon this subject rather than the section as it appears at page 449 of the 1913 session laws.

—J. J. Burges, 6-11-14.

2. RURAL HIGH SCHOOL DISTRICTS.

A rural high school district was composed of two common school districts. One of the common school districts desired to withdraw from the rural high school district.

Held: That, under the provisions of Sections 134 and 141 of the School Laws, where a rural high school district consists of but two common school districts, neither common school district can withdraw, since the plain intent of the law was that rural high school districts should be composed of two or more common school districts.

—Grace M. Shepherd, 2-6-13.

3. SELECTION OF SITE FOR SCHOOL HOUSE.

The Rupert school district is divided by the line of the Oregon Short Line Railroad so that about four-sevenths of the pupils come from that portion north of the road and three-sevenths south. A school house is

located north of the road and the district is now desirous of building another school house. The question presents itself as to whether, under the provisions of Section 58, subdivision "G" of the School Law, Laws of 1913, page 442, a two-thirds vote is necessary to determine the site for the new school house if it is placed elsewhere than on the land adjoining the present school house.

Held: Section 58 "G" applies only in the case of selecting a new site for a school house already built, and not in the case of selecting a site for an additional school house. Therefore a majority vote only is necessary to locate this new school house.

—Grace M. Shepherd, 3-4-13.

4. REVENUE.

Under the provisions of Section 200 of the Revenue Law, Laws 1913, page 238, the County Auditor must transmit an order on the County Treasurer on the second Monday of each month to the Clerk of any independent school district within the county for all moneys belonging to it. This section materially changes the procedure provided by Section 68 of the School Laws, Laws of 1911, page 512, and it is no longer necessary for the County Superintendent of Public Instruction to countersign such orders.

—Grace M. Shepherd, 1-30-14.

5. LEVY—CERTIFICATION.

Under the provisions of Section 54 of the School Laws, Laws of 1912, page 49, as amended in 1913 at pages 363 and 439, a common school district determines the amount of money to be raised by special tax, rather than the number of mills to be levied upon the taxable property of the district. In view of these provisions in Section 54, the levy necessary for the payment of interest and the creation of a sinking fund for bonds issued by the district under Section 80 should be made in the same manner by the Board of Trustees who should determine the amount of money necessary rather than the levy in mills. These two amounts should then be certified by the Board of County Commissioners who should determine the levy necessary to be applied.

—Grace M. Shepherd, 6-17-14.

6. ORGANIZATION OF NEW DISTRICT.

Section 47 "B" of the school law, Laws of 1913, page 436, provides that no change of boundaries or organization of a new school district shall take effect until the opening of the next school year, to-wit; the second Monday of September following said organization. This section was intended to obviate the dismemberment of a school district during any regular term of school.

When a new school district has been organized, however, unless it has a school house, it is in no condition to begin school on the second Monday of September following its organization, at which time, according to the law, its legal existence begins. For the purpose, therefore, of voting bonds, and building a school house with the proceeds thereof, the school district is organized as soon as the question has been voted upon and the result declared by the Board of Canvassers.

—J. L. Richards, 11-6-13.

7. APPORTIONMENT OF BONDS.

A new school district created out of an existing district should not be charged with any of the bonds of the old district, nor should the county superintendent apportion any of such bonds to the new district.

—D. L. Rhodes, 9-10-14.

8. RIGHT OF CHAIRMAN TO VOTE.

The Chairman of the Board of Trustees of an independent school district is entitled to vote upon all questions considered by the Board. The fact that a member of the board is elected as chairman does not divest him of the right to vote, except in cases of a tie, but he still retains a right to vote upon all questions whether there is a tie or not.

—George E. Hill, 4-16-13.

State Highway Commission.

1. POWERS—EXPENDITURES.

Under the provisions of Chapter 179, Laws of 1913, page 558, the State Highway Commission has authority to build a bridge within a city or town, if it so desires.

The State Highway Commission has authority to purchase a right-of-way under the provisions of subdivisions "A", "B" and "C" of Section 5, of said act.

The expenses incurred by the Highway Commission in the investigation authorized by subdivision "E" Section 5 of the said act should be paid out of the State Highway fund provided for by section 11 of said act.

—F. P. King, 6-13-13.

State Institutions.

1. CONSTRUCTION OF BUILDINGS.

There is no authority at law for the construction of, or payment for, a building at the Insane Asylum at Blackfoot, and the Board of Examiners has no authority to authorize the issuance of deficiency warrants for such a purpose, no matter how evident the necessity for the building may be.

—John M. Haines, 6-11-13.

State Treasurer.

1. INVESTMENT OF STATE FUNDS.

It was proposed to invest a portion of the State's money held on deposit in the various banks of the state in good short time securities such as state, county, city, school and irrigation district warrants, bearing 7% interest. As the state receives but 3½% interest from the banks in which it has deposits the income would be practically doubled. The question as to the power to so invest state funds was presented to this office.

Held: "Replying to the above, I will state that the law governing the investment of public funds in the hands of the State Treasurer is governed by Sections 127 to 136 inclusive, with such amendments as have been made to such Sec. 127, Laws 1909, page 363, and amendments made to Sec. 136, Laws 1909, page 362, and the method described in the investment of said funds is exclusive. Section 127, Revised Codes, as amended by Senate Bill No. 45, page 363, Session Laws 1909, in part reads as follows:

"Sec. 127. The State Treasurer shall deposit and at all times keep on deposit in the State or National Banks or some of them doing business in this State and of approved standing and responsibility the amount of money in his hands belonging to the several current funds in the State Treasury, and any such bank may apply for the privilege of keeping on

deposit such funds or some part thereof; Provided, That the State Treasurer is hereby authorized and empowered to retain on hand in the vault of the State Treasury a sum not to exceed \$10,000 as a reserve for the purpose of paying therefrom the current obligations and appropriations of the State. * * * ."

The State Treasurer cannot invest or deposit any of the State moneys in his possession, belonging to the several current funds of the State, except as above set out.

Sec. 136, Revised Codes as amended by Senate Bill 49, page 362, Session Laws 1909, defines the meaning of the words, "several current funds," such section as amended being as follows:

"Sec. 136. The words 'several current funds' used in this Article shall be held to apply to all funds in the State Treasury except the permanent educational, public school, or university funds; *Provided*, the State Treasurer is hereby authorized and empowered, pending the investment of the permanent charitable, educational, public school, or university lands funds, to deposit the said funds temporarily in any of the State depository banks, under the same conditions as other funds, but the State Treasurer shall withdraw the said funds from deposit at all times immediately upon the call of the State Land Board for the purposes of the permanent investment of the said funds by the said board. Nothing in this Article contained shall be construed to deprive the State Board of Land Commissioners of the power to invest or dispose of the funds derived from the sale of public lands as it now or may be provided by law. Whenever, by the provisions of this Article, a duty is enjoined upon the Governor, Secretary of State, and Attorney General, a majority may act and the decision of the majority shall be sufficient."

In my judgment, the Legislature has the power to authorize the investment of all funds in the hands of the State Treasurer other than the permanent educational, public school, or university land funds, to be invested in such short time security as State, county, city, school and irrigation warrants.

The investment of all permanent educational, public school or university land funds, under the Constitution of the State, devolves upon the State Land Board, and the Legislature would have no right to authorize the State Treasurer to invest said funds.

The permanent educational funds (and this includes the common school fund) other than the funds arising from the disposition of university lands belonging to the State, can only be loaned on first mortgages on improved farm lands within the State; state, United States, or school district bonds or state warrants, under such regulations as the Legislature may provide. These are the provisions as contained in Sec. 11, Art. 9, of the State Constitution.

The provisions of Sec. 11, Art. 9, as above quoted being exclusive as to the method of investing the permanent educational funds, none of said funds could be invested in county bonds, county warrants, city warrants or irrigation bonds, and neither would the Legislature have the power to authorize the investment of such funds in this manner until Sec. 11, Art. 9 of the Constitution of the State of Idaho should be amended permitting such investments.

—E. H. Dewey, 11-12-14.

Taxation.

1. ASSESSMENT.

All lots in a block should be valued separately, but, when owned by one person, the aggregate value thereof, may be extended on the assessment rolls, rather than the individual value of each lot.

In assessing acreage, all forty acre tracts should be valued separately, but, where several such contiguous tracts are owned by the same person, the aggregate value thereof may be extended on the assessment roll as a single assessment and delinquency certificate may issue thereon.

Where a delinquency certificate has issued upon property assessed as above mentioned, the property must be retained as a whole and retention can not be had of a single lot or parcel of land.

—William A. Kincaid, 2-16-14.

2. EXEMPTIONS.

Where an orphan, soldier, or widow is exempt, under subdivision "D", section 4, of the Revenue Law of 1913, Laws of 1913, page 175, and the exemption is less than a thousand dollars, the person would also be exempt under subdivisions "G", "H", "I", or "J", until the total exemption reached one thousand dollars.

—William A. Kincaid, 2-16-14.

3. ASSESSMENT OF UNDIVIDED INTEREST IN REAL PROPERTY.

Under the provisions of section 45 of the Revenue Laws, Laws of 1913, page 187, an undivided interest in real property should be assessed as such. The lien created by the Revenue Laws runs only as against the undivided interest.

—Norman Isaacs, 1-11-14.

4. ISSUANCE OF TAX DEEDS.

Under the provisions of sections 27 and 28 of the Revenue Law of 1912, Laws of 1912, page 44, a person holding a tax certificate is not entitled to a deed until he has published or served the notice required by said act. The time for the publication or service of notice, however, is not limited by the terms of the statute but may be made at any time after two years and seven months from the date the certificate was issued.

—Russell A. McKinley, 3-10-14.

Sustained by Supreme Court in case of Rice versus Rock, decided December 2, 1914.)

5. ASSESSMENT OF IMPROVEMENTS ON GOVERNMENT HOMESTEAD ENTRIES.

Improvements on Government homestead entries, or State lands, or on railroad rights-of-way, owned separately from the right-of-way, should be assessed as personal property.

William A. Kincaid, 2-16-14.

6. ASSESSMENT OF REAL ESTATE OWNED BY BANKS.

The Assessor must assess all real estate in his county. Real estate situated in one county can not be assessed as part of the capital stock of a bank doing business in another county.

William A. Kincaid, 2-16-14.

7. ASSESSMENT OF BANKS.

Under the provision of Section 173 of the Revenue Law, Laws of 1913, page 230, in assessing capital stock of banking and trust companies, the Assessor should assess all such stock at its full cash value and deduct from such amount the value of real estate standing in the name of the bank, upon the records of the county in which the bank is situated, and which is used by the bank as a place of business. Such exemption, however, should not exceed 50% of the total capital stock and surplus of the bank. The real estate for which deduction is allowed would include a building in which the bank was situated, but in which there were also store rooms and offices for rent. Section 38, of the Banking Law, Laws of 1911, page 399.

Real estate acquired by the bank in payment of a debt or the foreclosure of a mortgage, or to protect loans previously made, is not such real estate as can be deducted under Section 173 of the Revenue Law.

—W. H. Wyatt, 11-7-13.

8. BANK EXEMPTIONS.

Under the provisions of Section 17⁹ of the Revenue Act, Laws of 1913, page 230, real estate standing upon the records of one county in the name of a bank located in another county should be assessed at its full cash value and the bank is entitled to no exemption on account of such real estate.

—Opinion rendered County Commissioners in convention assembled 12-18-13.

9. WIDOW'S EXEMPTION.

A widow, within the meaning of the Revenue Laws of 1913, is a woman whose husband is dead. Laws of 1913, page 175, section 4, subdivision "D."

—Alfred Anderson, 3-16-14.

10. LIMITATIONS ON BONDED INDEBTEDNESS OF MUNICIPALITIES.

Under section 1652 of the Revised Codes, as amended by the extraordinary session of the Legislature in 1912, page 26, and section 2315 of the Revised Codes, as amended in 1911, page 66, the limitation upon the bonded indebtedness of a municipality applies to 40% of the full cash valuation.

—W. L. Harvey, 3-15-13.

11. POLL TAX EXEMPTION OF MILITIAMEN.

Under the provisions of Section 703, Revised Codes, all members of the National Guard of Idaho are exempt from all poll, or road poll taxes, as long as they continue active members of the National Guard.

—E. M. Heigho, 4-28-13.

12. REFUNDS BY COUNTY COMMISSIONERS.

Section 206 of the Revenue Law, Laws of 1913, page 240, gives the County Commissioners no power to make a refund on a tax deed that was issued on an erroneous or double assessment. Where the purchaser's title has ripened into a deed, the power granted by statute to the Board of County Commissioners is not sufficient to justify them in making a refund.

—Opinion rendered County Commissioners in convention assembled, 12-18-13.

13. REDUCTION OF ASSESSMENTS.

Where the County Commissioners, sitting as a Board of Equalization, reduced a taxpayer's personal property assessment, at their meeting held under the provisions of section 180, of the Revenue Laws, Laws of 1913, page 232, on the first Monday in December, they have authority to refund to him the amount of the excess paid by reason of his original assessment. Before a refund can be made, however, it is necessary that a duly verified claim for such rebate be filed with the County Commissioners. Section 152 of the Revenue Laws, Laws of 1913, page 221, provides that the claim must be filed on or before the fourth Monday in November. Since under a strict construction of the statute the taxpayer would be required to file a claim for rebate a week, and possibly two weeks, before the County Board of Equalization had reduced the assessment, the law must be construed in a reasonable sense. In view of the fact that the Board of Equalization must adjourn on or before the third Monday of December, the correct interpretation of the statute would be that the claim for rebate should be filed within a reasonable time after the taxpayer learns he is entitled to such rebate, and "reasonable time" would depend upon the circumstances surrounding each case.

—Opinion rendered County Commissioners in convention assembled, 12-18-13.

14. MIGRATORY STOCK.

Under the provisions of Sections 161 to 172, inclusive, of the Revenue Law, Laws of 1913, page 226, migratory stock should be assessed for the full year in the home county. When such stock is moved to another county, the owner of the stock should, within ten days from the time the stock entered the county, deliver to the Assessor of such county a sworn statement showing the date on which such stock entered the county, the number, description, etc., of such stock and the full length of time during the year that such stock will be in the county, and must also produce his receipt showing the payment of his taxes in his home county. The Assessor of the County into which the stock has been driven shall thereupon assess the same in proportion to the portion of the year such stock will be in the county and issue a receipt therefor. When the Board of County Commissioners of the home county meet as a Board of Equalization in December the owner of the stock shall present to them his verified claim attached to which must be his receipt for taxes paid in other counties of the state, and will be entitled to a rebate from the home county for the proportionate amount of time that the stock were absent therefrom.

—Opinion rendered County Commissioners in convention assembled, 12-18-13.

15. ASSESSMENT OF FLOATING TIMBER.

Different companies cut timber in Shoshone County or other nearby counties and run the logs down the various rivers into a lake in Kootenai County, in which the logs are harbored for from six months to two years.

Question: Are all such logs taxable in Kootenai County?

Held: That such property is the same as any other personal property and is taxable in Kootenai County, if found by the Kootenai County Assessor, whether the logs have been there for two months or for twelve months.

—Opinion rendered County Commissioners in Convention assembled, 12-18-13.

16. TAXATION OF LANDS ON GOVERNMENT RECLAMATION PROJECTS.

Lands under Government reclamation projects upon which the settler has done all that the law requires him to do, and nothing remains but the act of the Government in issuing patent, aside from the lien retained by the Government for the payment of water contracts, are taxable, and should be assessed by the Assessor at the full cash value of the interest of the entryman.

(Sustained by Supreme Court in case of Cheney versus Minidoka County.)

—Opinion rendered County Commissioners in Convention assembled,
12-18-13.

Water and Water Courses.

1. APPROPRIATION OF WATER.

Under the provisions of Section 3254, Revised Codes, as amended, Laws of 1911, page 184, where a party applies for a permit to appropriate the public waters of the State and fails to return his application to the State Engineer's office within sixty days after the same has been returned to him, but after the expiration of such sixty day period again makes application for a permit, he is required to pay but one filing fee.

—F. P. King, 3-24-13.

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