

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO
FOR THE
YEARS 1915-1916



J. H. PETERSON
ATTORNEY GENERAL

T. C. COFFIN
E. G. DAVIS
HERBERT WING
D. A. DUNNING

Assistants

L. G. HAMILTON
MARTHA HEUSCHKE

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
T. A. Walters.....	1917-1918

JUSTICES OF THE SUPREME COURT, 1915-1916.

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

JUSTICES OF THE SUPREME COURT, 1917-1918.

Alfred Budge, Chief Justice.....	Pocatello
William M. Morgan, Associate Justice.....	Moscow
John C. Rice, Associate Justice.....	Caldwell

UNITED STATES JUDGE.

Frank S. Dietrich.....	Boise
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*Deceased.

IDAHO DISTRICT JUDGES.

District.	1915-1916.	1917-1918.	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	James R. Bothwell.	James R. Bothwell.	Shoshone,
	William A. Babcock.	William A. Babcock.	Twin Falls.
Fifth	John J. Guheen....	John J. Guheen....	Pocatello
Sixth	Frederick J. Cowen.	Frederick J. Cowen.	Blackfoot.
Seventh	Ed. L. Bryan.....	Ed. L. Bryan.....	Caldwell.
Eighth	R. N. Dunn.....	R. N. Dunn.....	Coeur d'Alene.
	John M. Flynn.....	John M. Flynn.....	Sandpoint.
Ninth	James G. Gwinn....	James G. Gwinn....	St. Anthony.

PROSECUTING ATTORNEYS OF THE VARIOUS COUNTIES IN IDAHO.

	1915-1916.	1917-1918.	
County.	Name.	Name.	Residence.
Ada	R. L. Givens.....	E. S. Delana.....	Boise.
Adams	L. L. Burtenshaw..	B. J. Dillon.....	Council.
Bannock	C. D. Smith.....	Marcus Lockhart...	Pocatello.
Bear Lake....	T. L. Glenn.....	D. C. Kunz.....	Paris.
Benewah	Edward Elder.....	Allen A. Holsclaw..	St. Maries.
Bingham	R. W. Adair.....	R. W. Adair.....	Idaho Falls.
Blaine	P. K. Perkins.....	Wesley E. Matthaef.	Hailey.
Boise	D. L. Rhodes.....	D. L. Rhodes.....	Idaho City.
Bonner	A. P. Asher.....	Frank A. McCall...	Sandpoint.
Bonneville ...	J. S. Byers.....	E. A. Owen.....	Idaho Falls.
Boundary	C. H. Heighton....	O. C. Wilson.....	Bonnars Ferry.
Canyon	H. A. Griffiths....	Alfred F. Stone....	Caldwell.
Cassia	Chas. A. Johnson..	T. Bailey Lee.....	Albion.
Clearwater ...	F. Elliott Smith...	F. Elliott Smith...	Orofino.
Custer	S. B. Clark.....	M. A. Brown.....	Challis.
Elmore	D. McLaughlin....	Daniel McLaughlin..	Mt. Home.
Franklin	A. W. Hart.....	A. W. Hart.....	Preston.
Fremont	G. H. Lowe.....	C. Redmon Moon...	St. Anthony.
Gem	J. P. Reed.....	J. P. Reed.....	Emmett.
Gooding	P. T. Sutphen.....	A. F. James.....	Gooding.
Idaho	M. R. Hattabaugh..	Edward M. Griffith.	Grangeville.
Jefferson	A. C. Cordon.....	A. C. Cordon.....	Rigby.
Kootenai	N. D. Wernette....	Bert A. Reed.....	Coeur d'Alene.
Latah	F. L. Moore.....	Frank L. Moore....	Moscow.
Lemhi	J. E. Rees.....	John E. Rees.....	Salmon City.
Lewis	S. O. Tannahill...	S. O. Tannahill...	Nez Perce.
Lincoln	H. D. Heist.....	H. D. Heist.....	Shoshone.
Madison	T. W. Smith.....	C. W. Poole.....	Rexburg.
Minidoka	H. C. Mills.....	W. W. Mattinson...	Rupert.
Nez Perce....	H. S. Gray.....	H. S. Gray.....	Lewiston.
Oneida	S. D. Davis.....	T. E. Ray.....	Malad.
Owyhee	R. G. Adams.....	Logan D. Hyslop...	Silver City.
Power	S. L. Baird.....	Spencer L. Baird...	American Falls
Shoshone	J. H. Wixom.....	H. J. Hull.....	Wallace.
Teton	B. W. Driggs.....	R. S. Wilkie.....	Driggs.
Twin Falls....	J. E. Davies.....	Frank L. Stephan..	Twin Falls.
Washington ..	James Harris.....	George Donart....	Weiser.

Report of the Attorney General

December 1, 1916.

His Excellency,

MOSES ALEXANDER,

Governor of the State of Idaho.

SIR: I have the honor to submit herewith a report of the condition of the affairs of this department, and, as required by law, I accompany the same with a copy of the docket containing cases now pending and cases determined during the last biennial period.

I have included in the report a synopsis of only a few of the leading rulings that have been rendered by the department during the last biennium.

My appropriation will not permit of my setting out all the opinions rendered; neither do I think such a course would be practicable.

The great bulk of the time of the Attorney General is taken in rendering decisions and passing on questions that have a very remote if any reference to State affairs, but which involve requests for advice to school districts, cities and villages. These questions have been answered courteously and as fully as the time at my disposal would permit.

The affairs of the office have been conducted within the appropriation authorized by the last Legislature.

Recommendations.

There have come to my attention many defects and deficiencies in our statutes which should be corrected and modified, to a few of the most important of which I beg to call your attention.

Farm Loans.

The Constitution of the State of Idaho authorizes and directs the State Land Board to loan the permanent educational funds of the State to individuals of the State on first mortgages on improved farm lands. Great embarrassment has been caused the Board by reason of the borrower's failure to promptly meet his taxes for State, county and other purposes; and while it is probably true that State mortgages under our Constitution and law are created a lien prior even to the tax lien of the State, yet in order that there might be no misunderstanding about it, and to relieve the Land Board of embarrassment and criticism that might result from tax liens or other liens of this character being foreclosed, the Legislature should enact a law declaring that mortgages to the State should be and continue a first lien upon the property so mortgaged superior to all other liens of every nature whatsoever attaching or accruing after the record of the State's mortgage.

The present State Board of Land Commissioners of the State of Idaho has attempted, and with some legislative sanction, to compel the farm loan business of the State, which has grown to enormous proportions as is shown by this report, to bear its own expenses.

It has seemed to the Board unjust that the taxpayers of the State of Idaho generally should be called upon to bear the expense incident to making loans out of State funds to individuals. The individual borrower obviously should stand this expense. All expenses of preparing and printing mortgages and coupon notes, appraising and examining land in the field, and examining abstracts, should be paid by the borrower.

In view of the fact that during the biennium this office

has passed upon eight hundred abstracts of title in connection with farm loans, the immense volume of this business is at once seen.

Executive Duties of Attorney General.

The Attorney General, under our Constitution, must be a lawyer before he can be elected to the office of Attorney General; yet the duties of his office are such that he is deprived of active personal participation in the legal work of the State. He is a member of practically all executive State boards, and has become under our system an executive officer, rather than the legal advisor and attorney for the State.

The Attorney General should be adviser of State officers and State departments, as he is now, but should not be compelled to spend the greater part of his time in purely executive functions and duties.

Blue Sky Law.

There is on the statute books of the State of Idaho what I deem to be an efficient law for the regulation of stock selling corporations in the State, and requiring an examination of all such corporations proposing to sell stock before they are permitted to do so.

Unfortunately, however, the Legislature has failed to make an appropriation for the purpose of carrying this act into effect. The Bank Examiner, who under the statute is required to make these examinations, has not been provided with any money with which to do so, and while the present Bank Examiner has attempted in a most laudable way to supervise this important work, he has found himself handicapped by being provided with no funds.

In cases involving flagrant imposition he has made investigations, relying upon his appropriation as Bank Com-

missioner, but thorough regulation, of course, could not be attempted.

The Legislature can afford to make an appropriation for the purpose of carrying this act into effect. The people of the State have a right to protection against fraudulent corporations, where the individual may not always be in a position to ascertain the facts in reference thereto.

Election Laws.

The last election in this State demonstrated beyond any question of doubt the extreme weakness and dangerous inefficiency of our election laws.

The Legislature of 1913, by Chapter 92 of the laws of that session, made very radical amendments of the registration and election laws that had theretofore obtained in the State. By this Act it became unnecessary to register before election day, the Act authorizing the election officials to register one applying to vote upon his being vouched for by a property holder or freeholder of the precinct in which he desires to vote. Under the provisions of the said Act transfers from one precinct to another may be had upon election day.

The purpose of the Legislature in passing this Act was undoubtedly laudable. It sought to obtain as large a vote as possible, with the least inconvenience to the citizens of the State. Unfortunately, the said Act opened the door to fraud, encouraged carelessness and threw a suspicion upon our entire election proceedings.

Shortly after the last election the Attorney General requested a report from the County Attorneys of the various counties of the State upon the number of votes sworn in under the Act above referred to on election day; a report upon the fraudulent vote, if any was revealed by the re-

turns, with a view to determining whether there was any indication of widespread conspiracy to commit fraud in the said election.

These reports indicate that a vast number of voters availed themselves of the opportunity afforded them to register and transfer on election day. These reports further indicate extreme carelessness or ignorance on the part of election judges in apparently attempting to comply with the plain provisions of the said Act.

While I am pleased to say that these reports do not indicate any widespread conspiracy to commit fraud on behalf of any party, nevertheless they do show deplorable negligence in the administration of the Act.

Large numbers of voters were permitted to register on election day without being vouched for as the Act requires. Great numbers of voters were vouched for by individuals who did not possess the required qualifications. In many instances election officials themselves were active in swearing in voters. Party workers acted as vouchers for a suspiciously unreasonable number of voters. In some precincts ballots were given to the voters with the stubs attached, which stubs contained the number of the ballot, and thus made possible the identification of every vote cast, thus violating the constitutional provision of the State which guarantees to every voter a secret ballot.

In one instance, at least, intoxicating liquor which was being held by county officers as evidence in cases tried or to be tried by them for violations of the liquor laws of the State, was taken on election day and used, according to report, in the persuasion of obstinate voters.

The returns from the precincts in many instances show carelessness or extreme incompetency on the part of the

election officials, and all in all the proceedings indulged in at the last election seemed to be considered by the people generally as a kind of a game.

The proceedings did not possess the solemnity and dignity so vital a function should possess.

Prosecutions for violations of the election laws were seriously considered by this office, but it was found that the law afforded no adequate remedy against the abuses reported. In some instances, doubtless, the election officials might have been successfully prosecuted, but no adequate or salutary lesson, in the opinion of the Attorney General, would have been derived therefrom. The fault was not particularly with the officers who had charge of the election. The fault lies with the system under which they were working. This system being corrected, our citizens being of a superior type, our elections will assume the dignity they should possess.

The only remedy lies in a complete right-about face; a competent, painstaking and thorough revision of our election laws.

It is essential to the peace and welfare of our State that radical changes and amendments be made in our election laws.

We must go back to our old system of registration, which allowed a certain reasonable period for registration; registration closed a reasonable time before election to allow an investigation of the qualifications of those registering and thus preparing to vote. Those not so registered must be refused the right to vote.

Further, the Legislature should provide qualifications for election officials, so as to insure competent and capable handling and counting of the ballots, and a full and strict compliance with the election laws of the State.

This matter I deem to be of grave importance, and I trust your Excellency may see fit to recommend consideration thereof by the incoming Legislature.

Primary Election Law.

The Primary Election Law of the State should be materially amended so as to apply, if such law is desirable at all, only to county officers and officers of the smaller subdivisions of the State. In my judgment the present Primary Law is unnecessarily expensive; does not have a tendency to bring forward the best men available for public office; compels a discussion of everything except the merits of the campaign and the issues before the people; burdens the officers when elected with tasks not germane to the public welfare, and generally is subversive of good government.

Irrigation District Law.

The last Legislature provided for an Irrigation Code Commission, whose primary duty it seems under the statute creating it, was to recommend needful legislation in connection with the irrigation laws of the State.

I am of the opinion that this Commission mistook its duty and devoted itself largely to gathering evidence and reporting on conditions as they exist on the Carey Act projects of the State, without seriously considering a remedy for such conditions. Much good would have been accomplished by a careful study of the irrigation laws of the State, and a serious minded attempt to rejuvenate irrigation securities, the discrediting of which has resulted in retarding the State's development.

Carey Act Projects.

The Carey Act projects of the State may work out their own salvation only by and through the organization of ir-

rigation districts. In this manner some portion of the money invested in them may be returned and the projects finally turned over to the operating settlers.

Our present irrigation district law does not meet the problem. The credit of the State has been greatly impaired by a condition which has grown up on these projects, for which I think neither the investor nor the settler is entirely to blame, but the Carey Act law has been inadequate from the beginning.

Great suffering has been entailed upon the settlers, and great loss upon the investors. The settlers must finally take over these projects under an irrigation district, and by long time payments return at least a portion of the money that has gone into the completion of the projects. Long time payments will enable the settlers to pay a reasonable price for their water, but the terms must be such that these payments can be had and earned from the land itself after its improvement and development.

Public Utilities Law.

The Public Utilities Law of the State should be vitally amended so as to provide for a Utilities Commissioner. A salary then could be paid which would enable the State to obtain the services of an expert in public utilities work. Our present Utilities Commission is handicapped in not being able to obtain a sufficient force of experts to cope with the great corporations with which it is compelled to deal.

Anti-Trust Law.

The State is suffering from the activities of numerous petty trusts and monopolies. Practically every community in the State is infested with combinations which control the selling price of the necessities of life. Consumers are

now suffering from arbitrary, exorbitant prices on things they must have, and they should not be further looted by local combinations.

Our present law is efficient as far as it goes, but it should be broadened and enlarged to include all business of the State, and a sufficient appropriation should be had to enable examinations to be made. The large expense in prosecutions of this kind is entailed by examinations, but our present law does not make proper provision therefor.

Treasury Shortage.

I am pleased to report that the State has recovered and turned into the public treasury, through a successful action against the bonding company, surety on the bond of the defaulting State Treasurer, all moneys lost through the defalcation of State Treasurer O. V. Allen.

For this splendid result great credit is due Tom C. Coffin, an assistant in this office who had active charge of the prosecution of the case against the Surety Company, and Fred M. Coleman, a deputy in the office of the defaulting State Treasurer, whose testimony was essential to the State's recovery and who testified fully and freely concerning all matters growing out of this public wrong.

Growing out of this case I desire to make reference to an incident in relation to the Bank of Nampa at Nampa, Idaho.

Some months before the defalcation of the State Treasurer was known, this State bank closed its doors and it was thereupon ascertained, when this department began proceedings against the bank for State money there on deposit, that inadequate personal bonds had been filed with the State Treasurer covering these deposits. The bank was hopelessly insolvent, and the Attorney General declined to permit the State to be declared a preferred

creditor on account of the great loss and suffering that would be entailed by such a course upon the depositors of said bank.

Such property as the bondsmen possessed was seized by the State and placed in the hands of a trustee for the State.

The State Depository Board managed this property as best it could, and upon suit being instituted against the Surety Company, upon the defalcation of the State Treasurer being known, an item was included covering deposits in this bank which were illegally large. On this ground recovery was had of the entire amount in the bank at the time it closed its doors, with interest to date. Thus the depositors were permitted to share in such proceeds as the bank had, and the State recovered all its losses with interest.

Some criticism has been had of the action of this department in waiving its preference right over other depositors in the bank, but I am fully convinced that the position of this office in reference to the matter was wise and has resulted most fortunately for the depositors of the bank and for the people of the State.

For the results shown by this report, I take pleasure in acknowledging the earnest work of my assistants during the period covered herein. Tom Coffin, E. G. Davis, Herbert Wing and D. A. Dunning have taken a personal interest in the work of the office and have devoted themselves unselfishly to the important work entrusted to their hands. I also desire to commend L. G. Hamilton, my Secretary, for his faithful and efficient service.

Respectfully submitted,

J. H. PETERSON,
Attorney General.

Docket 1915-1916

STATEMENT OF CASES ARGUED IN THE SUPREME COURT OF THE STATE

CRIMINAL APPEALS.

State vs. John Bogris (26 Ida. 587; 144 Pac. 789).—Defendant was convicted in the District Court of the First Judicial District, Shoshone County, with the crime of grand larceny, and was sentenced to serve an indeterminate term in the penitentiary of not less than one nor more than fourteen years. Affirmed, December 19th, 1914.

State vs. Gust Johnson (26 Ida. 609; 144 Pac. 784).—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 a term in the State prison of from seven to fourteen years. Reversed December 22nd, 1914.

State vs. Charles Driskill (26 Ida. 738; 145 Pac. 1095).—Defendant was convicted in the District Court of the Second Judicial District, Nez Perce County, of the crime of statutory rape, and was sentenced to serve an indeterminate term in the penitentiary of not less than five nor more than ten years. Affirmed, February 3rd, 1915.

State vs. Hopkins (26 Ida. 741; 145 Pac. 1095).—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, and sentenced to serve a term in the State penitentiary of from one to fourteen years. Reversed, February 6th, 1915.

In re Harry S. Kessler (26 Ida. 764; 146 Pac. 113).—A proceeding in habeas corpus, brought in the District Court of the Third Judicial District, Ada County. Petitioner was arrested and convicted of driving a motorcycle without having caused the same to be registered, nor the fee thereon paid. Writ quashed and defendant remanded to custody, February 10th, 1915.

State vs. Samuel Tilden (27 Ida. 262; 147 Pac. 1056).—Defendant was convicted in the District Court of the Second Judicial District, Nez Perce County, of the crime of manslaughter, and was sentenced to serve a term of from one to ten years in the State penitentiary. Reversed, April 24th, 1915.

State vs. C. J. Clark (27 Ida. 48; 146 Pac. 1107).—Defendant was convicted in the District Court of the Fifth Judicial District, Power County, of the crime of incest, and sentenced to serve a term in the penitentiary of from five to ten years. Reversed, March 11th, 1915.

State vs. John S. Jewett, et al. (27 Ida. 147; 147 Pac. 288).—Judgment in favor of 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. Appeal dismissed on State's motion, March 19th, 1915.

State vs. Hosford, et al. (27 Ida. 185; 147 Pac. 286).—The defendants were convicted in the municipal court of the village of Challis of the crime of gambling. Application was made to the District Court of the Sixth Judicial District, Custer County, for a writ of certiorari, which was refused and an appeal taken. Affirmed, March 24th, 1915.

State vs. Idell Flower, Ed. Luke and Phoebe Luke (27 Ida. 223; 147 Pac. 786).—Defendants were convicted in the District Court of the Seventh Judicial District, Canyon County, of the crime of grand larceny, and sentenced to varying terms in the State penitentiary of from one to fourteen years. Judgment sustained as to Ed Luke, April 21st, 1915.

State vs. J. J. Bouchard (27 Ida. 500; 149 Pac. 464).—Defendant was convicted in the District Court of the Eighth Judicial District, Benewah County, of the crime of selling intoxicating liquors in a prohibition district, and was sentenced by the court to serve ten days in the county jail and to pay a fine of \$100.00. Affirmed, June 10th, 1915.

State vs. W. F. Kasiska (27 Ida. 548; 150 Pac. 17).—This appeal was taken from judgment rendered in the District Court of the Fifth Judicial District, Bannock County, declaring the Bannock Hotel building in the City of Pocatello to be a common nuisance and enjoining the defendant from selling intoxicating liquors in said hotel. Motion to dissolve or modify the injunction was denied. Affirmed, June 16th, 1915.

State vs. F. M. Mickey (27 Ida. 626; 150 Pac. 39).—An information charging the defendant with manslaughter, due to his killing one Allen Pearson while driving an automobile on a public highway at a high rate of speed, was filed in the District Court of the Third Judicial District, Ada County. Demurrer and motion to quash was sustained, and an appeal taken. Reversed, July 8th, 1915.

In re Ed Crane (27 Ida. 671; 151 Pac. 1006).—Proceeding in habeas corpus, petitioner having been arrested and committed for having intoxicating liquor in his possession. Constitutionality of the Prohibition Law of Idaho involved. Writ quashed, petitioner remanded to custody and law declared constitutional. September 11th, 1915.

State vs. Horn et al. (27 Ida. 782; 152 Pacific. 275).—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 trial court on motion dismissed the jury. The State appealed and judgment of the lower court was reversed, October 5th, 1915.

State vs. Guy Buster (28 Ida. 110; 152 Pac. 196).—Defendant was convicted in the District Court of the Fourth Judicial District, Lemhi County, of the crime of murder in the second degree, and sentenced to the State prison for not less than ten nor more than thirty years. Reversed, October 23rd, 1915.

State vs. Mox Mox (28 Ida. 176; 152 Pac. 802).—Defendant was convicted in the District Court of the Second Judicial District, Nez Perce County, of the crime of assault with a deadly weapon, and was sentenced to serve an indeterminate term in the penitentiary of not less than one nor more than two years. Affirmed, November 1st, 1915.

State vs. J. A. Givens (28 Ida. 253; 152 Pac. 1054).—Defendant was convicted in the District Court of the Seventh Judicial District, Canyon County, of the crime of making false report on the affairs and financial condition of the Bank of Nampa, and was sentenced to serve a term of from six months to three years in the State penitentiary. Reversed, November 27th, 1915.

State vs. Charles George (Not reported).—The defendant was convicted in the District Court of the First Judicial District, Shoshone County, with the crime of murder of the first degree, and sentenced to be hung. Death sentence commuted by State Board of Pardons to life imprisonment, and appeal dismissed. January 13th, 1916.

State vs. H. C. Jones (28 Ida. 428; 154 Pac. 378).—Defendant was convicted in the District Court of the Eighth Judicial District, Benewah County, of the crime of manslaughter, and was sentenced to serve a term in the State penitentiary of from two to ten years. Affirmed, January 22nd, 1916.

State vs. Jesse Scoble (28 Ida. 721; 155 Pac. 969).—Defendant was convicted in the District Court of the Fourth Judicial District, Blaine County, of the crime of grand larceny, and sentenced to serve a term of from six to fourteen years in the State penitentiary. Affirmed, March 16th, 1916.

State vs. Swan Berg (28 Ida. 724; 155 Pac. 968).—Defendant was convicted in the District Court of the Sixth Judicial District, Bingham County, of obstructing a public road and sentenced to pay a fine of \$100.00. Affirmed, March 17th, 1916.

State vs. J. W. Baker (28 Ida. 727; 156 Pac. 103).—Defendant was convicted in the District Court of the Third Judicial District, Ada County, of the crime of assault with a deadly weapon, and was sentenced to serve an indeterminate term in the penitentiary of not less than six months nor more than two years. Affirmed, March 21st, 1916.

State vs. Frank W. Andrus (29 Ida. —; 156 Pac. 421).—Defendant was convicted in the District Court of the Fifth Judicial District, Bannock County, of the crime of incest, and was sentenced to serve an indeterminate term in the State penitentiary of from five to ten years. Reversed, April 5th, 1916.

State vs. Michael Murphy (29 Ida. —; 156 Pac. 908).—The State appealed from the ruling of the District Court where acquittal had been had under advisory instruction complying with provisions of Sec. 7877, Rev. Codes. Appeal dismissed on motion of defendant, April 25th, 1916.

State vs. Charles Altwatter (29 Ida. —; 157 Pac. 256).—Defendant was convicted in the District Court of the First Judicial District, Shoshone County, of the crime of sodomy, and was sentenced to serve a term in the penitentiary of not less than five years. Affirmed, May 9th, 1916.

State vs. Fong Loon (29 Ida. —; 158 Pac. 233).—Defendant was convicted in the District Court of the Third Judicial District, Ada County, of the crime of manslaughter, and sentenced to serve a term in the penitentiary of from five to ten years. Reversed, June 15th, 1916.

State vs. Steen & Miller (29 Ida. —; 158 Pac. 499).—Defendants were convicted in the District Court of the Second Judicial District, Idaho County, of the crime of grand larceny, and were sentenced to serve a term of from six to fourteen years in the State penitentiary. Affirmed, July 15th, 1916.

State vs. Marcus S. Fite (Not yet reported).—The defendant, a chiropractor, was convicted in the District Court of the Second Judicial District of the crime of practicing medicine and surgery without a license. Reversed, October 9th, 1916.

State vs. H. D. Curtis (Not yet reported).—Defendant was convicted in the District Court of the Fourth Judicial District of the crime of felony, to wit: presenting to the Treasurer of Blaine County certain false and fraudulent claims, and was sentenced to serve a term in the State penitentiary of from eighteen months to two years. Affirmed, December 16th, 1916.

State vs. Zachariah Curtis and Cora Atkinson.—The defendants were convicted in the District Court of the Fourth Judicial District, Twin Falls County, of the crime of grand larceny, and sentenced to serve a term of imprisonment in the State penitentiary of from one to fourteen years. Ready for argument.

State vs. H. D. Cummins.—The defendant was convicted in the District Court of the Fourth Judicial District, Minidoka County, of the crime of illegal transportation of intoxicating liquors in a prohibition district, and was sentenced to imprisonment in the county jail for a term of three months and the payment of a fine of \$500.00. Ready for argument.

State vs. W. P. Dawe.—The defendant was convicted in the District Court of the Ninth Judicial District, Bonneville County, of the crime of embezzlement of public funds in the amount of \$8,430.78, while acting as Clerk of the City of Idaho Falls, and was sentenced to serve an indeterminate term of imprisonment in the State penitentiary of not less than one nor more than ten years. Time for filing brief of appellant extended to January 1st, 1917.

State vs. C. A. Feamster.—The defendant was convicted in the District Court of the Seventh Judicial District, Washington County, of the crime of having in his possession intoxicating liquor, and was sentenced to serve 45 days in the county jail and pay a fine of \$100.00. Pending.

In re Geo. W. Goode.—A proceeding in habeas corpus, brought in the District Court of the Second Judicial District, Clearwater County, for the purpose of obtaining release of appellant from the Northern Idaho Sanitarium. Ready for argument.

State vs. John D. Grady.—This is an appeal from the District Court of the Sixth Judicial District, Lemhi County, and involves the question of whether or not former jeopardy may be pleaded where a

jury after finding that they could not agree were discharged during the absence of defendant. Ready for argument.

State vs. Wm. W. Lottridge.—Defendant was convicted in the District Court of the Sixth Judicial District, Lemhi County, of the crime of embezzlement, and was sentenced to serve a term of from one to fourteen years in the State penitentiary. Judgment affirmed. Petition for rehearing granted.

State vs. Roy H. Leeper.—Defendant was found guilty in the Probate Court of Clearwater County of the crime of disturbing the peace, and a fine of \$50.00 imposed. An appeal was taken to the District Court, but was dismissed by that court on motion of the Prosecuting Attorney. The case was then appealed to the Supreme Court. Pending.

State vs. Lundhigh.—Defendant was convicted in the District Court of the Sixth Judicial District, Bingham County, with the crime of murder in the second degree, and was sentenced to serve a term of from ten to fifteen years in the State penitentiary. Ready for argument.

State vs. E. E. Morton.—Defendant was convicted in the District Court of the Third Judicial District, Ada County, of the crime of maintaining a common nuisance in violation of the Prohibition Law, and was sentenced to pay a fine of \$200.00. Pending.

State vs. Martin McGuire.—Defendant was convicted in the District Court of the Ninth Judicial District, Bonneville County, of the crime of maintaining a common nuisance and sentenced to serve four months in the county jail and pay a fine of \$500.00. Pending.

State vs. George Nolan and Percy Heath.—Defendants were convicted in the District Court of the Fourth Judicial District, Twin Falls County, of the crime of grand larceny, and were sentenced to the State penitentiary for an indeterminate term of from one to four-teen years. Ready for argument.

State vs. Joseph Park.—The defendant was convicted in the District Court of the Ninth Judicial District, Jefferson County, of the crime of rape, and was sentenced to the State penitentiary for an indeterminate term of from five to ten years. Pending.

State vs. Sherwood Platts et al.—Defendants were convicted in the District Court of the Fourth Judicial District, Cassia County, of the crime of grand larceny, and were sentenced to the State penitentiary for an indeterminate term of from one to fourteen years. Ready for argument.

State vs. D. D. Rogers.—The defendant was convicted in the District Court of the Fifth Judicial District, Power County, of the crime of murder in the second degree, and was sentenced to the State penitentiary for an indeterminate term of from twenty to forty years. Pending.

State vs. D. B. Richardson.—The defendant was convicted in the District Court of the Seventh Judicial District, Washington County, of the crime of having in his possession intoxicating liquor, and was sentenced to serve 45 days in the county jail and pay a fine of \$100.00. Pending.

State vs. Claude H. Roberts.—Defendant was convicted in the District Court of the Third Judicial District, Ada County, of the crime of obtaining money under false pretences, and sentenced to serve a term of not less than two nor more than fourteen years in the State penitentiary. Brief of appellant not yet filed.

State vs. Clyde Smith and Lloyd Logan.—The defendants were convicted in the District Court of the Seventh Judicial District, Adams County, of the crime of grand larceny, and sentenced to serve a term of from one to fourteen years. Ready for argument.

CIVIL APPEALS.

State ex rel. Clara Mills vs. American Surety Company (26 Ida. 652; 145 Pac. 1097).—Action by State to recover on surety company bond of William G. Cruse, former Bank Commissioner, for the benefit of certain depositors of the Idaho State Bank of Hailey. Judgment for plaintiff below. Affirmed, December 31, 1914.

Budge vs. Gifford (26 Ida. 521; 144 Pac. 333).—Original application for writ of mandate to compel the Secretary of State to issue a commission for the appointment of Honorable Alfred Budge to fill the full term of vacancy caused by the death of Justice Stewart. Writ granted November 28, 1914.

State ex rel. Canyon County vs. Jacob Forch (26 Ida. 755; 146 Pac. 110).—This is a test case, brought in the District Court of the Seventh Judicial District, Canyon County, 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. Appeal was taken by the State following judgment for defendant. Affirmed, February 8th, 1915.

Harry M. Coon vs. James A. Sommercamp (26 Ida. 776; 146 Pac. 728).—Action to enjoin collection of school tax. Motion to dismiss appeal. Sustained, February 15, 1915.

D. L. Ingard vs. Barker (27 Ida. 124; 147 Pac. 203).—On petition for writ of mandate to compel defendant as Secretary of State to issue plaintiff commission as member of the State Board of Horticultural Inspection. Defendant directed to issue commissions to such persons as may receive appointment from the Governor. March 19, 1915.

W. W. Adamson vs. Board of County Commissioners, Custer County (27 Ida. 190; 147 Pac. 785).—Appeal from an order of the Board of County Commissioners disallowing a part of a claim for the prosecution of a criminal case by a special prosecutor appointed by the District Court. Judgment for plaintiff below. Affirmed, March 31st, 1915.

Louise E. Barton vs. Board of Trustees, Soldier's Home (27 Idaho. 286; 148 Pac. 471).—Original application for a writ of prohibition to the Board of Trustees of the Soldier's Home. Anti-nepotism law construed. April 29, 1915.

D. L. Evans et al. vs. Huston (27 Ida. 559; 150 Pac. 14).—An original application for writ of mandate to compel State Auditor to issue State warrant to principal of Albion Normal School against

moneys of the school fund which had accrued thereto prior to first day of January, 1915. Writ issued June 18th, 1915.

Fox ex rel. State vs. Flynn (27 Ida. 580; 150 Pac. 44).—Proceeding upon petition for writ of mandate directing the presiding judge of the District Court of the First Judicial District to assume original jurisdiction of a certain case involving a misdemeanor triable in Probate and Justice's Courts. Writ issued June 22, 1915.

James A. Murray vs. Public Utilities Commission (27 Ida. 603; 150 Pac. 47).—Original application for writ of review of an order of the Public Utilities Commission fixing certain rates charged by the Pocatello Water Company and ordering extension and enlargement of plant. Reversed July 1st, 1915.

Northern Pacific Ry. Co. vs. John L. Chapman (29 Ida. —; 158 Pac. 560).—The question involved in this case was whether the increase of five mills as special tax in school districts, authorized by Chap. 93, Laws of 1915, Sec. 54, was effective at the time of the annual school meetings held in April, 1915, at which such levy was made. This action was brought as a test case in the District Court of the Second Judicial District, Nez Perce County, and was decided by that court in favor of the plaintiff company. Reversed, July 1st, 1916.

Idaho-Iowa Lateral and Reservoir Co. vs. C. C. Fisher (27 Ida. 695; 151 Pac. 998).—Action to quiet title to an easement of land for reservoir and dam purposes. The Attorney General was called upon to defend the title of the defendant who held title through State patent. An appeal was taken by the State from judgment for defendant in the District Court of the Third Judicial District. Reversed, September 17th, 1915.

State, R. T. Weaver et al. vs. Twin Falls Canal Co. (27 Ida. 728; 151 Pac. 1013).—This is an action commenced in the Supreme Court for the purpose of procuring writ of mandate to compel the issuance of shares of water stock to purchasers of State land within an irrigation project. Peremptory writ issued September 25th, 1915.

State to and for the use and benefit of O. W. Allen et al. vs. Title Guaranty & Surety Co. (27 Ida. 752; 152 Pac. 189).—Action brought in the District Court of the Third Judicial District, Ada County, on behalf of depositors of the defunct Boise State Bank against the official bond of the State Bank Examiner. Judgment for plaintiff affirmed, October 2nd, 1915.

James W. Epperson vs. County Commissioners, Ada County (28 Ida. 338; 154 Pac. 621).—This action involved the constitutionality of Chap. 27, Session Laws, 1915, which required the County Commissioners to provide emergency employment. Application for writ of mandate was filed to compel the Commissioners of Ada County to furnish such employment. Demurrer filed in behalf of the county was sustained, alternative writ quashed and peremptory writ denied, January 8th, 1916.

State ex rel. Peterson vs. Dunlap (28 Ida. 784; 156 Pac. 1141).—A special proceeding to procure issuance of writ of mandate to compel Probate Court of Ada County to take certain steps necessary to exaction of inheritance tax upon the Harriman estate. Held that the State

was without right to exact such tax, Sullivan, C. J., dissenting, April 3rd, 1916.

Raymond L. Givins vs. County Commissioners, Ada County (29 Ida. —; 157 Pac. 1120).—Action instituted by the Prosecuting Attorney of Ada County to compel the County Commissioners to pay to plaintiff the attorney's fees allowed in tax foreclosure suits. Judgment for the defendants, May 23rd, 1916.

John Reilly vs. Board of County Commissioners (29 Ida. —; 158 Pac. 560).—This is an appeal from a judgment rendered in the District Court of the Second Judicial District, Latah County, sustaining the right of the County Commissioners to order the installation of a "complete tract index" at County expense. Reversed, June 13th, 1916.

Fluharty vs. Board of County Commissioners (29 Ida. —; 158 Pac. 320).—This is an appeal from the judgment of the District Court of the Second Judicial District, Nez Perce County, reversing an order of the Board of County Commissioners making an appropriation of \$2,500.00 out of the current expense fund of the county in aid of Northwest Livestock Association for the year 1915, and involves the constitutionality of Sec. 3040, Rev. Codes. Affirmed, June 13th, 1916.

Captain E. G. Davis vs. Barker (Not reported).—Action in mandate to compel defendant, as Secretary of State, to certify down relator's name as Captain E. G. Davis to County Auditors for purposes of primary election ballot. Writ granted, August 14th, 1916.

Potlatch Lumber Co. vs. Commissioners Latah County (Not yet reported).—This is a proceeding for writ of mandate to compel the Board of County Commissioners of Latah County to levy a general property tax on the assessed valuation of all the taxable property in the county for the support and maintenance of public highways. Peremptory writ denied. Reversed, September 26th, 1916.

Northwest Light & Water Co. vs. State Board of Equalization (Not yet reported).—A proceeding on writ of review to compel State Board of Equalization, sitting as an assessing board, to accept for purposes of assessment, the valuation put upon petitioner's property by the Public Utilities Commission, for rate making purposes. Writ quashed, November 2nd, 1916.

State vs. National Surety Co (T. C. Coffin, Intervenor) (Not yet reported).—Intervenor sought to enforce a lien upon the proceeds of a judgment against the defendant and in favor of the State. The court below refused to recognize said lien and upon appeal the decision was affirmed December 13th, 1916.

D. L. Rhoades vs. State Board of Equalization (Not reported).—Action for writ of mandamus, the question involved being the method of apportioning the valuation of railroad properties as between main and branch lines in the various counties. The position of the Board sustained and writ denied.

Rome Adams et al. vs. Twin Falls Oakley Land & Water Co. (Not reported).—An action instituted in the Supreme Court for a writ of mandate to compel the defendant to deliver water to settlers on the Oakley project. Judgment for the plaintiffs and writ issued, December 13th, 1916.

State vs. Frederick J. Cowen, District Judge.—A proceeding under writ of prohibition brought to restrain defendant from transferring to Bingham County for trial a misdemeanor case originally brought in Justice Court in Custer County and appealed to the District Court. Case argued. Decision not yet rendered.

E. C. Davis vs. State of Idaho.—Action instituted by plaintiff for recommendatory judgment for damages alleged to have been sustained by reason of a break in the canal of the Kings Hill project, which break occurred after the State had acquired title. Awaiting field examinations by State Engineer's department preliminary to hearing. Pending.

M. E. Lewis vs. A. O. Christopher.—This is an appeal from the District Court of the Seventh Judicial District, Canyon County, and involves the proper method of determining the full cash value of the purchaser's interest in State land for taxation purposes. Pending.

Ivan A. Poteet vs. Owyhee County.—Action instituted by Ivan A. Poteet, a Carey Act entryman under the King Hill project, to restrain the defendant from issuing tax deed for land of plaintiff. Case submitted and argued on an agreed statement of facts. The District Court denied the injunction. On appeal to the Supreme Court this judgment of the District Court was affirmed. Upon rehearing and upon a showing that the agreed statement of facts was incorrect, the case was remanded to the District Court with instructions to take testimony on all matters at issue. Now pending in the District Court of the Third Judicial District.

State & Robert Rayl vs. Twin Falls Salmon River Land & Water Co.—Action instituted in the Supreme Court for a writ of mandate compelling defendant to enter into a contract for the sale of a water right to Robert Rayl for school lands purchased of the State. Case argued. Decision not yet rendered.

Geo. F. Steele, Insurance Commissioner, vs. Humbird Lumber Co.—An action brought in the District Court of the Eighth Judicial District, Kootenai County, against the defendant company to collect statutory penalties for having insured property in companies not authorized to do business in the State of Idaho. State appealed from order of the lower court dismissing the case. Pending.

CASES IN THE DISTRICT COURTS OF THE STATE

Enterprise Irrigation District vs. State Engineer.—This suit instituted to obtain water right decree. Settled by stipulation.

In re McFarney.—Defendant was committed to jail to answer the charge of statutory rape and sued out writ of habeas in the Fourth Judicial District. Defendant released.

State vs. National Surety Company.—Action instituted in the District Court of the Third Judicial District, Ada County, on the bond of O. V. Allen, defaulting State Treasurer. Judgment secured for \$154,000.00.

Benewah County vs. State.—Action instituted in Eighth Judicial District, Benewah County, for condemnation of right of way through State land. Decree entered December 5th, 1916.

Bliss Highway District vs. State.—Action instituted in the Fourth Judicial District, Gooding County, for condemnation of right of way through State land. Decree entered November 15th, 1915.

Intermountain Ry. Co. vs. State.—Action instituted in the Third Judicial District, Ada County, for condemnation of right of way through State land. Decree entered.

Plummer Highway District vs. State.—Action instituted in Eighth Judicial District, Kootenai County, for condemnation of right of way through State land. Decree entered March 4th, 1915.

Potlatch Lumber Co. vs. State.—Action instituted in the Second Judicial District, Clearwater County, for condemnation of State land for reservoir site. Decree entered February 15th, 1915.

B. E. Stoutemeyer vs. State.—Action instituted in Seventh Judicial District, Canyon County, for condemnation of right of way through State land. Decree entered January 11th, 1915.

J. F. Shelley vs. State.—Action instituted in the Sixth Judicial District, Bingham County, for condemnation of right of way through State land. Decree entered October 23rd, 1915.

Lew Daniels vs. Pocatello Retail Grocers Association et al.—This action was brought in the District Court of the Fifth Judicial District, Bannock County, to restrain certain retail grocers in the City of Pocatello, Idaho, from forming an unlawful combination in violation of the Anti-Trust Laws of the State. Pending.

Grandview Irrigation District vs. State of Idaho et al.—This is an action brought in the District Court of the Third Judicial District, Owyhee County, to recover delinquent assessments levied by the Irrigation District on lands of defendants. This case is held up pending decision of Supreme Court on case of similar nature now on appeal.

Grandview Irrigation District vs. Otto Altschul et al.—Action brought in the District Court of the Third Judicial District, Owyhee County, to recover delinquent assessments levied by the Irrigation District on lands of defendants. This is a companion case of Grandview Irrigation Dist. vs. State et al. and is held up pending decision of Supreme Court.

State vs. Yates Center Highway District.—Action instituted in the District Court of the Fourth Judicial District, Elmore County, to recover the amount claimed to be due the State Highway Commission and the defendant Highway District. Complaint filed.

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.

State vs. Richfield Highway District.—Action instituted in the District Court of the Fourth Judicial District, Lincoln County, to recover amount claimed to be due the State Highway Commission under the contract entered into between such Commission and the defendant Highway District. Complaint filed.

Northern Pacific vs. Geo. R. Barker.—This case was brought in the District Court of the Second Judicial District, Nez Perce County, and is based upon the same principles of law and involves the same questions as the case of Northern Pacific vs. Gifford, now on appeal before the U. S. Supreme Court. Argument on defendant's demurrer is deferred by stipulation until a decision is had in the above mentioned case.

Alder Creek Ry. Co. vs. State Land Board.—Action instituted in the Eighth Judicial District, Kootenai County, for condemnation of right of way through State land. Answer filed.

O. S. L. R. R. vs. J. S. Parkinson and State of Idaho.—Action instituted in the Ninth Judicial District, Madison County, for condemnation of right of way through State land. Answer filed.

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

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

Oregon Short Line vs. State.—Action instituted in the District Court of the Fourth Judicial District, Twin Falls County, to condemn right of way through State land. Answer filed.

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

Highway District No. 1, Power Co., vs. State.—Action instituted in the Fifth Judicial District, Power County, for condemnation of right of way through State land. Answer filed.

State & King Hill Irrigation & Power Co. vs. Title Guaranty & Surety Co.—This is an action brought by the State, in the District Court of the Fourth Judicial District, for the purpose of foreclosing bond given as a guarantee of completion of irrigation works by the irrigation company. Complaint filed.

State & King Hill Extension Irrigation Co. vs. Nat'l Surety Co.—Action brought by the State in the District Court of the Fourth Judicial District, for the purpose of foreclosing bond given as a guarantee of completion of irrigation works by the irrigation company. Complaint filed.

State and Blaine Co. Irrigation Co. vs. Title Guarantee & Surety Co.—Action brought by the State in the District Court of the Fourth Judicial District, for the purpose of foreclosing bond given as a guarantee of completion of irrigation works by the irrigation company. Complaint filed.

Following foreclosure proceedings have been instituted in behalf of the State in the various district courts, account non-payment of interest on farm loans

State vs. John E. Beede.

State vs. H. H. Peters.

State vs. W. S. Haws.

State vs. J. R. Field.

State vs. Harry S. and May L. Worthman.

State vs. Jane and Grace Laughran.

State vs. E. W. Bowman, F. W. Parkinson et al.

State vs. E. W. Bowman, Philip Schaff et al.

State vs. John H. Brownlee.

State vs. F. J. Colburn.

State vs. Frederick Christensen.

State vs. Cora M. Allen.

State vs. Joseph Y. Taylor.

State vs. Chas. O. Workman.

State vs. Chas. P. Hartley.

State vs. Otto Altschul.

State vs. Wm. A. Rankin.

State vs. Seth T. Morrison.

State vs. Wm. L. Turner.

UNITED STATES SUPREME COURT

Glen R. Bothwell vs. Bingham County.—Writ of error to Supreme Court of the State. The question involved was the right of the County to collect taxes against lands taken under what is commonly known as the Carey Act, prior to the issuance of patent. Judgment of the lower court holding such lands subject to taxation affirmed and writ of error dismissed.

Northern Pacific R. R. Co. vs. Gifford.—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 sustain the constitutionality of the Act and reversed the District Court. The case is now pending on appeal before the U. S. Supreme Court.

Beaver River Power Co. vs. United States.—An action involving certain water rights in the State of Utah. Through its Attorney General, Idaho has filed motion to appear as a friend of the court for the purpose of presenting argument relative to certain questions of water law involved in the case, the determination of which in the pending action will materially affect Idaho.

State vs. Secundine Omaechevviaria.—Criminal prosecution for herding, grazing and pasturing sheep upon a cattle range in violation of Sec. 6872, Revised Codes. Judgment for plaintiff affirmed by State Supreme Court, October 5th, 1915. Appeal filed February 14th, 1916.

UNITED STATES COURT OF APPEALS

United States vs. Elias Marsters.—This is an appeal from judgment for plaintiff in an action instituted by the United States in the United States District Court, to restrain defendant, as Water Commissioner, from interfering with the headgates of the New York Canal during the irrigation season. The United States claimed 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. Affirmed, September 1st, 1916.

Continental & Commercial Trust & Savings Bank vs. King Hill Irrigation & Power Co. et al. and State of Idaho.—Action instituted by plaintiff as trustee to foreclose bonds issued by defendant company. B. P. Shawhan appointed receiver. Decree for plaintiff. Judgment affirmed June 11th, 1915.

UNITED STATES DISTRICT COURT FOR IDAHO

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.

Twin Falls Salmon River Land & Water Co. vs. Caldwell et al. and State Board of Land Commissioners.—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.

United States vs. Canyon County.—An action instituted to restrain Canyon County from collecting taxes on lands embraced in homestead entries in the Boise reclamation project for which conditional patent has issued or for which a certificate of residence has issued. Judgment for the defendant.

INTERSTATE COMMERCE COMMISSION

Public Utilities Commission vs. Oregon Short Line & Union Pacific.—Case instituted by the Public Utilities Commission of Idaho for the purpose of procuring an order reducing rates on coal from Wyoming mines to territory in southern Idaho. A hearing was had and a decision handed down February 9th, 1915, to the effect that the rates complained of were not unreasonable, and the complaint was dismissed.

State of Idaho and Public Utilities Commission vs. Pacific & Idaho Northern and Oregon Short Line.—Case brought to secure lower rate on logs from points on the Pacific & Idaho Northern Railroad in Adams County to Boise. A hearing was had and decision rendered February 9th, 1915, reducing rates complained of from 9 cents to 7 cents per hundred pounds.

PUBLIC UTILITIES COMMISSION

J. H. Peterson vs. Meadows Light & Power Co.—Action brought before the Commission to compel the defendant company to provide and furnish adequate and satisfactory service. Defendant ordered to provide additional facilities and better service.

J. H. Peterson vs. Oregon Short Line.—Action instituted for the purpose of obtaining an order reducing passenger rates on branch lines of defendant railroad company. Rates reduced to three cents on Twin Falls and Ashton branches.

Arthur Hodges, Mayor, vs. Boise Artesian Hot & Cold Water Co.—Action instituted for the purpose of fixing water rates. Case ready for hearing.

Arthur Hodges, Mayor, vs. Capital Water Co.—Action instituted for the purpose of fixing water rates. Testimony submitted. Awaiting filing of transcript of testimony so that briefs may be prepared and presented.

J. H. Peterson vs. Washington Water Power Co.—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. Still pending.

DEPARTMENT OF THE INTERIOR

Union Phosphate Co. 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 Charles N. Black.—Land in Twp. 44 N. R. 4 W. B. M. State selection held for cancellation.

In re H. E. of Casson Ferrel.—Land in Twp. 46 N. R. 5 W. B. M. State selection held for cancellation.

In re H. E. of David Campbell.—Land in Twp. 46 N. R. 5 W. B. M. State selection held for cancellation.

In re H. E. of Charles Wetsel.—Land in Twp. 46 N. R. 5. W. B. M. State selection held for cancellation.

In re H. E. of Simon M. Watson.—Land in Twp. 46 N. R. 5 W. B. M. State selection held for cancellation.

In re H. E. of Thomas A. Rogers.—Land in Twp. 43 N. R. 4 W. B. M. State selection held for cancellation.

In re H. E. of James McGreevy.—Land in Twp. 44 N. R. 4 W. B. M. State selection held for cancellation.

In re H. E. of Cornelius McGreevy.—Land in Twp. 46 N. R. 5 W. B. M. State selection held for cancellation.

In re H. E. of John C. Black.—Land in Twp. 43 N. R. 4. W. B. M. State selection held for cancellation.

In re H. E. of Luther A. Thompson.—Land in Twp. 44 N. R. 5 W. B. M. State selection held for cancellation.

In re H. E. of Earle J. Atkins.—Land in Twp. 43 N. R. 4 W. B. M. State selection held for cancellation.

In re H. E. of William H. Rudolph.—Land in Twp. 44 N. R. 4. W. B. M. State selection held for cancellation.

In re H. E. of J. B. Sargent—Twp. 44 N. R. 3 E. B. M. State selection held for cancellation.

In re H. E. of B. F. Rogers—Twp. 44 N. R. 3 E. B. M. State selection held for cancellation.

In re H. E. of Frank Keller—Twp. 44 N. R. 3 E. B. M. State selection held for cancellation.

In re H. E. of A. C. Rice—Twp. 44 N. R. 3 E. B. M. State selection held for cancellation.

Digest of Opinions Rendered

AUTOMOBILES.

Automobiles of Rural Mail Carriers Not Exempt from License Tax.

Query: Under Sec. 17 of Chapter 179, 1913 Session Laws, 567, are automobiles and other motor vehicles used by rural mail carriers exempt from license tax?

Held: That they are not, since they are not "owned or controlled" by the United States.

A. O. Christopher, April 16, 1915.

Automobile Tax Required of All Resident Owners.

Query: Must a resident of Idaho who stores his automobile in Spokane during winter months and who pays automobile tax in Washington also pay the Idaho tax?

Held: That all resident owners of automobiles must pay the Idaho tax.

W. H. Herrick, September 8, 1915.

Non-Residents Not Required to Pay Automobile License Tax.

Query: Are non-residents of the State of Idaho required to pay the Idaho license tax upon automobiles owned by them and upon which the license tax has been paid in the States of which they are residents?

Held: That they are not, if the States of which they are residents grant a similar exemption to citizens of the State of Idaho, reference being made to Sec. 25, 1913 Session Laws, 569.

E. H. Bayes, May 25, 1915.

Automobile License.

Query: Is Senate Bill No. 81, Laws of 1915, relating to automobile licenses, unconstitutional under the provision of the Constitution which requires revenue bills to originate in the House of Representatives?

Held: That said bill is not a revenue measure within the meaning of our Constitution, but is properly a police measure and the raising of revenue is only incidental thereto.

George R. Barker, March 17, 1915.

APPROPRIATIONS.

Continuing Appropriation for State Experiment Station.

Query: Is the appropriation specified in Sec. 11, of Chapter 189, 1913 Session Laws, a continuing one?

Held: That by the language of the section a continuing appropriation is created which shall be available each year for the purposes indicated in the act.

Ralph Bickell, March 17, 1915.

Appropriation Bills—Effect of Vetoes.

Query: How should appropriation bills passed by the last Legislature and attempted to be vetoed in whole or in part by the Executive be printed in the Session Laws?

Held: An item may be vetoed entirely, but where an attempt has been made to reduce an item, such attempt is futile.

Geo. R. Barker, March 19, 1915.

County Appropriations for Exposition Exhibits.

Query: Have county commissioners the authority to appropriate money for the general purpose of collecting, preparing and maintaining exhibitions of products and industries of the county at domestic and foreign expositions for the purpose of encouraging immigration and increasing trade in the products of the State of Idaho?

Held: That, under the provisions of Chapter 95, 1911 Session Laws, 340, the county commissioners are given such authority.

E. C. S. Brainard, May 10, 1915.

BANKS.**Foreign Banks Making Loans Within the State.**

Query: Is a foreign bank protected in making collections upon loans on Idaho property, in cases where the bank has not come within the Idaho foreign corporation law?

Held: That a bank may make such collections without danger of the foreign corporation law intervening as a defense.

O. V. Adams, January 5, 1915.

Bank Commissioner May Require Banks to Dispose of Real Estate.

Query: Under Section 38 of the Banking Law, Laws 1911, page 399, can Bank Commissioner require banks that have acquired real estate to dispose of same five years from the acquisition thereof, or are such banks entitled to hold such real estate until five years from the date said law went into effect?

Held: Banks can be required to dispose of real estate five years from the date of acquisition thereof.

A. E. Reid, December 28, 1914.

Paid Up Capital Stock and Not Surplus to Be Considered in Making State Deposits in Banks.

Query: May the surplus of a bank be considered in connection with determining the amount of state funds which may be legally deposited therein.

Held: That under the provisions of Sec. 127 R. C., as amended by 1909 Session Laws 363, the amount of State funds to be so deposited must be based upon the paid up capital stock of the bank and not upon its surplus.

O. R. Baum, January 21, 1915.

COUNTIES.**County Division—Liquidation of Indebtedness Created Thereby.**

Query: What is best method for county commissioners to pursue to liquidate the indebtedness of a county which was created by the division of the county?

Under Sec. 1955, Revised Codes, warrants should be registered and paid in order of registration, and when the next levy is made, the county commissioners should provide for payment of these warrants by fixing a tax under the authority of Sec. 99, Chap. 58, Laws 1913.

Expenses of County Commissioners at Annual Meeting.

Query: Are county commissioners entitled to collect from the county such expenses as are incurred in attendance upon annual convention at Boise.

Held: They are not.

Ralph W. Adair, February 3, 1915.

Appointment of Deputy Prosecuting Attorney and County Stenographer.

Query: Does Sec. 1975 R. C. authorize a prosecuting attorney to appoint a deputy?

Held: That it does.

Query: Could such deputy also draw salary as clerk or stenographer in the office at the same time?

Held: That as the law specifically provides for a county stenographer, the same person cannot hold position as county stenographer and deputy prosecuting attorney at the same time.

C. A. Johnson, February 2, 1915.

Probate Judge—Right to Issue Deeds.

Query: Has the probate judge the right to issue deeds for city lots taken under the townsite act in territory which originally belonged to another county?

Held: The probate judge has such a right.

James A. Berry, March 3, 1915.

County Division as Affecting Notaries Public.

Query: Under the law relating to notaries public as it now stands, where county division has taken place, are new seals and commissions necessary for notaries commissioned in the old county, but by division now located in the new?

Held: That they are not.

Myrvyn Davis, June 28, 1915.

Limit of Compensation of County Commissioners.

Query: May county commissioners charge \$100 per year in addition to regular salary, for ascertaining that farms and farm yards are properly cleaned and made sanitary?

Held: That salary provided by law is in full compensation for performance of duties as county commissioner.

Arthur W. Hart, April 18, 1916.

Holding Office as Legislator and County Commissioner Not Incompatible.

Query: May a member of the state legislature hold office as a county commissioner?

Held: That there is no legal reason why he should not.

Frank W. Clarkson, June 5, 1915.

HIGHWAYS.**Highway District Commissioners—Not Allowed Compensation.**

Query: Can highway district commissioners performing the duties of a highway director allow themselves compensation therefor?

Held: That the payment of compensation for such services is unwarranted and unlawful under the provision of Sec. 22, Chap. 55, Session Laws 1911, and Sec. 28 of Chap. 55, Session Laws 1911, as amended by Chap. 146, Session Laws 1913.

C. W. Space, December 16, 1914.

Expenses of Highway Commissioners.

Query: Under Sec. 22, Chap. 55, Session Laws 1911, may a highway commissioner legally charge for the use of his automobile as a part of his expense in the performance of his official duties?

Held: That he may, it being understood that such charge shall be reasonable.

E. C. Davis, October 25, 1915.

Highway Fund.

Query: What authority has the State Highway Commission with reference to use of moneys in the State Highway Fund?

Held: That so long as any bond issue which has been authorized is protected by the setting aside of the necessary amount to take care of that issue as it matures, the Commission can use any other moneys remaining in said fund as specified in Chap. 179, 1913 Session Laws.

Theo. Turner, January 29, 1915.

Issuance of Deficiency Certificates Prohibited.

Query: May the State Highway Commission issue deficiency certificates in excess of the amount appropriated and authorized to be collected and expended by the commission?

Held: That deficiency certificates and deficiency indebtedness are prohibited under the laws of Idaho, particular reference being had to 1915 Session Laws, 361.

George R. Barker, May 4, 1916.

State Highway Commission Exempt from Attachment and Garnishment.

Query: Does attachment lie against the State Highway Commission for credits in its hands running to a contractor, who is also a judgment debtor, and where attachment has issued under the judgment?

Held: That, the State Highway Commission, being a State agency, is not properly subject to attachment or garnishment, and that it is not bound by a writ issued in such proceedings.

George R. Barker, August 10, 1916.

INTOXICATING LIQUOR.**Auto Truck Line as Common Carriers.**

Query: Is an auto truck line a common carrier which may legally engage in interstate transportation of liquors.

Held: That it may be, if such auto truck line is so recognized as a common carrier by the Inter State Commerce Act, and has complied therewith in the matter of filing tariffs, entering into contracts with connecting lines for the handling of freight, and has met with other necessary requirements of said act.

James E. Albert, May 5, 1916.

What Constitutes an Intoxicating Liquor Under the Statute.

Query: What percentage of alcohol must be present in a beverage to make it an intoxicating liquor within the meaning of the Idaho statute?

Held: That the percentage of alcohol present in the beverage has no bearing upon the question, since as a matter of law, by statutory enactment, all "spirituous, vinous, malt and fermented liquors" are declared to be intoxicating.

John McDevitt, November 20, 1915.

Legal Purchases of Alcohol Not Limited in Quantity.

Query: What is the legal limit in quantity of alcohol legally purchased?

Held: That the law does not limit the quantity of alcohol which may be purchased at any one time, but that it does give the Probate Judge a certain discretion, in that he must be satisfied of the good faith of the applicant before issuing a permit.

Lynn Bros. Hospital, January 19, 1916.

Offer of Rewards for Apprehension of Offenders Against Liquor Law.

Query: May appropriation for payment of rewards offered by Governor be used for the apprehension of persons bringing liquor into the State and selling it contrary to law?

Held: That it may be so employed.

M. Alexander, June 9, 1916.

Alcohol for Drugs and Manufacturing Purposes.

Query: May a physician compound drugs containing alcohol without obtaining a permit from the Probate Judge?

Held: That he may, where the compound is for medicinal purposes, and not a mere pretense to hide or disguise the alcohol.

Query: What steps are necessary to the purchase of alcohol from a wholesale house for manufacturing purposes?

Held: That under the law it is necessary to apply for and obtain a permit from the Probate Judge.

Barkley's Pharmacy, December 30, 1915.

Alcohol to be Sold on Probate Judge's Permit Only.

Query: Is it permissible to fill a doctor's prescription for alcohol unless same be accompanied by a permit from the probate judge?

Held: That the safer practice is to sell alcohol upon a permit of the probate judge only.

St. Maries Drug Company, October 6, 1915.

Alcohol for Hospital Purposes.

Query: May a hospital purchase alcohol by the barrel, under the

provisions of the Internal Revenue law, exempting hospitals from the payment of internal revenue?

Held: That under the provisions 1915 Session Laws, 40, alcohol can only be purchased from a registered pharmacist.

John H. Shepherd, May 27, 1915.

INSURANCE.

Three-Fourths Value Clause in Fire Insurance.

Query: Has the Board of Fire Underwriters the power to insist that what is known as the "three-fourths value clause" be attached to policies written in the Panhandle of Idaho?

Held: That there is no legal prohibition preventing such action on the part of the Board.

George F. Steele, July 24, 1915.

As to Excessive Increase in Insurance Rates.

Query: Has the State of Idaho any authority under the anti-trust or other statute to take action against excessive increase in insurance rates?

Held: That if there is a combination among insurance men of the State for the purpose of raising or regulating insurance rates, such action would be in violation of Chapter 125, 1911 Sessions, the so-called anti-trust law.

M. Alexander, May 4, 1916.

OFFICERS.

Appointment of Officers.

Query: Is approval of the Senate necessary in the matter of appointments made by the Governor, where the law does not provide for confirmation of appointment by the Senate?

Held: Confirmation by the Senate is not necessary.

Herman H. Taylor, January 18, 1915.

Oath of Officers.

Query: Can an officer take his oath of office any time after the time prescribed by statute therefor?

Held: That statutes fixing time for the taking of oath of office are directory and not mandatory, and with the approval of the proper authorities, an officer can take his oath of office after the time fixed by law therefor.

PRIMARY ELECTIONS.

Primary Election Candidates Named by Nomination and not by Petition.

Query: May Candidates name appear upon primary party ticket where nomination has been made by petition and not by filing nomination papers?

Held: That for primary election purposes, nomination by petition was abolished by 1913 Session Laws, 350.

H. S. Gray, August 3, 1916.

SCHOOLS.**Investment of Proceeds of Sales of University Lands.**

Query: Who is vested with power to invest moneys arising from the sale of lands granted to the State University?

Held: That such power vests in the State Board of Land Commissioners.

Query: In what securities may such moneys be invested?

Held: That such funds may only be invested in United States, State and school district bonds and State warrants, or loans on first mortgages on improved lands within the State.

Query: What is the proper distribution of interest moneys derived therefrom?

Held: That during the present biennium such moneys may be used for the support and maintenance of the University, in accordance with the provisions of Sec. 4, 1905 Session Laws, 417.

Bernice McCoy, September 24, 1915.

Consolidation of Common School and Rural High School Districts.

Query: May a common school and a rural high school district consolidate in the interests of efficiency and economy?

Held: That they may not, but that they may contract with each other for the use of the same buildings, etc., so long as neither interferes with the other.

Bernice McCoy, March 16, 1916.

Building of Teachers' Cottages by School Boards Not Permitted.

Query: Has a school board the authority to build cottages for the accommodation of teachers employed by the district?

Held: That under the law as it now stands, the board is not vested with such authority.

E. O. Sisson, April 11, 1916.

Use of Schoolhouse for Religious Purposes.

Query: Under what conditions, if any, may religious services be held in a schoolhouse?

Held: Such services may be held by any church, charitable society or institution, upon such terms as the directors may say, so long as such services are not held during school hours and do not in any way interfere with the regular work of the school.

Mark Austin, November 18, 1915.

School District Elections—Qualifications of Electors.

Query: Who may vote in school district election upon the question of selecting new schoolhouse site?

Held: That any person having the qualifications prescribed under the general election laws of the State may vote at such election.

Query: Who may vote upon the question of special tax to be levied?

Held: That for this purpose, the above qualifications of electors

are further narrowed to "actual resident freeholders or heads of families." In other words, only those persons may vote who actually reside within the district and own property, or are the heads of families therein.

E. T. Mitton, April 16, 1915.

Assistant to County School Superintendent.

Query: May a county superintendent employ an assistant?

Held: That under Sec. 37 of Chapter 159, Session Laws 1911, specific authority is given for the employment of an assistant or assistants in the office of the county superintendent.

Ella M. Miller, January 29, 1915.

Free Text Books for Schools.

Query: Is it mandatory upon school districts to furnish free text books?

Held: That it is not, but that the district has the authority to decide at a meeting held for that purpose, whether or not free text books shall be furnished.

Myrtle Journey, July 10, 1915.

Rescission of School District Bond Sale.

Query: If after voting, issuance and sale of school district bonds it is decided not to use the money for the purposes for which the bonds were voted, can the money derived from the sale of the bonds be employed to pay them off and so stop interest?

Held: That a meeting of the school district be called and that if two-thirds of the voters present, qualified to vote at bond elections, vote to retire the bonds, the board may do so.

J. P. Gray, July 12, 1915.

Independent School District Funding Bonds.

Query: May independent school districts issue funding bonds for any other purpose of funding other than bonded indebtedness?

Held: That they may not.

W. J. Mitchell, January 15, 1916.

School District Deficiency Warrants.

Query: Under what circumstances may a school district issue deficiency warrants?

Held: That, under the provision of Chapter 5, 1915 Session Laws, 19, orders for warrants may be issued without reference to the income for the year, but cannot exceed an amount equal to the ordinary and necessary maintenance expenses of the district for the minimum term, in the event of the approval of the State Board of Education.

Allen P. Asher, May 3, 1915.

Eight Grades Only for Rural Schools.

Query: May rural schools give ninth grade work?

Held: That none but rural high schools have authority to have more than eight grades.

Nellie Albretson, October 13, 1915.

State Funds Available Only to District Schools Where All Pupils Have Nine Months School.

Query: May a school participate in State funds under the provisions of Sec. 54 of the School Code, in which some of the pupils receive less than nine months school?

Held: That it may not.

Ralph W. Adair, July 29, 1915.

Limit of School District Special Tax.

Query: Where the special tax of 10 mills is insufficient, may the school district levy an additional amount for gymnasium work?

Held: That it may not, reference being made to Sec. 1, Chapter 93, 1915 Session Laws.

J. Frank Sims, May 27, 1915.

School District Trustees.

Query: Has the board of trustees of an independent school district, not class A, power to make a contract employing a principal of schools for a term of two years?

Held: That the board has such right.

TAXATION.**Assessment of Bank Property.**

Query: Is a bank that carries on an abstract business entitled to exemption from taxation for such abstract department, under Sec. 173, Revenue Law, Laws 1913?

Held: Bank is not entitled to such exemption.

H. Rothwell, February 17, 1915.

Assessment of Reservations of Mineral Rights in Lands.

Query: Has the assessor the right to assess reservations of mineral right in lands sold to corporations, and fix a flat valuation thereon?

Held: A flat valuation would be illegal.

Thomas E. Martinson, March 25, 1915.

Apportionment of Penalties on Delinquent Taxes, in Cases of Special Assessments.

Query: Shall penalties and interest collected on delinquent taxes on special assessments for city, village or independent school district purposes be apportioned to such city, village or school district respectively?

Held: That with the exception of attorney's fees and costs of suit which are apportioned to the county expense fund, such cities, villages and school districts are entitled to their proportionate part of the interest, penalties, and costs accrued by reason of the delinquency.

T. W. Smith, February 11, 1916.

Exemptions.

Query: Can a person who has received an exemption of \$1,000.00 under sub-division D, Sec. 4, Chap. 58, Session Laws 1913, claim an additional exemption under sub-divisions G, H, I and J?

Held: This question answered in the negative in view of the clear language of the first paragraph of Sec. 4.

E. L. Weaver, December 30, 1914.

Last Date for Receiving Taxes Without Penalty.

Query: May county commissioners waive penalty where taxes are not paid prior to first Monday in January?

Held: That they have no authority to do so.

C. W. Holmes, January 29, 1915.

Road Poll Taxes.

Query: Are road poll taxes levied in a highway district comprising an entire county properly certified up to the tax collector of the county for the collection of delinquent taxes?

Can such taxes so certified be made a lien against real estate assessed to the person liable therefor?

Held: That both of these questions must be answered in the affirmative.

H. O. Frazier, December 16, 1914.

Special Municipal Assessments—Who Shall Place Upon Assessment Roll?

Query: Referring to Sec. 2337 R. C. and Sec. 107, Art. 7, Chap. 58, 1913 Session Laws, upon whom devolves the duty of placing special municipal assessments upon the assessment roll?

Held: That the latter section does not, by implication, repeal the former, and that such duty devolves upon the county assessor.

Chester O. Cornwall, November 9, 1915.

Tax Sale Certificate.

Query: Is the purchaser of a tax sale certificate for any given year such a party in interest within the meaning of Sec. 133, Chapter 58, Session Laws 1913, as to be entitled to redeem the property covered by his tax sale certificate from a delinquency certificate issued against the same property for any subsequent year?

Held: Question answered in the affirmative.

C. W. Pomeroy, December 18, 1914.

Tax Foreclosures by County.

Query: Is it mandatory upon county officials to institute tax foreclosure proceedings in cases where such proceedings would result in actual loss to the county, owing to the inconsiderable value of the property involved?

Held: That although it is apparently mandatory that tax foreclosures be brought in all cases, yet the county commissioners would not be justified in foreclosing in cases where by such foreclosure a monetary loss would result to the county.

Henry S. Gray, November 27, 1915.

Taxation of Mining Rights to Use of Stream.

Query: Where a mining company has a right to dump tailings, waste material and debris into a stream, is such right taxable, and if so, how?

Held: That such rights, being incidental to the general operations of the mining company, are not subject to taxation, except as they are included in the tax which the State imposes upon the mines as such.
Dean Perkins, January 4, 1916.

Taxes on Carey Act Lands.

Query: When do Carey act lands first become assessable?

Held: Taxes should be assessed and collected upon Carey Act lands from the time final proof is made upon such lands and accepted by the State of Idaho.

William A. Kincaid, Assessor, July 15, 1915.

Manner of Fixing Value of Carey Act Lands Under Partially Paid Contracts.

Query: What is the taxable interest of the settler upon Carey Act lands, where the contract price for the purchase of same together with water right has only been partially paid?

Held: That such interest is such portion of the full cash value of the land as the ratio existing between the amount of the payments made upon the contract bear to the total amount of the contract.

D. C. McDougall, July 16, 1916.

TRANSPORTATION.

Free Transportation—Issuance of.

Query: Under House Bill No. 129, 1915 Legislature, who would be entitled to receive free transportation?

Held: Transportation may be issued to any officer whose duties require him to travel in the interests of the State, or to any deputy authorized to perform the duties of his superior on any particular occasion.

Public Utilities Commission, March 22, 1915.

Transportation—Issuance of Free.

Query: Have railroad companies a right to issue free transportation to certain state officials and deny the same to others when such officials have been recommended by the Public Utilities Commission?

Answer: Railroad companies must either adopt the recommendations of the Public Utilities Commission and issue free transportation to all officials recommended, or refuse to issue such transportation to any member of the class.

Public Utilities Commission, April 10, 1915.

Free Transportation for Public Officers and Deputies.

Query: Who are the officers to whom free transportation may be legally issued?

Held: That free transportation may be issued to any State official who holds an office created by the Constitution or laws of this State, and to the deputy of such official; also to sheriffs and their deputies.

Query: Who are to be considered as deputies within the meaning of the act providing for free transportation of officers and their deputies?

Held: That for the purposes in question, a deputy is one authorized or appointed by a State official or a sheriff to exercise the right or office which the official himself exercises or possesses, for and in the place of the said official.

Public Utilities Commission, March 22, 1915.

Free Transportation for Physicians, Surgeons and Attorneys at Law.

Query: Under what circumstances may "physicians, surgeons and attorneys at law" use free transportation on common carriers?

Held: That they may do so only when it appears that they are in the permanent employment of such common carrier, or are actually employed for the time being upon business of such carrier which necessitates the particular travel for which the free transportation in question has been issued.

Public Utilities Commission, January 7, 1915.

Free Transportation to Ministers of Religion.

Query: Is the President of a stake of the Church of Jesus Christ of Latter Day Saints a minister of religion such as may receive free transportation under the law.

Held: That he is.

Query: Must a minister of religion devote his entire time to his ministerial duties, in order to entitle him to use free transportation?

Held: That a person duly ordained in his respective church, to officiate and administer, is a minister of religion within the meaning of the law, and employment along other lines does not affect his status as such minister.

Public Utilities Commission, January 18, 1916.

Query: Has the Public Utilities Commission the power to classify ministers of religion, under the provisions of Sec. 16 A-3, 1915 Session Laws, page 258, for the purpose of determining whether they shall receive annual free transportation or half fare permits?

Held: That such commission has such power.

Public Utilities Commission, September 23, 1915.

WATER RIGHTS.

Right to Surplus Water.

Query: If a company has decreed to it more water than it can put to beneficial use, can it retain title thereto.

Held: That under our statutes, title to water may not be obtained but only the right to the use thereof, and when the water is abandoned or not put to beneficial use, the title automatically reverts to the State.

William Stibel, March 6, 1915.

Right to Lease Water Right.

Query: Can a person temporarily lease a water right belonging to him for which for the time being, he has no use?

Held: That where a person has an unqualified right to the use of water, he may lease the same temporarily.

G. A. Condie, July 31, 1915.

Water for Stock and Domestic Purposes.

Query: Has a person the right to use water for domestic and stock purposes which has been previously appropriated and used by a lower appropriator?

Held: That if all the water in question has been legally appropriated by the lower user, it could not be taken by a later claimant for stock and domestic purposes without instituting condemnation proceedings.

Barbara Hoover, May 12, 1915.

Irrigation District Law as Applied to Artesian Projects.

Query: Under the irrigation district law, may a district be formed under which the water supply is to be derived from artesian wells?

Held: That it may.

George A. Bremer, February 2, 1915.

MISCELLANEOUS.**City Appointive Officer Need Not Live Within City Limits.**

Query: Must a city attorney live within the city limits?

Held: A city attorney, being an appointee, is not such an officer as is required by Sec. 2189 R. C., to reside within the city limits.

W. R. Hamilton, June 4, 1915.

Discrimination in Telephone Rates.

Query: Where persons are receiving identically the same class of telephone service as others, can a part of them lawfully be charged seventy-five cents per month while others are only charged fifty cents per month?

Held: That such action constitutes unlawful discrimination and that matter should be referred to Public Utilities Commission.

J. A. Arkoosh, February 5, 1916.

Express Franks for State Property.

Query: Is it lawful for express companies to issue franks for the purpose of transporting property for the State of Idaho?

Held: That such action is lawful so long as the transportation for which franks are issued lies wholly within the State of Idaho.

Public Utilities Commission, March 30, 1915.

Jurisdiction Over Mineral Lands Within School Sections.

Query: Does mineral land within school sections come within state or federal jurisdiction in the matter of passing title?

Held: That if the land in question was "known mineral land" prior to the survey, by the terms of the grant from the federal government, it is exempted and title does not pass to the State. If, however, the land was not known to be mineral in character prior to the survey, title would pass to the State at the time of the survey, although it might afterwards appear that the land was mineral in character.

Ravenal Macbeth, November 7, 1915.

Prohibiting Sale of Soft Drinks, Etc., in Pool Halls.

Query: Is it within the police power of city councils to prohibit

the sale of soft drinks, tobacco, refreshments or confections in pool halls?

Held: That if the sale of these commodities in a pool hall interferes with the enforcement of the law, and if there is reasonable ground to believe that such is the case, the council has power to pass an ordinance prohibiting such sale.

S. C. Chadwick, November 10, 1915.

Right to Sell Papers Upon Railway Station Platform.

Query: May a railroad company grant the exclusive right to sell papers on its railway station platforms?

Held: That it may.

Public Utilities Commission, April 14, 1916.

Sale of Drugs by Osteopaths.

Query: May an osteopath legally sell or administer drugs?

Held: That he may not, reference being made to Chapter 61, 1915 Session Laws, page 148.

Dr. Ed. E. Maxey, September 2, 1915.

Selling of Meat by Farmers.

Query: Can a farmer, under the provisions of Section 27, Chapter 184, Session Laws 1911, as amended in 1913, page 365, sell meat butchered by him?

Held: That his right to sell is absolute as soon as meat has passed inspection by Sanitary Department of State.

George W. Padgham, December 7, 1915.

Sunday Rest Law as Applied to Express Companies.

Query: Do express companies come within the provisions of Sec. 6824, Revised Codes, prohibiting the carrying on of business on Sunday.

Held: That they do.

Query: Are such companies required to advise the public through the Public Utilities Commission that they will not accept intra-state shipments on Sunday?

Held: That they are not so required, since it is unnecessary to declare that an unlawful act will not be performed.

Query: If by statute an inhibition is put upon express companies prohibiting carrying on business on Sunday as to intra-state shipments, should it not apply to inter-state shipments as well?

Held: That it does not so apply, since the authority of the State may not place any burden whatever upon inter-state commerce.

Public Utilities Commission, November 30, 1915.

University Professor Not an Officer Within Sec. 2080, R. C.

Query: May a county attorney legally hold a professorship in the State University in view of the provisions of Sec. 2080, R. C.?

Held: That a University professorship is neither a "county nor State office" as contemplated by said section.

A. H. Oversmith, November 20, 1915.

Inclusion of Costs With Fine in Fixing Jail Sentence.

Query: Where one has been fined and is sent to jail for non-payment thereof, may costs of prosecution be included with fine in determining how many days' imprisonment shall run based upon the rate of deducting \$2.00 from the fine for each day served?

Held: That in such cases the costs of prosecution may be added to the fine and worked out at the rate of \$2.00 for each day's imprisonment.

Joseph H. Horton, January 8, 1916.

Employment of Labor on State Work by the Hour.

Query: Do the Idaho statutes prohibit employment of laborers by the hour on State work?

Held: That there is no such prohibition, provided that the compensation is made upon the basis of an eight-hour day, and that such laborers shall not be required nor permitted to work more than eight hours per day, unless in case of emergency.

P. B. Shawhan, February 9, 1916.

Magic Reservoir a Lake or Navigable Stream.

Query: Is Magic Reservoir to be considered as a lake or navigable stream within the meaning of 1911 Session Laws 175, permitting the catching of trout between the first day of April and the first day of May in lakes and navigable streams.

Held: That it is.

J. H. Helman, April 18, 1916.

Use of Endowment Fund of Idaho Insane Asylum for Building Purposes Prohibited.

Query: May the endowment fund of the Idaho Insane Asylum be employed for building purposes?

Held: That it may not.

M. Alexander, May 27, 1916.

Requiring Individuals to Produce Tax Receipts in Auditing County Books.

Query: May the State auditor require private individuals to produce their tax receipts, cancelled personal checks or other evidence of the payment of taxes, when it is found that such evidence is necessary in making a complete audit of the county books?

Held: That the State Auditor possesses no such authority?

Fred L. Huston, June 23, 1916.

Prosecution for Pollution of Stream or Lake by Sawdust.

Query: In prosecutions for the pollution of streams or lakes by allowing sawdust to pass into same, is the State required, under the provisions of Sec. 6, 1909 Session Laws, 90, to show that the permitting of sawdust to pass into a stream or lake "will or may tend to the destruction or driving away from such waters, any fish?"

Held: That such showing is not required to be made, and that the above quotation refers only to "other substances" mentioned in the act, and not to the words "any sawdust," it being a matter of

common knowledge that sawdust, when permitted to enter a stream or lake, will injure the fish therein.

W. H. Taylor, July 26, 1916.

Municipal Bond Election.

Query: At an election called for the purpose of voting upon bonds issued for erecting a municipal electric lighting plant, it was desired to know who are entitled to vote, and the vote which such bonds must receive in order to carry.

Held: Under Sec. 2316, as amended by Chap. 64, Session Laws 1913, only qualified electors who are taxpayers of a city or town may vote at such election, and that two-thirds of all such qualified electors must vote in favor of the bond issue before the same carries.

John Ferebauer, December 22, 1914.

Assistance Given One Department of State Government by Another.

Query: Has the University a right to furnish an engineer to assist the Utilities Commission in making property valuations?

Held: The use of funds appropriated for the University in accomplishing the work pertaining to the Public Utilities Commission would be a violation of law.

Ralph Bickell, March 17, 1915.

Pool and Billiard Table Licenses.

Query: Is it necessary to take out a license in order to maintain a pool or billiard table in a club or lodge room?

Held: That it is not necessary to take out such license, except in places which are open to the general public.

Jesse P. Rich, December 16, 1914.

Federal Revenue Stamps.

Query: What is the responsibility of the county recorder in regard to use of federal revenue stamps?

Held: Responsibility for failure to attach revenue stamps to instruments filed for record rests with those executing the instruments.

Ray Gudmunsen, February 3, 1915.

CONSTRUCTION OF ANTI-NEPOTISM ACT (1915 SESS. LAWS, 40).

For the guidance of officers of the different state, county and municipal governments in Idaho, the following opinion is given regarding the application of the Anti-Nepotism Act, which appears as Chapter 10 of the Session Laws of 1915, page 40.

The act in question includes all relationships within the third degree of consanguinity or affinity.

Consanguinity refers to blood relations; affinity refers to the relationship existing between a husband and the blood relatives of his wife, and between a wife and the blood relatives of her husband. Affinity includes, in addition to the above, all brothers- and sisters-in-law; thus, in the case of two married sisters, their husbands are related to each other by affinity.

The following relationships and none other are covered by this act: Parents, grandparents, great grandparents, uncles and aunts, brothers and sisters, children, grandchildren, great grandchildren, nephews and nieces, husbands and wives.

A public officer making an appointment of any of the above named relatives of his own, or of his wife, is subject to the penalties of the act.

Appointments of relatives within the prohibited degree made prior to May 8th, 1915, are legal, but such relatives cannot draw pay for any services rendered after May 8th, 1915, without subjecting the officer or officers paying them to the penalties of the act.

Boards of County Commissioners cannot, after May 8th, 1915, appoint to office, nor authorize the payment of a salary to, any person who is related to any member of the Board, within the prohibited degree. This applies to all state boards and commissions, all county boards, all city and municipal boards and councils, and all trustees and directors of road districts.

School districts, irrigation districts, drainage districts and improvement districts are not included within the terms of the act.

The head of one department of the state, county or municipal governments may, when the sole and exclusive appointing power rests in him, appoint to office a relative, within the prohibited degree, of the head of any other state, county or municipal department, whenever such appointment is not "made on the agreement or promise of such other officer or any public officer to appoint or furnish employment to anyone so related to the officer making or voting for such appointment."

The State Board of Examiners and the Boards of County Commissioners, when auditing claims, are not violating the act when they approve the claims of persons legally appointed and serving, even though such persons are related to members of the Board of Examiners and Boards of County Commissioners.

The penalty of the act is a fine of not less than ten dollars nor more than one thousand dollars, and removal from office for any officer making any illegal appointment, and a similar penalty for any officer knowingly paying money to any person illegally appointed or illegally continued in employment after May 8, 1915.