

REPORT  
OF THE  
ATTORNEY GENERAL  
OF THE  
STATE OF IDAHO  
—  
1925-26  
—

A. H. CONNER, Attorney General

*HERBERT WING, Assistant	SAM E. BLAINE, Assistant
xJAMES L. BOONE, Assistant	JOHN W. CRAMER, Assistant
xBARTLETT SINCLAIR, Assistant	LEON M. FISK, Assistant

Margery Scholes, Secretary, Lillian C. Fraser, Law Stenographer,  
Dora M. Haas, Mortgage Clerk.

\*Deceased  
xResigned

**IDAHO DISTRICT JUDGES**  
1927-1930

District		Address
First	A. H. Featherstone	Wallace
Second	Edgar C. Steele	Moscow
Third	Dana E. Brinck	Boise
	Clinton H. Hartson	Boise
Fourth	Henry F. Ensign	Hailey
Fifth	Robert M. Terrell	Pocatello
	O. R. Baum	Pocatello
Sixth	Ralph W. Adair	Blackfoot
Seventh	Ed. L. Bryan	Caldwell
	Bertram S. Varian	Weiser
Eighth	W. F. McNaughton	Coeur d'Alene
	Chas. L. Heitman	Sandpoint
Ninth	George W. Edgington	Idaho Falls
Tenth	Miles S. Johnson	Lewiston
Eleventh	Wm. A. Babcock	Twin Falls
	Hugh A. Baker	Rupert

# 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
Roy L. Black .....	1919-1922
A. H. Conner .....	1923-1926
Frank L. Stephan .....	1927-

# JUSTICES OF THE SUPREME COURT, 1925-1926

*Robert N. Dunn .....	Coeur d'Alene
*William A. Lee .....	Blackfoot
Alfred Budge .....	Pocatello
William E. Lee .....	Moscow
Raymond L. Givens .....	Boise
Herman H. Taylor .....	Sandpoint
T. Bailey Lee .....	Burley

Clerk of the Supreme Court—I. W. Hart

# JUSTICES OF THE SUPREME COURT, 1927-1928

William E. Lee .....	Moscow
Alfred Budge .....	Pocatello
Raymond L. Givens .....	Boise
Herman H. Taylor .....	Sandpoint
T. Bailey Lee .....	Burley

Clerk of the Supreme Court—I. W. Hart

# UNITED STATES DISTRICT JUDGE

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

\*Deceased

PROSECUTING ATTORNEYS FOR THE VARIOUS COUNTIES  
OF IDAHO

1927-1928

Ada .....	Carl A. Burke.....	Boise
Adams .....	C. H. Swanstrom .....	Council
Bannock .....	H. J. Swanson.....	Pocatello
Bear Lake .....	Geraint Humphreys.....	Paris
Benewah .....	Wm. D. Keeton.....	St. Maries
Bingham .....	Z. Reed Milar.....	Blackfoot
Blaine .....	W. A. Brodhead.....	Hailey
Boise .....	Lawrence Quinn.....	Idaho City
Bonner .....	Sidney H. Smith.....	Sandpoint
Bonneville .....	Joshua T. Evans.....	Idaho Falls
Boundary .....	A. T. Aronson.....	Bonnors Ferry
Butte .....	Jo. G. Martin.....	Arco
Camas .....	Frank Croner .....	Fairfield
Canyon .....	H. A. Griffiths.....	Caldwell
Caribou .....	D. K. McLean.....	Soda Springs
Cassia .....	T. M. Morris.....	Burley
Clark .....	Grant W. Soule.....	Dubois
Clearwater .....	Arthur S. Guerin.....	Orofino
Custer .....	Merle L. Drake.....	Challis
Elmore .....	R. W. Beckwith.....	Mountain Home
Franklin .....	J. A. Carver.....	Preston
Fremont .....	N. D. Jackson.....	St. Anthony
Gem .....	H. M. Haag .....	Emmett
Gooding .....	M. F. Ryan.....	Gooding
Idaho .....	Frank E. Fogg.....	Grangeville
Jefferson .....	F. A. McCall.....	Rigby
Jerome .....	E. D. Reynolds.....	Jerome
Kootenai .....	E. T. Knudson.....	Coeur d'Alene
Latah .....	Abe Goff.....	Moscow
Lemhi .....	Francis R. Hall, Jr.....	Salmon
Lewis .....	Leo L. Abbott.....	Nez Perce
Lincoln .....	Paul S. Haddock.....	Shoshone
Madison .....	C. L. Hillman.....	Rexburg
Minidoka .....	H. V. Creason.....	Rupert
Nez Perce .....	Fred J. Babcock.....	Lewiston
Oneida .....	Darwin W. Thomas.....	Malad
Owyhee .....	B. R. Riordan.....	Silver City
Payette .....	F. A. Wilbur.....	Payette
Power .....	R. S. Anderson.....	American Falls
Shoshone .....	Chas. E. Horning.....	Wallace
Teton .....	B. W. Driggs.....	Driggs
Twin Falls .....	O. W. Witham.....	Twin Falls
Valley .....	Fred M. Taylor.....	Cascade
Washington .....	D. L. Carter.....	Weiser



## REPORT OF ATTORNEY GENERAL

---

Honorable C. C. Moore,  
Governor of Idaho,  
Boise, Idaho.

Sir:

I have the honor to make this report concerning the affairs of this department up to December 1, 1926. I am attaching a transcript of the Attorney General's dockets showing the status of cases handled during the past biennium. A digest of the more important opinions prepared and written by this office during the past biennium is also included in this report.

I wish to repeat my recommendation of two years ago that the Reclamation District Bond Commission law be repealed. I also wish to invite your attention to the recommendations made two years ago regarding the amendment of the inheritance tax laws of the state.

### REVENUE LAWS

The revenue laws relating to the collection of personal property taxes have been in a chaotic condition since the decision of the Supreme Court of this state in the case of State vs. Malcom, reported in 39 Idaho, page 185. This decision held that Sections 3267 and 3307, C. S., which made it the duty of the assessor to collect certain personal property taxes, were unconstitutional. There are other sections to which the same principle would apply. This condition should be called to the attention of the legislature so that the resulting confusion can be cured. There has been a little difficulty in some of the counties, but on the whole, the splendid cooperation between the assessors, county auditors and tax collectors of most of the counties has prevented any serious loss of revenue. The condition, however, should be remedied at the earliest opportunity.

## CLAIMS AGAINST THE STATE

The law relating to the work of the State Auditor and the Board of Examiners in the auditing and allowance of claims is archaic and cumbersome. The legislature has prescribed the procedure in the handling of claims against the state in minute detail. These provisions hamper the work of the State Auditor, and quite often work a distinct hardship on officials and employees who are required to travel on business of the state. I have filed with the State Auditor a copy of the official government travel regulations prepared by the Bureau of the Budget and approved by the President, effective October 1, 1926. These rules and regulations are the result of a very careful study of the entire question, and Idaho's system could well be modernized by taking advantage of the research and experience of the federal government. I recommend that the statute fixing a \$5.00 per day limitation upon travel expenditures be repealed; that the other provisions requiring that receipts be furnished in all instances and prescribing in detail the form and manner of handling vouchers be repealed; and that a general statute be passed authorizing the Board of Examiners to make rules and regulations governing the whole question. For the Board of Examiners, I would recommend that all commutation for use of privately owned automobiles be dispensed with, and that an official or employee using his own car be reimbursed only for his actual expenditures for gasoline, oil and garage rent. While this might work a hardship in some instances, I believe it would effect a material saving for the state, and check a practice which is rapidly growing into an abuse.

I further recommend that, if the laws shall be changed as above suggested, the Board of Examiners model their

rules and regulations for travel and other expenses very closely upon those of the federal government which appear in the pamphlet filed with the State Auditor.

### *PENITENTIARY*

I know that you are fully aware of the necessity of some relief for the congested condition at the state penitentiary. Eventually, the state will be forced to purchase land elsewhere and build a new prison. Until this is done, it is imperative that more cell room be provided. While the Warden has carried out the segregation policy of the board as well as could be expected under the circumstances, the legislature should be asked for a sufficient appropriation to complete the unfinished cell house now occupied by the shoe factory, and modern, up-to-date, steel cell equipment should be placed therein. This equipment could be moved to a new site when one is chosen. The legislature should also be requested to appropriate a sum sufficient to permit the construction of a dormitory outside the walls for the housing of trustees. It might be possible for this dormitory to be constructed from the earnings of the shirt factory, and the appropriation for that purpose might well take the form of an advance of funds to be repaid out of the earnings of the factory, as was the case with the original appropriation for the construction of the factory building.

### *HABITUAL CRIMINAL LAW*

I would earnestly recommend the passage of an habitual criminal law for Idaho. While the population of our penitentiary has increased during the past two or three years, it has not been because of any particular increase in crime over the state, but is the result of the policy of the pardon and parole boards to be slow about releasing men duly convicted and sentenced to the penitentiary. I firmly believe, however, that a law providing a more severe punishment for habitual criminals will materially reduce crime in this state, as it will in any other jurisdiction where it obtains. I would particularly invite your attention to a law commonly known

as the "Baumes Law", passed in New York last winter and effective July 1st of this year. (Vol. 1, Laws of New York 1926, Chapter 457, page 805). This law provides that as a punishment for a second offense of felony, the offender shall be sentenced for not less than the longest term, or more than twice the longest term, prescribed for a first conviction; and for a fourth conviction of a felony, such offender shall be sentenced to life imprisonment.

There is no question about the effect of this law in the State of New York. A prominent New York official connected with its prison work informed me that in his opinion this law had resulted in at least twenty-five per cent of the known criminals in the City of New York migrating to neighboring states. The law became effective July 1, 1926, and the courts of that state were crowded during the latter part of June with applications for those awaiting trial for permission to plead guilty that they might be sentenced before this law took effect. This one fact alone should be sufficient proof of the efficacy of an habitual criminal act. There have been some objections made to the severity of the act, and the fact that it leaves no discretion to the court charged with fixing the sentence. I do not believe, however, that these objections are particularly well founded. Certainly the resulting benefits to society outweigh them. I earnestly urge that this matter be called to the attention of the legislature.

### CONCLUSION

I would invite your attention to the copy of the office dockets attached hereto. The large number of mortgage foreclosure cases closed and pending is the result of determination on the part of the Land Board and the Department of Public Investments to clean up state loans and get them upon a business basis. For this purpose, I employed extra stenographic help during the biennium, and these matters are now in process of determination.

All criminal cases have either been disposed of or are ready to be argued at the next sessions of the Supreme Court.

The civil dockets indicate the wide range of litigation which it is necessary for this office to handle.

Respectfully Submitted,

A. H. CONNER  
Attorney General.



## DIGEST OF OPINIONS RENDERED

(Only opinions of general interest are included)

## COMMON CARRIER: DEFINITION.

1. A "common carrier" is generally defined as "one who undertakes for hire or reward, to transport the goods of such as choose to employ him from place to place." Before an operator can be held to be a common carrier of passengers or goods, there must have been a dedication of his facilities to the public, by which he becomes obligated to transport passengers or goods, or both, to the extent of the facilities offered and within the limits of his dedication. Without this dedication to the public he is a "private" as distinguished from a "common" carrier.

## CORPORATIONS: BLUE SKY, FORFEITURE.

2. The forfeiture referred to in Section 5312 applies only to a corporation's right to do business as an investment company, and does not affect its right to do business in other capacities upon compliance with the laws governing such other activities.

## CORPORATIONS: FEES, REINSTATEMENT.

3. The \$10.00 reinstatement fee prescribed by Section 4782, C. S., in the case of delinquent corporations, is to be collected for each year of the delinquency.

## CORPORATIONS: SURETY COMPANIES.

4. Corporations which have not complied with the laws of Idaho relating to surety companies and have not secured a certificate from the Department of Finance, as required by Section 5105, C. S., cannot be accepted as sureties in this state.

## ELECTIONS: FILING FEES.

5. Section 546, requiring the payment of a fee upon the filing of a nomination paper, does not apply to a candidate who becomes such by reason of having had his name written on the ballot.

## ELECTION: STICKERS, USE OF.

6. Two general principles underlie all questions as to the use of the Australian ballot: first, the vote must be counted in accordance with the evident intention of the voter; and, second, a ballot is void if it is so marked as to identify the person casting it. In the absence of a statutory prohibition of the use of stickers, I cannot see any objection to them, provided they are so printed and attached to the ballot as to prevent the identification of the voter. It seems to me a sticker is capable of expressing the intention of the voter very clearly, and if it meets the requirements as to the secrecy of the ballot, I think the law would be satisfied.

## ELECTION: VOTERS, INTENTION OF.

7. Where a voter places a cross in the circle at the top of two different tickets, his vote must be counted for the names in each column where there are no other names in the other column for the same office.

The whole test of counting votes is the intention of the voter, and if his intention can be determined, the vote must be counted no matter how he marks his ballot.

#### ELECTION: VOTERS, QUALIFICATIONS OF.

8. Under the Constitution of Idaho, a person who is confined in prison on conviction of a criminal offense cannot vote.

#### ELECTIONS: VOTERS, RESIDENCE OF.

9. There is no more puzzling question than that of the qualification of a voter where it depends upon residence. A person may have maintained his residence in Idaho for a decade and by some act of his demonstrated in a very short time, by moving out of the state, acting as an elector in some other jurisdiction, or some other overt act, his intention to take up his residence in some other place; or he may, as many people actually do, move from the state with the intention of returning and with no intention of taking up his residence somewhere else. I have known cases where people have been absent from the state for several years, travelling, or on other business, but who have always maintained their local residence in Idaho because they had no intention of establishing their residence anywhere else. I was once absent from the State of Idaho for something like three years and no question ever arose in my mind, and I do not think in the minds of anyone else, as to my rights as a citizen of Idaho. Each case must rest upon its own facts.

#### ELECTIONS: WRITING IN NAMES.

10. There is no direct provision for the writing in of names at a primary election, but it is evident that it was the intention of the legislature to permit nominations to be so made. The only reference, however, to writing in of names is found in Section 557, C. S., where it is provided that a person whose name is not printed on the official ballot shall not be considered a candidate so as to require him to file an itemized statement unless he receives a certain percentage of the votes cast for that office. The necessary corollary to this is that if a person receives more than a certain percentage of the votes cast, he is a candidate, and under Section 538, C. S., if he receives the highest number of votes cast, he is nominated.

#### ESTATES OF DECEASED PERSONS: ADMINISTRATRIX.

11. I see no reason why a female nineteen years of age, if she is not otherwise disqualified, cannot be appointed administratrix under Section 7491, C. S. Under Section 4583, C. S., a female reaches her majority at the age of eighteen years, and this has been recognized in *Piatt v. Piatt*, 32 Ida. at page 414.

#### ESTATES OF DECEASED PERSONS: FEES OF ATTORNEY.

12. Idaho laws do not provide for a sliding scale for attorney's fees in the settlement of estates. There is a sliding percentage scale for the compensation of executors and administrators, but that officer is allowed such sum as the court may approve for attorney's fees.

#### ESTATES OF DECEASED PERSONS: PUBLIC ADMINISTRATORS, ATTORNEY.

13. The public administrator has no right to employ counsel other than the prosecuting attorney, except under the same cir-

cumstances which would authorize the employment of outside counsel in connection with any other county business.

**EXTRADITION: ESCAPE FROM INSANE ASYLUM.**

14. Under the Idaho statutes it is not a crime for a patient to escape from an insane asylum, and he could not be extradited for the mere act of escape. If, however, he was aided or assisted by another person in making his escape, he could be charged with the crime of conspiracy to obstruct justice and the due administration of the laws, as criminal conspiracy is defined in Section 8204, C. S. He could then be extradited and returned to Idaho by the usual procedure. See *Drew v. Thaw*, 235 U. S. 432, 59 L. Ed. 302.

**EXTRADITION: EXPENSE OF RETURNING FUGITIVES.**

15. On the authority of *Kroutinger v. Board of Examiners*, 8 Ida. 463, and *Roberts v. Board of County Commissioners*, 17 Ida. 379, which cases construe Section 9348, C. S., the cost of returning fugitives from justice to this state is not a proper charge against a county but is a proper charge against the state.

**FARM PRODUCE LAW: CASH SALES.**

16. The farm produce brokers act does not apply to cash sales for the reason that the title to the property passes with the sale.

**FARM PRODUCE LAW: PURPOSE.**

17. The purpose of the farm produce act was to protect the producer of fruit, vegetables and hay, and not to regulate competition in the purchase and sale of such commodities.

**FARM PRODUCTS: STANDARDS AND GRADES.**

18. Section 2032, C. S., specifically vests the Department of Agriculture with the authority to establish and promulgate standards for grade and receptacles for farm products, and to prescribe and promulgate rules and regulations governing the marks, bands and labels upon such receptacles "for the purpose of showing the name and address of the producer or packer, the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto."

(Standards adopted by the United States, so far as applicable, must be followed, and the statute contains a general proviso that the standards established and the requirements for marking shall not become effective until the expiration of six months after they shall have been promulgated.

Proper rules and regulations established and promulgated by the department, pursuant to the authority of this section, would have the force and effect of law and would subject a violator thereof to the penalty prescribed by Section 2037, C. S.

**GARNISHMENT: STATE NOT SUBJECT TO.**

19. I am of the opinion that the State of Idaho is not subject to garnishment nor can funds in its hands be attached.

**GAMBLING: SLOT MACHINES.**

20. This office has always held that slot machines come within the terms of our statute prohibiting the use of gambling devices.



**HIGHWAY DISTRICTS: INCLUDED MUNICIPALITIES.**

21. Under Section 1507 and 1568, C. S., the highway district board has general supervision and jurisdiction over all highways in their district, except in incorporated cities or villages, which constitute a separate division of the district, and the governing bodies of such municipalities, so far as relate to their respective municipalities, have the powers conferred upon the highway board.

**HIGHWAYS: MAINTENANCE.**

22. Chapter 66, Laws of 1925, relate solely to the maintenance of state highways and has nothing to do with construction.

**HIGHWAY DISTRICTS: ORGANIZATION.**

23. A highway district becomes organized when a certified copy of the order of the Board of County Commissioners declaring the district to be duly organized has been filed for record in the office of the County Recorder.

**HIGHWAY DISTRICTS: RIGHT OF WAY, CONDEMNATION OF.**

24. Boards of County Commissioners have no power to condemn rights of way for highways through highway districts. The department of public works has such power.

**HIGHWAY DISTRICTS: SECRETARY.**

25. Under Section 1504, C. S., a board of highway commissioners has the right to employ a secretary-treasurer, who is not a member of the board, if they so desire.

**IRRIGATION DISTRICTS: ASSESSMENTS AND TOLLS.**

26. So far as maintenance and operation are concerned there are two methods provided under the statutes for an irrigation district to collect payment for water furnished to water users in the district. The district may levy an assessment against the lands, in which event the amount of assessment becomes a lien upon the land to secure payment for the water, or the district may fix the amount of tolls to be charged for water and collect the money in advance.

It is my opinion that if the district adopts the first method, that is, levying a water assessment against the land, the district has no right to shut off the water to secure payment, but is limited to its lien on the land and must follow the statutory method of foreclosure. If the district follows the other method, by fixing the water tolls, it may refuse to deliver the water until it is paid for.

**IRRIGATION DISTRICTS: SALARY OF OFFICERS.**

27. The salary of a secretary or treasurer of an irrigation district is not fixed by law, but the board of directors has authority to fix such salaries under Section 4352, C. S., as amended by Chapter 73, Laws of 1923.

**JUSTICES OF PEACE: SMALL CLAIMS COURT.**

28. Section 2360, et seq, C. S., pertaining to collection agencies, do not apply to justices of the peace so far as their conduct of the small claims court is concerned.

**LICENSES: COLLECTION AGENCY, REALTORS.**

29. The taking out of a real estate broker's license would not excuse a realtor from complying with Section 2360, C. S., as amended by Chapter 126, Laws of 1925, relating to collection agencies, if such realtor came under its provisions. The real estate broker's license covers only the "selling" of real estate or an interest therein.

**LICENSES: MOTOR VEHICLE.**

30. No Idaho license is required in Idaho for a motor vehicle unless it is used on the public highways. A vehicle which is not licensed, however, must pay a personal property tax.

**LOTTERIES: CHANCES; PUNCH BOARDS.**

31. The use of a device to which an envelope is attached in which is inserted a premium certificate purporting to be worth ten cents and exchangeable under certain circumstances for merchandise, some of the envelopes containing a certain number also entitling the purchaser to a box of candy, in my opinion violates Section 8488, 8316 and 8318, C. S. I think punch boards are also in violation of Sections 8316 and 8318, C. S.

**NEPOTISM.**

32. The employment of the wife of the chief deputy in the county auditor's office to do clerical work in the same office would not be a violation of the nepotism law in view of the decision in *Barton v. Alexander*, 27 Ida. 286.

**NEWSPAPERS: PUBLISHING LEGAL NOTICES.**

33. Section 2340, Compiled Statutes, defines the qualifications of newspapers for printing legal notices. In order to print legal notices a weekly newspaper must have been published in the county during a period of 78 consecutive weeks prior to the first publication of a legal notice; and if published daily must have been published as a daily paper in the county during a period of 12 consecutive months prior to the first publication of a legal notice. This section pertains to all legal notices, advertisements or publication required or provided by the laws of the State of Idaho to be published in a newspaper.

**OFFICERS, COUNTY: FEES.**

34. A Clerk of the District court, as such, is not authorized to perform a marriage ceremony under Section 4602, C. S. If he does perform it, therefore, it must be as a minister of the gospel or in some other capacity than that of a public official, and the state or county is not interested in the fee that he may collect in so doing.

**OFFICERS, COUNTY: ABSENCE, DEPUTIES.**

35. Section 3555, C. S., which provides that no county officer must absent himself from the state for more than 20 days without the consent of the county commissioners, and the proviso in Section 3454, C. S., with reference to the appointment of a deputy to fill the officer's place during his absence, and obtaining consent of his bondsmen, must be construed together.

**OFFICERS, COUNTY: COMMISSIONERS, VACANCY.**

36. If a county commissioner has changed his residence from the commissioner's district from which he was elected, a vacancy exists.

**OFFICERS, COUNTY: DEPUTIES.**

37. Under Section 3546, C. S., a deputy acts in the absence of his principal; under Section 3550, C. S., the use of the name of the principal officer includes his deputies, and under Section 404, C. S., a deputy is required to take and file an official oath.

I think all of these provisions point to the necessity of a deputy having the same qualifications as his principal officer, and a person under twenty-one years of age would not be eligible to appointment.

**OFFICERS, COUNTY: JUSTICES OF PEACE, JURISDICTION.**

38. The jurisdiction of a justice of the peace as an examining magistrate extends throughout his county.

**OFFICERS, COUNTY: NEGLIGENCE OF.**

39. Some wise, old statesman once made the remark that "guilt is always personal," and this might well be applied to the relationship between a county and its officers. Its officers are charged with the performance of certain duties, and within the scope of their authority these officers can bind the county, but as the law does not authorize them to transact their business in a negligent manner, necessarily the county cannot be held responsible for such negligent acts. It is the individual officer, therefore, who becomes responsible in a case where damage arises from his negligence, and not his principal.

**OFFICERS, COUNTY: PROBATION OFFICER, COMPENSATION.**

40. A probation officer can be paid either a fixed monthly salary or by the job, in the discretion of the probate court with the approval of the Board of County Commissioners.

**OFFICERS, COUNTY: PROSECUTING ATTORNEY, DUTIES OF.**

41. In ordinary criminal cases, no duty to prosecute in justices' courts arises on the part of the Prosecuting Attorney until the Justice's Court has requested him to act, as provided by Subdivision 2, Section 3655, C. S., but in the case of a violation of the fish and game law, I think it becomes the duty of the Prosecuting Attorney to act whether he is required to do so by the Justice's Court or not.

**OFFICERS, COUNTY: PROSECUTING ATTORNEY, EXPENSES OF.**

42. The Prosecuting Attorney of a county is entitled to his actual and necessary expenses incurred in the performance of his official duties.

**OFFICERS, COUNTY: SHERIFF'S DEPUTIES.**

43. A sheriff has no authority to appoint a deputy to perform the ordinary and usual duties of his office unless empowered to do so by the Board of County Commissioners in the manner provided by law.

**PUBLIC UTILITIES COMMISSION: JURISDICTION.**

44. The Public Utilities Commission would have no jurisdiction over a local telephone company which is a purely mutual, non-profit or cooperative affair, operating at cost and not for profit, so as to bring it within the exception named in Section 2371, C. S.

**SCHOOLS: BIBLE, READING OF.**

45. The provisions of the Idaho Constitution are peculiar in that while the teaching of "religious" tenets or doctrines is prohibited, so far as the introduction and use of books are concerned, the question of religion seems to have been left out. It is only books of a "sectarian" or "denominational" character which are prohibited. In other words, while teachers or students may not be required to participate in religious services, and no religious tenets or doctrines may be taught, the use or introduction of religious books, etc., is not prohibited so long as those books are not sectarian or denominational in character.

I am of the opinion that selections from the "Standard American version of the Bible" may legally be read, without comment, by teachers in the public schools of the State of Idaho, provided such selections are chosen for their literary and moral value, as distinguished from their religious, sectarian, or denominational character.

**SCHOOLS: CHILDREN, TRANSPORTATION OF.**

46. The whole matter of transportation of school children rests in the discretion of the board of trustees, and so long as the provisions they make are reasonable, that discretion cannot be interfered with.

**SCHOOLS: CONTRACTS.**

47. A member of a school board of an independent school district may not write the insurance for the district.

**SCHOOLS: COUNTY SUPERINTENDENT, DUTY OF.**

48. If a teacher refuses to comply with the law relative to reading the Bible in the schools, and is upheld in her action by the Board of Trustees, it is the duty of the County Superintendent to notify the County Treasurer of such delinquency by the Board of Trustees, and it thereupon becomes the duty of the County Treasurer to withhold moneys apportioned to the district until he is notified by the County Superintendent that the delinquent board has fully complied with the law.

**SCHOOLS: ELECTION RETURNS.**

49. Informalities in the return to a county superintendent would not invalidate a school election if sufficient information is given so that that official is able to canvass the return and notify the board or boards of trustees of the result.

**SCHOOLS: FUNDS, DISBURSEMENT OF.**

50. The State Board of Education has nothing to do with the paying out of the funds of school districts.

**SCHOOLS: INDIANS.**

51. The Idaho Constitution and laws make no exception of Indian children, and I am of the opinion that they have the right to attend the public schools of the state.

**SCHOOLS: SCHOOL HOUSE, PURCHASE OF.**

52. No part of the general fund of a common school district can be used for the purchase of a school house unless authorized by the annual meeting, as provided in Section 50, Chapter 215, Laws of 1921, as amended by Chapter 52, Laws of 1923.



**SCHOOLS: SCHOOL HOUSE SITE.**

53! In order to designate a site for a new school house, an election must be held for that purpose.

**SCHOOLS: TEACHER, BREACH OF CONTRACT BY.**

54. The failure of a teacher to comply with the law requiring the reading of the Bible in the schools constitutes a breach of the contract which the teacher entered into with the school district.

**SCHOOLS: TEACHERS, EMPLOYMENT OF.**

55. The power to employ a teacher rests entirely with the board of trustees. The county superintendent has no authority to employ a teacher, or cause one to be employed.

**SCHOOLS: TEXT BOOKS.**

56. The State Board of Education may adopt textbooks for the use of all the public schools of the state with the exception of independent class A and joint independent class A school districts, who are authorized to adopt their own textbooks under Section 47A, Chapter 215, Laws of 1921.

**SCHOOLS: TUITION, SPECIAL AID.**

57. Under Section 998, C. S., the payment of high school tuition may be judged a part of the necessary minimum expense of a district in applying special aid under the 17% fund provided for by Section 908, C. S., as amended by Chapter 68, Laws of 1925.

**SUNDAY CLOSING: MERRY-GO-ROUND.**

58. Any person who operates a merry-go-round in Idaho on Sundays is guilty of a misdemeanor.

**TAXES: ASSESSMENT, RAILROAD OPERATING PROPERTY.**

59. Any property acquired or held by a railroad with the intention of using it in the immediate future for operating purposes is classed as operating property, and should be assessed by the State Board of Equalization.

**TAXES: CANCELLATION.**

60. Personal property taxes properly levied remain a lien upon the real property of the owner, and under Section 3098, C. S., can only be discharged by their payment, cancellation or rebate. The Board of County Commissioners under Section 3332, C. S., is empowered to cancel taxes which for any lawful reason should not be collected, but this applies only to those taxes which have been illegally assessed.

**TAXES: COUNTY AS TRUSTEE.**

61. Where the county acquires title to property via the tax route, it takes its title in trust for the various taxing units involved, and when it is sold under Section 3423, C. S., the proceeds must be prorated.

**TAXES: DELINQUENT, NOTICE, SERVICE OF.**

62. There are four combinations of circumstances affecting the manner of service of notice of delinquent taxes by the tax collector:

(a) Assuming that the property is occupied and that the owner of the property is within the state, it becomes the duty of the

tax collector to serve the notice on the person in possession and also upon the record owner. He is not required to either post or publish the notice.

(b) If the property is occupied, but the record owner lives outside of the state, the tax collector is required to serve only the person in possession. He is not required to serve the record owner or to post or publish the notice.

(c) If there is no one in possession of the property, and the owner lives in the state, the tax collector must serve the owner with the notice, but is not required to post or publish it.

(d) If the property is not in the possession of any one, and the owner cannot be found in the state, the tax collector must post a copy of the notice on the property, and also publish it, and in addition thereto, must mail a copy of the notice to the record owner at his last known place of residence.

#### TAXES: DELINQUENT, PERSONALTY, INTEREST AND PENALTIES.

63. There is no statutory authority for the collection of any penalty or interest in connection with personal property taxes. Evidently the legislature did not contemplate that personal property taxes which do not become a lien on real property would ever become delinquent.

#### TAXES: RECEIPT AND DEED.

64. Where land is deeded to a county on account of delinquent taxes, and a mortgagee pays the taxes, the tax receipt and deed should both run to the owner of the property for the reason that the mortgagee is redeeming on behalf of such owner.

#### TAXES: STATUTE OF LIMITATIONS.

65. Taxes due the State of Idaho, or any of its subdivisions, are not barred by the statute of limitations. Section 3097, C. S., specifically referring to real and personal property taxes, provides that such taxes "shall only be discharged by the payment, cancellation or rebate of the taxes as provided in this chapter." This is a special statute relating to this particular subject, and, even if the general statute of limitations had application here, the special statute would govern.

#### TAXES: TAX DEED, TITLE OF COUNTY UNDER.

66. Under Section 3263, C. S., as amended by Chapter 232, Laws of 1921, a tax deed conveys to the county the title to the land free of all encumbrances except certain mortgages and except "any lien for taxes which may have attached subsequently to the assessment." The county cannot convey any better title than it received; therefore, the purchaser of this property would have to take it subject to the taxes for the later years. The county commissioners may not cancel taxes except under the authority of Section 3332, C. S.

#### TREASURY NOTES: COUNTIES, BASIS FOR.

67. I am of the opinion that no revenues other than taxes can be considered as a basis for issuing treasury notes in counties.

**TREASURY NOTES: NOT MANDATORY TO ISSUE.**

68. The provisions of Section 4, Chapter 187, Laws of 1925, with reference to borrowing money in anticipation of the collection of taxes is not mandatory. The act does not provide that the taxing districts must borrow, but merely provides that they may borrow in anticipation of the collection of taxes.

**TREASURY NOTES: SCHOOL DISTRICTS.**

69. Under the provisions of Chapter 187, Laws of 1925, common school districts have no power to issue treasury notes. That power, so far as school districts are concerned, is limited to independent and specially chartered school districts.

**TRADING STAMPS: PROHIBITED.**

70. Section 8488, Compiled Statutes, prohibits the issuance by merchants of coupons or stamps which are redeemable in merchandise.

**WATER AND WATER RIGHTS: APPROPRIATION ON STATE LAND.**

71. Section 5572, C. S., prohibits the Department of Reclamation from issuing permits to divert the waters of lakes, less than five acres in area, ponds, pools or springs located wholly upon lands "of a person or corporation" without the consent of such owner.

I am of the opinion that this section should be invoked for the protection of the state, and that no permit should be issued by the Department of Reclamation to appropriate waters of springs, etc., on state lands unless it is accompanied by the written consent of the State Land Board.

**WATERMASTERS: BONDS.**

72. Under Section 5609, C. S., as amended by Chapter 60, Laws of 1925, watermasters are permitted to qualify by furnishing a personal bond.

**WORKMEN'S COMPENSATION: NON-PROFIT ASSOCIATION.**

73. I do not think that athletic associations, fair and rodeo associations or baseball associations, none of which are operating for pecuniary gain, come under the Workmen's Compensation Law.

**WORKMEN'S COMPENSATION: POLICIES, NON-INSURANCE.**

74. Insurance in the State Insurance Fund is initiated by the entering into of a contract of insurance between the employer and the fund, and unless such contract is entered into, there is no insurance. It follows that if the liability of the State Insurance Fund only arises as a result of a contract of insurance, then it has the right to protect itself by inserting in the policy such provisions as to cancellation, etc., as may be reasonable and necessary.

This emphasizes what I consider to be the great weakness or the Idaho Workmen's Compensation Law. The employee is not insured unless his employer takes out a policy of insurance or furnishes a surety bond or guaranty contract. The penal provisions of the law which are directed against the uninsured employer do not furnish very much protection to the employee. The employer who fails to take out insurance or furnish a surety bond or guaranty contract is usually irresponsible financially, and in case one of his employees is injured or killed, the employee or his beneficiaries are without a practical remedy in most cases.

In Section 6214, C. S., the legislature made a beautiful gesture when it declared that the whole question of personal injury to employee came under the police power of the state, and that it was the purpose of the act to provide sure and certain relief for injured workmen and their families. It then proceeded to permit an employer to elect as to whether or not he would insure with the state, furnish a surety bond or guaranty contract, or take a chance on the penalties which the law prescribes. The employee has no election. He is protected only to the extent that his employer complies with the law. A Workmen's Compensation Law, to be fully effective and to meet the high purposes contained in the declaration of police power under Section 6214, C. S., must provide for insurance, or security through other means, which is non-elective, compulsory and automatic.

#### WAREHOUSE: BONDED, JURISDICTION OF STATE.

75. The only basis for state interference and regulation of a warehouse is that it is devoted to a public use, and the state, therefore, has the right under its police power to regulate that use. If the warehouse is not devoted to a public use, it follows that the state's power cannot be invoked, and the parties are left to make their own contracts. The same general principle applying to other public utilities applies to a warehouse, and before such warehouse can be subjected to regulation by the state, there must have been a dedication to the public by the owner. When an owner once dedicates his property to the use of the public and holds himself out as being willing to receive agricultural produce "for storage or transfer for compensation," he becomes a public utility under the definition in Section 6179, C. S. If the owner leases either his entire warehouse or any portion of it to some other party, who may do with the leased portion as he will, such warehouse, so far as that particular use is concerned, is not a public utility. If a farmer rents a portion of a warehouse and places agricultural produce therein, it is the farmer who is doing the storing and not the owner of the warehouse.

#### ATTORNEY GENERAL'S DOCKETS 1925-1926 UNITED STATES SUPREME COURT

Chicago, Milwaukee & St. Paul Railway Company v. Public Utilities Commission. Appeal from order of the Public Utilities Commission. Pending.

#### UNITED STATES DISTRICT COURT

Idaho Power Company v. Public Utilities Commission. Action to establish rates. Pending.

Boise Water Company v. Public Utilities Commission. Petition for Interlocutory Injunction. Pending.

Auto Interurban Company v. Jeter. Action testing Validity of Auto Bus Law. Pending.

Natwick v. Jeter. Action Testing Validity of Auto Bus Law. Pending.

Green Stage Line v. Jeter. Action Testing Validity of Auto Bus Law. Pending.



Nelson-Ricks Creamery Company v. Conner, et al. Action Testing Constitutionality of Dairy Discrimination Act. Pending.

Oregon Short Line Railroad Company v. Clark County. Action Testing Validity of Highway District Bonds. Pending.

Investors Syndicate v. Porter. Action under the Blue Sky Law. Judgment for defendant. Closed.

Missouri Valley Bridge & Iron Co. v. Associated Employers Reciprocal. Judgment in favor of the State. Closed.

Idaho Copper Corporation v. Campbell. Action for libel. Judgment of dismissal.

United States v. Nelson, et al. Condemnation Proceedings. Pending.

United States v. Klyce, et al. Condemnation Proceedings. Pending.

United States v. Fitzgerald, et al. Condemnation Proceedings. Pending.

United States v. Hunter. Condemnation Proceedings. Judgment in favor of State. Closed.

United States v. Manning. Condemnation Proceedings. Closed as to State.

#### **SUPREME COURT OF IDAHO ORIGINAL PROCEEDINGS**

Gem Irrigation District v. Gallet. Petition for Writ of Mandate to compel State Auditor to issue state warrant. Writ quashed. Pending on rehearing.

Nampa and Meridian Irrigation District v. Swendsen. Petition for Alternative Writ of Prohibition. Pending.

Wheeler v. Gallet. Petition for Writ of Mandate to compel State Auditor to recognize appropriation and file bill for audit. 249 Pac. 1067.

Ada Investment Company v. State. Action for recommendatory judgment to refund fees paid under protest by plaintiff to Secretary of State. Denied. 40 Ida. 409, 234 Pac. 304.

Earl Fruit Company v. State. Action for recommendatory judgment to refund fees paid under protest by plaintiff to the Secretary of State. Denied. 40 Ida. 426, 233 Pac. 518.

State v. Stuart. Application for Writ of Mandate to compel county treasurer of Power County to accept tender of delinquent taxes for year 1920, and to issue tax deed therefor. Writ issued. 41 Ida. 126, 238 Pac. 305.

#### **SUPREME COURT OF IDAHO CRIMINAL APPEALS SUBMITTED**

State v. Pederson. District Court, Canyon County. Obtaining money under false pretenses. Judgment of conviction affirmed. 39 Ida. 707, 230 Pac. 1116.

State v. Ashby. District Court, Canyon County. Intoxicated at a public gathering. Judgment of conviction affirmed. 40 Ida. 1, 230 Pac. 1013.

State v. Boykin. District Court, Bannock County. Voluntary Manslaughter. Judgment of conviction affirmed. 40 Ida. 536, 234 Pac. 157.

State v. Dawson. District Court, Twin Falls County. Unlawful sale of intoxicating liquor. Judgment of conviction affirmed. 40 Ida. 495, 235 Pac. 326.

State v. Breyer. District Court, Custer County. Murder in the first degree. Judgment of conviction affirmed. 40 Ida. 324, 232 Pac. 560.

State v. McLennan. District Court, Canyon County. Murder in the second degree. Judgment of conviction affirmed, 40 Ida. 286, 231 Pac. 718.

State v. Brassfield. District Court, Ada County. Grand Larceny. Judgment of conviction affirmed. 40 Ida. 203, 232 Pac. 1.

State v. Hart. District Court, Canyon County. Possession intoxicating liquor. Judgment of conviction affirmed. 40 Ida. 71, 231 Pac. 671.

State v. Bowker. District Court, Payette County. Statutory rape. Judgment of conviction reversed. 40 Ida. 74, 231 Pac. 706.

State v. Bowman. District Court, Ada County. Convicted of enticing, inducing and procuring a female to enter a house of prostitution for the purpose of prostitution. Affirmed. 40 Ida. 470, 235 Pac. 577.

State v. Caviness. District Court, Ada County. Murder in the first degree. Judgment of conviction affirmed. 40 Ida. 500, 235 Pac. 890.

State v. Dunlap. District Court, Twin Falls County. Murder in the second degree. Judgment of conviction reversed. 40 Ida. 630, 235 Pac. 432.

State v. Choate. District Court, Nez Perce County. Judgment of conviction of burning a stack of bean hay, under Section 8556. Reversed. 41 Ida. 251, 238 Pac. 538.

State v. Dawn. District Court, Canyon County. Appeal from order of the district court dismissing an appeal from a judgment of conviction of a misdemeanor, upon a plea of guilty, in the probate court. Reversed. 41 Ida. 199, 239 Pac. 279.

State v. Egli. District Court, Bingham County. Prosecution for violating city ordinance. Judgment of conviction reversed. 41 Ida. 422, 238 Pac. 514.

State v. Mason. District Court, Latah County. Statutory Rape. Judgment of conviction affirmed. 41 Ida. 506, 239 Pac. 733.

State v. Rigby. District Court, Madison County. Petit larceny. Judgment of conviction affirmed. 41 Ida. 570, 240 Pac. 859.

State v. Weeks. District Court, Bannock County. Grand larceny. Judgment of conviction affirmed. 41 Ida. 105, 237 Pac. 702.

State v. Weir. District Court, Benewah County. Possessing intoxicating liquor. Judgment of conviction affirmed. 41 Ida. 345, 238 Pac. 1029.

State v. Wharfield. District Court, Canyon County. Prosecution for offering to bribe an "executive officer of the state." Judgment dismissing information affirmed. 41 Ida. 14, 236 Pac. 862.

State v. Wheeler. District Court, Bingham County. Assault with intent to commit robbery. Judgment of conviction reversed. 41 Ida. 212, 238 Pac. 312.

State v. Woodward. District Court, Benewah County. Maintaining common nuisance. Judgment of conviction affirmed. 41 Ida. 353, 238 Pac. 525.

State v. Wilson. District Court, Bonneville County. Murder in the second degree. Judgment of conviction affirmed. 41 Ida. 616, 243 Pac. 359.

State v. Wilson. District Court, Lincoln County. Convicted of making false report of the condition of the Delco State Bank to the Commissioner of Commerce and Industry. Affirmed. 41 Ida. 598, 242 Pac. 787.

State v. Rambo. District Court, Valley County. Convicted of unlawful possession of intoxicating liquor. Reversed.

State v. McLaughlin. District Court, Ada County. Convicted of unlawful sale of intoxicating liquor. Affirmed. 245 Pac. 77.

State v. Killian. District Court, Bannock County. Convicted of grand larceny. Appeal dismissed. Judgment of conviction affirmed.

State v. Kohkonen and Maki. District Court, Shoshone County. Convicted of unlawful possession of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Kohkonen. District Court, Shoshone County. Convicted of unlawful possession of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Jurko. District Court, Twin Falls County. Convicted of murder in the first degree. Affirmed. 245 Pac. 685.

State v. Otto. District Court, Ada County. Conviction of unlawful possession of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Adkins. District Court, Twin Falls County. Convicted of Manslaughter. Appeal dismissed. Judgment of conviction affirmed.

State v. Dudgeon. District Court, Adams County. Convicted of illegal transportation of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Dawn. District Court, Washington County. Convicted of unlawful possession of intoxicating liquor. Affirmed. 245 Pac. 74.

State v. Watkins. District Court, Ada County. Convicted of Man-slaughter. Appeal dismissed. Judgment of conviction affirmed.

State v. West. District Court, Latah County. Convicted of un-lawful possession of intoxicating liquor. Affirmed. 245 Pac. 85.

State v. Richardson. District Court, Twin Falls County. Con-victed of unlawful possession of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Mason. District Court, Latah County. Convicted of statutory rape. Affirmed. 41 Ida. 506, 239 Pac. 733.

State v. Cole. District Court, Bonner County. Convicted of un-lawful possession of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Peterson. District Court, Bonner County. Convicted of unlawful possession of intoxicating liquor. Affirmed. 248 Pac. 12.

State v. Johnson. District Court, Payette County. Convicted of unlawfully selling cigarettes to minor. Affirmed. 246 Pac. 531.

State v. Austin. District Court, Kootenai County. Convicted of unlawful possession of intoxicating liquor. Appeal dismissed. Judg-ment of conviction affirmed.

State v. Maheras. District Court, Bingham County. Convicted of forgery. Reversed. 246 Pac. 304.

State v. Kerras. District Court, Bannock County. Convicted of the crime of adultery. Appeal dismissed. Judgment of con-viction affirmed.

State v. Larsen. District Court, Bannock County. Convicted of statutory rape. Reversed. 246 Pac. 313.

State v. Flynn. District Court, Shoshone County. Convicted of statutory rape. Affirmed. 248 Pac. 1118.

State v. Ocimici. District Court, Twin Falls County. Convicted of unlawful possession of intoxicating liquor. Appeal dismissed. Judg-ment of conviction affirmed.

State v. Stillwell. District Court, Twin Falls County. Convicted of unlawful possession of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Hill. District Court, Payette County. Convicted of un-lawful sale of intoxicating liquor. Appeal dismissed. Judgment of conviction affirmed.

State v. Martinez. District Court, Kootenai County. Convicted of bigamy. Modified and affirmed. Unreported.

State v. Miles. District Court, Kootenai County. Appeal by the State from an order denying change of venue. Action of lower court affirmed. 248 Pac. 442.

State v. Dyer. District Court, Latah County. Convicted of un-lawful possession of intoxicating liquor. Appeal dismissed. Judg-ment of conviction affirmed.

State v. Southard. District Court, Twin Falls County. Convicted of murder in the second degree. Appeal dismissed. Judgment of conviction affirmed.

### CRIMINAL APPEALS PENDING

State v. Peters. District Court, Twin Falls County. Embezzlement.

State v. Murray. District Court, Twin Falls County. Unlawful possession of intoxicating liquor.

State v. Moultrie. District Court, Canyon County. Manslaughter. On rehearing.

State v. Jester. District Court, Canyon County. Embezzlement.

State v. Pate. District Court, Twin Falls County. Burglary.

State v. Arregui. District Court, Ada County. Unlawful possession of intoxicating liquor.

State v. Hines. District Court, Twin Falls County. Statutory rape.

State v. Pasta. District Court, Bingham County. Violation of road laws.

State v. Andreason. District Court, Bannock County.

State v. Smith. District Court, Bingham County. Possession of intoxicating liquor.

State v. White. District Court, Bannock County. Embezzlement.

State v. Lockie. District Court, Twin Falls County. Embezzlement.

State v. Kimery. District Court, Canyon County. Statutory rape.

State v. Poglianich. District Court, Clearwater County. Murder in the first degree.

State v. Foyte. District Court, Shoshone County. Murder in the first degree.

State v. Petrogalli. District Court, Latah County. Persistent violator of the prohibition law.

State v. Gibbs. District Court, Oneida County. Statutory rape.

State v. Noorlander. District Court, Bannock County. Murder in the first degree.

State v. Williamson. District Court, Twin Falls County.

State v. Whitney. District Court, Ada County. Obtaining money under false pretenses.

State v. George. District Court, Twin Falls County. Interfering with headgates.

State v. Roby. District Court, Canyon County. Exhibiting a deadly weapon.



State v. Marks. District Court, Nez Perce County. Burglary.

### **CIVIL APPEALS TO SUPREME COURT OF IDAHO**

(Closed)

Albrethsen v. Wood River Land Co. District Court, Blaine County. Action for abandonment of water. Judgment for defendant. Reversed and remanded. 40 Ida. 49, 231 Pac. 418.

Brady v. Place. District Court, Kootenai County. Appeal from judgment of the district court affirming the decision of the Industrial Accident Board denying an award in a proceeding under the Workmen's Compensation law. 41 Ida. 747. 242 Pac. 314.

Fist v. Bonner Tie Co. District Court, Boundary County. Action for compensation under workmen's Compensation Law. Judgment for claimant. Affirmed. 40 Ida. 304, 232 Pac. 569.

Falls River Irrigation Co. v. Swendsen. District Court, Fremont County. Action to establish priority of water right. Judgment for defendants. Affirmed. 41. Ida. 686, 241 Pac. 1021.

Kootenai Power Company v. Public Utilities Commission. Motion to dismiss appeal from order of the Public Utilities Commission. Denied. 40 Ida. 781, 236 Pac. 735.

Consumers Company v. Public Utilities Commission. Motion to dismiss appeal from order of the Public Utilities Commission. Denied. 40 Ida. 772, 236 Pac. 732.

McElroy v. Boise Valley Traction Co. Appeal from an order of the Public Utilities Commission. Appeal dismissed.

State v. Cleland. District Court, Ada County. From a Judgment granting a peremptory writ of mandate, defendant appeals. Affirmed. 248 Pac. 831.

Smallwood v. Jeter. District Court, Ada County. Action Testing validity of Auto Bus Law. From judgment sustaining general demurrer to complaint, plaintiff appeals. Affirmed. 244 Pac. 149.

Aldrich v. Dole. District Court, Nez Perce County. From judgment reversing the decision of the Industrial Accident Board which denied an award, the employer and insurer appealed. Affirmed. 249 Pac. 87.

### **CIVIL APPEALS PENDING IN SUPREME COURT OF IDAHO**

Burley Independent School District v. Cordell. District Court, Cassia County. Action to restrain county assessor from collecting automobile license tax on automobile trucks owned by school district. From judgment in favor of district the county appealed.

Department of Law Enforcement v. Myers. District Court, Ada County. Action to restrain Department of Law Enforcement from revoking dental license. From decision in favor of Myers the Department appealed.

Smith v. Canyon County et al. District Court, Canyon County. Action to restrain tax levy. Judgment for county. Appeal from order denying new trial.

Capital water Company v. Public Utilities Commission. An appeal from an order of the Public Utilities Commission.

Hamilton v. Swendson. District Court, Custer County. Appeal from an order refusing to tax cost of agricultural survey.

In the matter of the Estate of Samuel Marx Rothchild, deceased. District Court, Ada County. Action to determine amount of inheritance tax due the State.

State v. Taylor. District Court, Bannock County. Action to abate a public nuisance. Judgment for plaintiff. Defendant appeals.

Idaho County v. Fenn Highway District. District Court, Idaho County. Action to compel highway district to repair highway. Judgment for plaintiff. Reversed and remanded. Petition for rehearing.

In the matter of Melvin Farnsworth, a Juvenile Delinquent. District Court, Bannock County. Appeal from an order dismissing an appeal from an order of commitment of the probate court.

#### CIVIL CASES IN DISTRICT COURTS

Sammons v. State. District Court, Twin Falls County. Action to quiet title. Pending.

Arkoosh v. Big Wood Canal Company, et al. District Court, Lincoln County. Action for injunction. Pending.

Gibbs v. Geer. District Court, Latah County. Action to quiet title. Pending.

State v. Salisbury. District Court, Ada County. Action on bond. Pending.

In the Matter of the Application of Lester Grove for Writ of Habeas Corpus. District Court, Ada County. Writ denied.

Oregon Short Line Railroad Company v. State. District Court, Lincoln County. Condemnation proceedings. Pending.

State v. Horsley. District Court, Ada County. Action on bond. Pending.

Koepp v. Swendsen, et al. District Court, Owyhee County. Suit involving change in point of division of water. Closed as to State.

Ake v. Swendsen. District Court, Elmore County. Petition for Writ of Mandate to compel delivery of water. Closed as to State.

Watkins v. Swendsen. District Court, Blaine County. Adjudication of water right. Closed as to State.

In the matter of the estate of Helen Sommer, Deceased. District Court, Washington County. Action to determine amount of inheritance tax due the State. Closed.

Highway District No. 1 of Power County v. State. District Court, Power County. Condemnation proceedings. Closed.

Union Central Life Insurance Co. v. Allen et al. District Court, Bannock County. Action to quit title. Closed.

State v. New Home Sewing Machine Company. District Court, Ada County. Condemnation proceedings. Closed.

Baptie v. Swendsen, et al. District Court, Blaine County. Adjudication of water right. Closed.

Yates v. Yates, et al. District Court, Ada County. Action to quiet title. Closed as to State.

Miller v. Hall, et al. District Court, Minidoka County. Water case. Closed as to State.

State v. McLaughlin. District Court, Elmore County. Action to quiet title. Writ of injunction issued.

Diamond-L Company v. Allen, et al. District Court, Gem County. Water case. Closed as to State.

Independent Irrigation Company et al. v. Swendsen, et al. District Court, Jefferson County. Action for injunction. Closed as to State.

Minidoka Irrigation District v. Swendsen, et al. District Court, Cassia County. Action for Injunction. Closed as to State.

Washington County Irrigation District v. Swendsen, et al. District Court, Ada County. Action for Injunction. Closed as to State.

Miller v. Swendsen, et al. District Court, Custer County. Adjudication of water right. Closed as to State.

Bramwell v. Baldwin. District Court, Fremont County. Adjudication of water right. Closed as to State.

Ellis v. Baldwin. District Court, Fremont County. Adjudication of water right. Closed as to State.

North American Mortgage Company v. Swendsen, et al. District Court, Fremont County. Adjudication of water right. Closed as to State.

Laidlaw v. Swendsen. District Court, Blaine County. Adjudication of water right. Closed as to State.

State v. Utah Construction Company, et al. District Court, Power County. Appeal from an award of the Industrial Accident Board in favor of the State. Pending.

Ellis, Administrator, v. Bunker Hill & Sullivan M. & C. Co., et al. District Court, Shoshone County. Appeal from an award of the Industrial Accident Board in favor of the State. Pending.

In re Peter Hunter. District Court, Shoshone County. Appeal from an award of the Industrial Accident Board in favor of the State. Pending.



**CASES IN PROBATE COURTS**

In the Matter of the Estate of Edwin Prichard, Deceased. Probate Court, Shoshone County. Petition to withdraw payment of money deposited in the state treasury. Certificate issued. Closed.

In the matter of the Estate of J. H. Murray, Deceased. Probate Court, Nez Perce County. Petition requesting appointment of Public Administrator. Petition granted. Closed.

In the Matter of the Estate of David Hutchinson, Deceased. Probate Court. Shoshone County. Petition to withdraw payment of money deposited in the state treasury. Pending.

**MORTGAGE FORECLOSURES**

(Suits Closed)

**Loan No.**

3300	State v. Bolitho, District Court, Ada County.
1450	State v. Loy, District Court, Ada County.
3033	State v. Richey, District Court, Ada County.
3255	State v. Riley, District Court, Ada County.
2838	State v. Rockwell, District Court, Ada County.
2348-a	State v. Wise, District Court, Ada County.
1912	State v. Edson, District Court, Adams County.
2817	State v. White, District Court, Adams County.
1608	State v. Turner, District Court, Bannock County.
2744	State v. White, District Court, Bannock County.
2712	State v. Clark, District Court, Bear Lake County.
2407	State v. Clark. District Court, Bear Lake County.
2166	State v. Collings, District Court, Bear Lake County.
2216	State v. Nelson, District Court, Bear Lake County.
1023	State v. Wallantine, District Court, Bear Lake County.
5	State v. Bolton, District Court, Benewah County.
2118	State v. Burrell, District Court, Bingham County.
3486	State v. Ezell, District Court, Bingham County.
2743	State v. Fall Creek Sheep Company, District Court, Bingham County.
2811	State v. Jensen. District Court, Bingham County.
2168	State v. Kliewer, District Court, Bingham County.
3184	State v. Lindsay. District Court, Bingham County.
3449	State v. Paulsen, District Court, Bingham County.
3653	State v. Sjostrom, District Court, Bingham County.
2307	State v. Bowlden, District Court, Blaine County.
2987	State v. Cahoon. District Court, Blaine County.
3179	State v. Colistro, District Court, Bonner County.
2896	State v. Sanborn, District Court, Bonner County.
3376	State v. Homer, District Court, Bonneville County.
3700	State v. Green. District Court, Butte County.
3852	State v. Jensen, District Court, Butte County.

3933	State v. Jensen, District Court, Butte County.
1327	State v. Jones, District Court, Camas County.
2928	State v. Aven, District Court, Canyon County.
2865	State v. Bolitho, District Court, Canyon County.
2900	State v. Bolitho, District Court, Canyon County.
3262	State v. Bowman, District Court, Canyon County.
3178	State v. Burris, District Court, Canyon County.
2582	State v. Emerson, District Court, Canyon County.
2717	State v. Fisher, District Court, Canyon County.
2431	State v. Flemmons, District Court, Canyon County.
2891	State v. Griffiths, District Court, Canyon County.
2335	State v. Paine, District Court, Canyon County.
1235	State v. Barker, District Court, Cassia County.
2470	State v. Critchfield, District Court, Cassia County.
1570	State v. Pulley, District Court, Cassia County.
2788	State v. Taylor, District Court, Cassia County.
3895	State v. Gauchay, District Court, Clark County.
3167	State v. Hays, District Court, Clark County.
1762	State v. Roberts, District Court, Clark County.
1300	State v. Bowen, District Court, Custer County.
2784	State v. Hardy, District Court, Custer County.
2653	State v. Lambson, District Court, Custer County.
763	State v. Muir, District Court, Custer County.
2664	State v. Nesbitt, District Court, Custer County.
2808	State v. Nickerson, District Court, Custer County.
3126	State v. Taggart, District Court, Custer County.
3307	State v. Thompson, District Court, Custer County.
3308	State v. Thompson, District Court, Custer County.
2862	State v. Turner, District Court, Custer County.
1285	State v. Wells, District Court, Custer County.
2316	State v. Zumbrunn, District Court, Custer County.
3190	State v. Bunnell, District Court, Elmore County.
3177	State v. Bickmore, District Court, Elmore County.
2810	State v. Greenstreet, District Court, Elmore County.
1992	State v. Ridings, District Court, Elmore County.
3204	State v. Schoenecke, District Court, Elmore County.
2938	State v. Clayton, District Court, Franklin County.
3410	State v. Hammond, District Court, Franklin County.
3395	State v. Anderson, District Court, Fremont County.
2288	State v. Andrus, District Court, Fremont County.
3021	State v. Pemble, District Court, Fremont County.
1048	State v. Coate, District Court, Gem County.
1920	State v. Taylor, District Court, Idaho County.
4024	State v. Owen, District Court, Jefferson County.
2781	State v. Evans, District Court, Lincoln County.
3123	State v. Smith, District Court, Madison County.

- 2842 State v. Webster, District Court, Madison County.  
2411 State v. Leitch, District Court, Nez Perce County.  
3724 State v. Cox, District Court, Oneida County.  
3542 State v. Earl, District Court, Oneida County.  
3701 State v. Hardman, District Court, Oneida County.  
3876 State v. Hawkins, District Court, Oneida County.  
3543 State v. Jones, District Court, Oneida County.  
3742 State v. Brand, District Court, Owyhee County.  
929 State v. Cruse, District Court, Owyhee County.  
1303 State v. Cruse, District Court, Owyhee County.  
770 State v. Neil, District Court, Owyhee County.  
880 State v. Schmelzel, District Court, Owyhee County.  
2959 State v. Cavanaugh, District Court, Payette County.  
2726 State v. Gladish, District Court, Payette County.  
3024 State v. Shimp, District Court, Payette County.  
2629 State v. Barnard, District Court, Power County.  
3589 State v. Blossche, District Court, Power County.  
2816 State v. Bradshaw, District Court, Power County.  
2376 State v. Byington, District Court, Power County.  
3375 State v. Cotant, District Court, Power County.  
2971 State v. Durkee, District Court, Power County.  
3751 State v. Ells, District Court, Power County.  
2890 State v. Fitzgerald, District Court, Power County.  
3599 State v. Kaul, District Court, Power County.  
3706 State v. Kuck, District Court, Power County.  
1201 State v. Laird, District Court, Power County.  
1648 State v. Philbrick, District Court, Power County.  
2778 State v. Philbrick-Greenwood Corporation, District Court,  
Power County.  
3346 State v. Ringe, District Court, Power County.  
3242 State v. Roth, District Court, Power County.  
4010 State v. Semken, District Court, Power County.  
1053 State v. Shuck, District Court, Power County.  
1098 State v. Strong, District Court, Power County.  
3267 State v. Zimmerman, District Court, Power County.  
1967 State v. Waylett, District Court, Power County.  
2592 State v. Brinton, District Court, Teton County.  
3591 State v. Driggs, District Court, Teton County.  
3695 State v. Dustin, District Court, Teton County.  
3513 State v. Floyd, District Court, Teton County.  
2973 State v. Grover, District Court, Teton County.  
3944 State v. Harrop, District Court, Teton County.  
3707 State v. Johnson, District Court, Teton County.  
3602 State v. Loosli, District Court, Teton County.  
2394 State v. Parker, District Court, Teton County.  
2553 State v. Pratt, District Court, Teton County.  
3306 State v. Rammell, District Court, Teton County.

---

3837	State v. Taylor, District Court, Teton County.
3555	State v. McAdams, District Court, Valley County.
1206	State v. Spink, Executor, District Court, Valley County.
2714	State v. Allison, District Court, Washington County.
3630	State v. Bradshaw, District Court, Washington County.
3261	State v. Brown, District Court, Washington County.
1735	State v. Coleman, District Court, Washington County.
891	State v. Ford, Administrator, District Court, Washington County.
883	State v. Hill, District Court, Washington County.
3829	State v. Ingalls, District Court, Washington County.
3112	State v. Nolan, District Court, Washington County.
2152	State v. Severine, District Court, Washington County.

### MORTGAGE FORECLOSURES

(Suits Pending)

#### Loan No.

3732	State v. Jarrett, District Court, Ada County. Ready for trial.
2627	State v. Aitken, District Court, Bannock County. Judgment entered, pending sale.
2947	State v. Broomhead, District Court, Bear Lake County. Judgment entered, pending sale.
2428	State v. Howell, District Court, Bear Lake County. Service incomplete.
2381	State v. Howell, District Court, Bear Lake County. Ready for trial.
2193	State v. Nate, District Court, Bear Lake County. Ready for trial.
2695	State v. Richards, District Court, Bear Lake County. Ready for trial.
2624	State v. Tippets, District Court, Bear Lake County. Ready for trial.
2180	State v. Smith, District Court, Benewah County. Ready for trial.
3461	State v. Capson, District Court, Bingham County. Pending on demurrer.
4092	State v. Hutchinson, District Court, Bingham County. Service incomplete.
2823	State v. Cahoon, District Court, Blaine County. Service incomplete.
2824	State v. Cahoon, District Court, Blaine County. Service incomplete.
3743	State v. Cook, District Court, Blaine County. Ready for trial.
1402	State v. Henry, District Court, Blaine County. Service complete.
3411	State v. Hollenbeck, District Court, Blaine County. Service incomplete.
2442	State v. Irvin, District Court, Blaine County. Ready for trial.
2575	State v. Jones, District Court, Blaine County. Service incomplete.



- 2519 State v. Lark, District Court, Blaine County. Service incomplete.
- 2520 State v. Larsen, District Court, Blaine County. Pending on demurrer.
- 3379 State v. Osborn, District Court, Blaine County. Ready for trial.
- 1667 State v. Williams, District Court, Bonneville County. Pending on demurrer.
- 3893 State v. Bassett, District Court, Butte County. Pending on demurrer.
- 750 State v. Montgomery, District Court, Butte County. Pending on demurrer.
- 2862 State v. Turner, District Court, Butte County. Judgment entered. Pending sale.
- 3357 State v. Harris, District Court, Camas County. Pending on demurrer.
- 3358 State v. Harris, District Court, Camas County. Pending on demurrer.
- 2873 State v. Larson, District Court, Camas County. Ready for trial.
- 2584 State v. Matthews, District Court, Camas County. Pending on demurrer.
- 3467 State v. Vaught, District Court, Camas County. Ready for trial.
- 2859 State v. Adams, Administratrix, District Court, Canyon County. Service incomplete.
- 3532 State v. Allen, District Court, Canyon County. Pending on demurrer.
- 3485 State v. Allen, District Court, Canyon County. Service incomplete.
- 3176 State v. Bailey, District Court, Canyon County. Ready for trial.
- 2902 State v. Claybaugh, district Court, Canyon County. Ready for trial.
- 3145 State v. Kelly, District Court, Canyon County. Ready for trial.
- 2295 State v. Pascoe, District Court, Canyon County. Service incomplete.
- 2514 State v. Riddle, District Court, Canyon County. Service incomplete.
- 2703 State v. Ruby, District Court, Canyon County. Ready for trial.
- 2637 State v. Wood, District Court, Canyon County. Pending on demurrer.
- 3208 State v. Bull, District Court, Cassia County. Judgment entered, pending sale.
- 1049 State v. Clayton, District Court, Cassia County. Ready for trial.
- 926 State v. Condit, District Court, Cassia County. Judgment entered, pending sale.
- 1612 State v. Cook, District Court, Cassia County. Judgment entered, pending sale.
- 426 State v. Critchfield, Administrator, District Court, Cassia County. Service incomplete.

- 2827 State v. England, District Court, Cassia County. Judgment entered, pending sale.
- 1445 State v. Gholson, District Court, Cassia County. Judgment entered, pending sale.
- 2275 State v. Latham, District Court, Cassia County. Pending on demurrer.
- 2033 State v. Lewis, District Court, Cassia County. Pending on demurrer.
- 11 State v. Patterson, District Court, Cassia County. Judgment entered, pending sale.
- 1061 State v. Stevens, District Court, Cassia County. Service incomplete.
- 1112 State v. Strong, District Court, Cassia County. Service incomplete.
- 1666 State v. Taylor, District Court, Cassia County. Judgment entered, pending sale.
- 1283 State v. Wilson, District Court, Cassia County. Service incomplete.
- 1283 Equitable Trust Company of New York v. State and Wilson, District Court, Cassia County. Ready for trial.
- 729 State v. Workman, District Court, Cassia County. Pending on demurrer and motion to dismiss.
- 2336 State v. Belnap, District Court, Clark County. Service complete.
- 2807 State v. Ellis, District Court, Custer County. Pending on demurrer.
- 860 State v. Zilkey, District Court, Custer County. Service incomplete.
- 3693 State v. Brown, District Court, Elmore County. Ready for trial.
- 3140 State v. Flagler, District Court, Elmore County. Ready for trial.
- 2966 State v. Kissinger, District Court, Elmore County. Service incomplete.
- 3739 State v. Rice, District Court, Elmore County. Ready for trial.
- 3070 State v. Roler, District Court, Elmore County. Ready for trial.
- 3703 State v. Henderson, District Court, Franklin County. Service incomplete.
- 2857 State v. Mason, District Court, Franklin County. Service complete.
- 1143 State v. Curtis, District Court, Fremont County. Pending on demurrer.
- 2523 State v. Johnson, District Court, Fremont County. Service complete.
- 3624 State v. Lavery, District Court, Fremont County. Ready for trial.
- 4083 State v. Niendorf, District Court, Fremont County. Service complete.

- 3539 State v. Burns, District Court, Gem County. Ready for trial.
- 944 State v. Colburn, District Court, Gem County. Dismissed.
- 672 State v. Hartley, District Court, Gem County. Pending on demurrer.
- 3337 State v. Look, District Court, Gem County. Pending on demurrer.
- 3322 State v. Tappan, District Court, Gem County. Service incomplete.
- 3570 State v. Bissell, District Court, Gooding County. Ready for trial.
- 4156 State v. Brown, District Court, Idaho County. Service incomplete.
- 2679 State v. McMahon, District Court, Idaho County. Service incomplete.
- 2909 State v. Platt, District Court, Idaho County. Service incomplete.
- 3382 State v. Taylor, District Court, Idaho County. Service incomplete.
- 3309 State v. Wilkin, District Court, Idaho County. Service incomplete.
- 195 State v. Beede, District Court, Idaho County. Pending.
- 3384 } State v. Williams, District Court, Jerome County.
- 3385 } Judgment entered, pending sale.
- 4192 State v. Albers, District Court, Lincoln County. Service incomplete.
- 2483 State v. Bates, District Court, Lincoln County. Ready for trial.
- 2319 State v. Byrne, District Court, Lincoln County. Ready for trial.
- 2486 State v. Elliott, District Court, Lincoln County. Ready for trial.
- 2649 State v. Fender, District Court, Lincoln County. Ready for trial.
- 3937 State v. McIntyre, District Court, Lincoln County. Pending on demurrer.
- 3451 State v. Serpa, District Court, Lincoln County. Ready for trial.
- 2358 State v. Baker, District Court, Madison County. Service complete.
- 2413 State v. Webster, District Court, Madison County. Ready for trial.
- 1852 State v. Christean, District Court, Minidoka County. Judgment entered, pending sale.
- 3552 State v. Heck, District Court, Minidoka County. Judgment entered, pending sale.
- 3362 State v. Neibaur, District Court, Minidoka County. Ready for trial.
- 2876 State v. Neibaur, District Court, Minidoka County. Ready for trial.
- 3054 State v. Rigg, District Court, Minidoka County. Service incomplete.

---

3055	State v. Rigg, District Court, Minidoka County. Service incomplete.
3187	State v. Todd, District Court, Minidoka County. Judgment entered, pending sale.
3509	State v. Austin, District Court, Oneida County. Service incomplete.
4345	State v. Jenkins, District Court, Oneida County. Service incomplete.
3022	State v. Parry, District Court, Oneida County. Judgment entered, pending sale.
2328	State v. Peck, District Court, Oneida County. Service incomplete.
3121	State v. Richards, District Court, Oneida County. Service incomplete.
2261	State v. Weese, District Court, Oneida County. Service incomplete.
528	State v. Altschul, District Court, Owyhee County. Ready for trial.
999	State v. Brunzell, District Court, Owyhee County. Service incomplete.
3290	State v. Cross, District Court, Owyhee County. Ready for trial.
3666	State v. Freitag, District Court, Owyhee County. Service complete.
3755	State v. Jessup, District Court, Owyhee County. Ready for trial.
4278	State v. Lee, District Court, Owyhee County. Ready for trial.
836	State v. Rock, District Court, Owyhee County. Ready for trial.
1486	State v. Ross, District Court, Owyhee County. Ready for trial.
2441	State v. Enberg, District Court, Payette County. Service incomplete.
2656	State v. Lynn, District Court, Payette County. Ready for trial.
2285	State v. Eliassen, District Court, Power County. Judgment entered, sale pending.
3697	State v. Evans, District Court, Power County. Pending on demurrer.
3407	State v. Fredrich, District Court, Power County. Judgment entered, pending sale.
1558	State v. Kosanke, District Court, Power County. Pending on demurrer.
3050	State v. Morris, District Court, Power County. Service incomplete.
2559	State v. Walker, District Court, Power County. Ready for trial.
3719	State v. Walworth, District Court, Power County. Service incomplete.



- 
- |      |   |
|------|---|
| 3820 | State v. Daniels, District Court, Teton County. Ready for trial.            |
| 3850 | State v. Griggs, District Court, Teton County. Ready for trial.             |
| 3595 | State v. Harris, District Court, Teton County. Service incomplete.          |
| 3596 | State v. Harris, District Court, Teton County. Service incomplete.          |
| 3646 | State v. Jacob, District Court, Teton County. Ready for trial.              |
| 3378 | State v. Johnson, District Court, Teton County. Service incomplete.         |
| 3601 | State v. Kirk, District Court, Teton County. Service incomplete.            |
| 3559 | State v. Letham, District Court, Teton County. Service complete.            |
| 3925 | State v. Linseman, District Court, Teton County. Pending on demurrer.       |
| 3757 | State v. Little, District Court, Teton County. Ready for trial.             |
| 3205 | State v. Little, District Court, Teton County. Service incomplete.          |
| 2795 | State v. Rutledge, District Court, Twin Falls County. Ready for trial.      |
| 2283 | State v. Alsterberg, District Court, Washington County. Service incomplete. |
| 3512 | State v. Cate, District Court, Washington County. Ready for trial.          |
| 3270 | State v. Galloway, District Court, Washington County. Ready for trial.      |
| 3211 | State v. Paradis, District Court, Washington County. Ready for trial.       |
| 3957 | State v. Ross, District Court, Washington County. Ready for trial.          |
| 2658 | State v. Saling, District Court, Washington County. Ready for trial.        |
| 3906 | State v. Wulff, District Court, Washington County. Service incomplete.      |