

**REPORT
AND DIGEST OF
SELECTED OPINIONS
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO
1931-1932**



FRED J. BABCOCK, Attorney General

ATTORNEY GENERAL'S DEPARTMENT

Fred J. Babcock.....	Attorney General
Sidman I. Barber.....	Assistant Attorney General
S. E. Blaine.....	Assistant Attorney General
‡Leon M. Fisk.....	Assistant Attorney General
Maurice H. Greene.....	Assistant Attorney General
Z. Reed Millar.....	Assistant Attorney General
Noel B. Martin.....	Special Assistant Attorney General
Margery Scholes Cornell.....	Secretary to Attorney General
Grace H. Detweiler.....	Law Stenographer
Beulah Scholes.....	Law Stenographer
Helen Shawhan.....	Law Stenographer

‡Deceased.

ATTORNEYS GENERAL OF THE STATE OF IDAHO

TERRITORIAL PERIOD

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

SINCE STATEHOOD

‡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.....	1927-1928
W. D. Gillis.....	1929-1930
Fred J. Babcock.....	1931-1932
B. H. Miller.....	1933-

JUSTICES OF THE SUPREME COURT

1933-1934

Alfred Budge, Chief Justice.....	Pocatello
Raymond L. Givens, Justice.....	Boise
Robert D. Leeper, Justice.....	Lewiston
Wm. M. Morgan, Justice.....	Boise
Edwin M. Holden, Justice.....	Idaho Falls

Clerk of the Supreme Court—Clay Koelsch

1931-1932

T. Bailey Lee, Chief Justice.....	Burley
Bertram S. Varian, Justice.....	Weiser
*W. F. McNaughton, Justice.....	Coeur d'Alene
Alfred Budge, Justice.....	Pocatello
Raymond L. Givens, Justice.....	Boise
Robert D. Leeper, Justice, Appointed Jan. 1, 1932.....	Lewiston

Clerk of the Supreme Court — Clay Koelsch

‡Deceased.

*Resigned.

UNITED STATES DISTRICT JUDGE
Charles C. Cavanah.....Boise

IDAHO DISTRICT JUDGES

1933-1934

First Judicial District, comprising the county of
Shoshone

Albert H. Featherstone.....Wallace

Second Judicial District, comprising the counties
of Clearwater and Latah

Gillies D. Hodge.....Moscow

Third Judicial District, comprising the counties
of Ada, Boise, Elmore and Owyhee

Chas. F. Koelsch.....Boise

Chas. E. Winstead.....Boise

Fourth Judicial District, comprising the counties
of Blaine, Camas, Gooding and Lincoln

Doren H. Sutphen.....Gooding

Fifth Judicial District, comprising the counties
of Bannock, Bear Lake, Caribou, Franklin,
Oneida and Power

Jay L. Downing.....Pocatello

Robert M. Terrell.....Pocatello

Sixth Judicial District, comprising the counties
of Bingham, Butte, Custer and Lemhi

Guy Stevens.....Blackfoot

Seventh Judicial District, comprising the counties
of Adams, Canyon, Gem, Payette, Valley and
Washington

A. O. Sutton.....Weiser

John C. Rice.....Caldwell

Eighth Judicial District, comprising the counties
of Benewah, Bonner, Boundary and Kootenai

Bert A. Reed.....Coeur d'Alene

Everett E. Hunt.....Sandpoint

Ninth Judicial District, comprising the counties
of Bonneville, Clark, Fremont, Jefferson, Mad-
ison and Teton

C. J. Taylor.....Idaho Falls

Tenth Judicial District, comprising the counties
of Idaho, Lewis and Nez Perce

Miles S. Johnson.....Lewiston

Eleventh Judicial District, comprising the counties
of Cassia, Jerome, Minidoka and Twin Falls

Adam B. Barclay.....Jerome

William A. Babcock.....Twin Falls

PROSECUTING ATTORNEYS FOR COUNTIES OF IDAHO

1933-1934

Ada.....	Homer E. Martin.....	Boise
Adams.....	C. H. Swanstrom.....	Council
Bannock.....	B. A. McDevitt.....	Pocatello
Bear Lake.....	D. E. Haddock.....	Paris
Benewah.....	Ed S. Elder.....	St. Maries
Bingham.....	G. F. Hansbrough.....	Blackfoot
Blaine.....	William A. Brodhead.....	Hailey
Boise.....	L. B. Quinn.....	Idaho City
Bonner.....	Robt. E. McFarland.....	Sandpoint
Bonneville.....	K. S. MacKenzie.....	Idaho Falls
Boundary.....	Patrick H. Walker.....	Bonnars Ferry
Butte.....	W. J. Lamme.....	Arco
Camas.....	Frank Croner.....	Fairfield
Canyon.....	Frank E. Meek.....	Caldwell
Caribou.....	R. J. Dygert.....	Soda Springs
Cassia.....	Adonis H. Nielson.....	Burley
Clark.....	Harold W. Ellsworth.....	Dubois
Clearwater.....	Paul W. Hyatt.....	Orofino
Custer.....	Harold Holden.....	Challis
Elmore.....	Gene Anderson.....	Mountain Home
Franklin.....	Arthur W. Hart.....	Preston
Fremont.....	Ralph Litton.....	St. Anthony
Gem.....	J. P. Reed.....	Emmett
Gooding.....	M. F. Ryan.....	Gooding
Idaho.....	Harry J. Hanley.....	Grangeville
Jefferson.....	C. A. Bandel.....	Rigby
Jerome.....	Henry M. Hall.....	Jerome
Kootenai.....	J. Ward Arney.....	Coeur d'Alene
Latah.....	Abe Goff.....	Moscow
Lemhi.....	F. A. McCall.....	Salmon
Lewis.....	G. C. Pennell.....	Nezperce
Lincoln.....	Harlan D. Heist.....	Shoshone
Madison.....	C. W. Poole.....	Rexburg
Minidoka.....	Dwight Disney.....	Rupert
Nez Perce.....	Ray E. Durham.....	Lewiston
Oneida.....	Jno. W. Clark.....	Malad
Owyhee.....	Laurence N. Smith.....	Silver City
Payette.....	John Kenward.....	Payette
Power.....	W. C. Loofbourrow.....	American Falls
Shoshone.....	S. S. Gundlach.....	Wallace
Teton.....	S. H. Atchley.....	Driggs
Twin Falls.....	O. W. Witham.....	Twin Falls
Valley.....	Frank M. Kerby.....	Cascade
Washington.....	Herman Welker.....	Weiser

REPORT OF THE ATTORNEY GENERAL

December, 1932.

To His Excellency C. Ben Ross,
Governor of the State of Idaho,
Boise, Idaho.

SIR:

I have the honor to submit to you my biennial report covering the business transacted by the Attorney General's office for the period beginning December 1, 1931, and ending December 1, 1932.

DUTIES

Under the provisions of Article IV of the Constitution of Idaho, the Attorney General is made a member of the executive department of the state. Section 3 of Article IV provides that no person shall be eligible to the office of Attorney General unless he shall have attained the age of thirty years and shall have been admitted to practice in the Supreme Court of this state and be in good standing at the time of such election. In addition to these qualifications he must be a citizen of the United States and must have resided in the state for a period of two years next preceding his election.

The statutes provide that he shall be a member of the following boards:

STATE BOARD OF EXAMINERS, which is required to pass upon and approve all claims for expenditures of state moneys.

STATE BOARD OF LAND COMMISSIONERS, which handles all state land matters, and passes upon loans and investments of endowment funds, school moneys and other state funds in an advisory capacity.

STATE BOARD OF EQUALIZATION, which equalizes all assessments of property made by the County Assessors, also originally assesses the property of public utility companies in the state and computes the state tax as levied by the legislature.

STATE COOPERATIVE BOARD OF FORESTRY, which is charged with the responsibility of enforcing the forestry laws for the prevention of forest fires and for the protection of forest resources, forest ranges, water conservation, etc.

STATE BOARD OF PRISON COMMISSIONERS, which has supervision of the Idaho State Penitentiary and its inmates.

STATE BOARD OF PARDONS, which hears, considers and grants or rejects applications for pardons and commutations of sentences.

STATE BOARD OF PAROLE, which has jurisdiction over applications for parole.

STATE LIBRARY COMMISSION, which has supervision of the Traveling Library, and libraries belonging to the state.

STATE BOARD OF CANVASSERS, which canvasses the returns of the election of state and district officers.

THE COEUR D'ALENE RIVER AND LAKE COMMISSION, which was created for the purpose of studying and investigating the ways and means of eliminating from the Coeur d'Alene River and Coeur d'Alene Lake all industrial wastes which tend to pollute the same and recommend methods of preventing pollution.

In addition to the duties devolving upon the Attorney General by virtue of his membership upon the above boards and the executive duties attendant upon such membership, the additional powers and duties prescribed by law are multitudinous.

The statutes provide that he shall attend the Supreme Court and prosecute or defend all causes in which the state or any officer thereof in his official capacity is a party. Under this provision considerable litigation is handled in our Supreme Court involving the constitutionality of acts passed by the legislature which frequently arise in the nature of mandamus or other original proceedings

instigated directly in the Supreme Court. This also includes prosecution of criminal appeals before the Supreme Court. (In all cases in which a criminal case has been appealed from the District Court, the matter is then handled by the Attorney General on behalf of the state rather than the prosecuting attorney).

The Attorney General is also required to prosecute or defend all causes to which any county may be a party, unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity. This applies to actions in all courts. He must also direct the issuing of such process as may be necessary to carry judgments into execution, and to account for or pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county. There are very few fees of any nature which come into the hands of the Attorney General, although large sums are often recovered on behalf of the Auditor in some action in which the state is a party plaintiff.

He is also required to keep a docket of all causes in which he is required to appear. This docket is kept open to the inspection of the public during business hours, and must show the county, district and court in which said cause has been instituted and tried, whether civil or criminal. In civil cases, the docket must show the stage of the proceedings and a memorandum of the judgment or any process issued thereon, and whether satisfied or not, and if not satisfied, the return of the sheriff. A complete record of the criminal cases must also be kept.

The statute also provides that the Attorney General shall exercise supervisory powers over prosecuting attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge, and when required by the public service to repair to any county in the state and assist the prosecuting attorney thereof in the discharge of his duties.

The Attorney General, or someone appointed by him to represent him, must bid upon and purchase in the name of the state, and under the direction of the Auditor, any property offered for sale under execution issued upon judgment in favor of or for the use of the state and to enter satisfaction in whole or in part of any such judgment. When in his opinion it may be necessary for the collection or enforcement of any judgment he must institute and prosecute on behalf of the state such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors.

He must report to the Governor at the time specified in the code the condition of the affairs of his department, and accompany the same with a copy of his docket and reports received by him from the prosecuting attorneys.

The law provides that he must give an opinion in writing, without fee, to all elective officials, department heads, and the trustees or commissioners of state institutions, when required, upon any question of law relating to their respective offices. These may be enumerated as follows:

Governor.

Secretary of State.

State Treasurer.

State Auditor.

Superintendent of Public Instruction.

State Mine Inspector.

Department of Agriculture, including various inspection bureaus, etc.

Department of Finance, including various bureaus.

Department of Law Enforcement, including various bureaus.

Department of Public Welfare, including the State Chemist, State Bacteriologist, etc.

Department of Public Works.

State Land Department.
Department of Public Investments.
State Forester.
Department of Education.
Department of Reclamation.
Department of Fish and Game.
Bureau of Public Accounts.
University Extension Service.
Traveling Library.
Historical Society.
Bureau of Budget and Taxation.
Purchasing Agent.
Adjutant General.
Bureau of Insurance.
Veterans' Welfare Commission.
Sheep Commission.

There is no provision for the rendition of opinions to highway districts, irrigation districts, good road districts, school districts, drainage districts, cemetery maintenance districts, county officials (other than prosecuting attorneys), justices of the peace, judges of election, or private individuals.

LITIGATION

Among the important cases handled during the past biennium, I will refer briefly to the following:

KILOWATT TAX CASE

Utah Power & Light Company v. Pfost, et al., 52 Fed. (2d) 226; 54 Fed. (2d) 803; also 286 U. S. 165; 76 L. ed. 1038.

This was an action brought in the Federal Court for the District of Idaho before a statutory three judge court to enjoin the enforcement of an act passed by the Extraordinary Session of the 1931 Legislature, known as the

Kilowatt Tax Act, which act levies a license tax on the manufacture, generation or production within the state for sale, barter or exchange of electricity or electrical energy. An interlocutory injunction was granted and after an answer was filed and evidence submitted, a final decree was entered disposing of the interlocutory injunction and requiring the appellant to pay the tax in question with interest, but without penalty. An appeal was then perfected to the Supreme Court of the United States and was argued before that court on April 13, 1932. The act was attacked upon a number of different points but the main contention of the power company was that the tax could not be one on the manufacture or production but was rather a tax upon the transfer or conveyance of energy from its source to the place of use and that as its system consisted of generating plants located in Idaho and transmission lines running from these plants into Utah where the power was sold to customers in Utah and Wyoming, that a tax upon the transfer of energy from the Idaho stations to these customers in other states amounted to a burden on interstate commerce and, therefore, the entire act was void. This office took the position that the tax was laid upon the generation of this electricity as a separate and distinct act without regard to its transmission; that the generation of electricity or electrical power is one of converting the energy of falling water into a different form or type of energy, giving it an entirely different physical characteristic. In considering the scientific question raised by the power company the Supreme Court said:

“From the strictly scientific point of view the subject is highly technical, but in considering the case, we must not lose sight of the fact that taxation is a practical matter and that what constitutes commerce, manufacture or production is to be determined upon practical considerations.”

The court considered that while the generation or con-

version and transmission of this power were practically instantaneous that nevertheless they were separate and distinct operations. The decree of the lower court was affirmed, and the interest collected because of the delay in payment of this tax amounted to many times the expense incurred by this office in defending this case.

Similar cases were instituted by the Idaho Power Company, Chelan Electric Company, and Washington Water Power Company. These companies chose to abide by the result of the Utah Power & Light Company case.

RAILROAD CASE

Another case of importance tried during the past biennium is that of Oregon Short Line R. Company v. Ross, et al, 52 Fed. (2d) 695, in which the railroad company sought to enjoin the members of the State Board of Equalization and the State Auditor from apportioning to the County Auditors the assessment for taxation on the railroad company's property for the year 1931 of the total sum of \$56,884,645.00, on the ground that the State Board of Equalization for that year had assessed the company's property in an arbitrary and unlawful manner and had discriminated against such company. It also alleged that the property was assessed by the board at 60.3 per cent. of its actual value, while the property of other taxpayers was assessed at 44.58 per cent. of its value. Upon a trial of the case, the court held that the evidence was insufficient to establish the fact that the board in determining the valuation of the railroad company's property as compared to other property discriminated against the railroad company. The application for injunction was denied.

KOOTENAI VALLEY MATTERS

Application of West Kootenay Power & Light Co. to Construct Dam.

This is a matter which has been pending before the

International Joint Boundary Commission since in the fall of 1929. The West Kootenay Power & Light Company, Ltd., a Canadian corporation, has requested permission of the International Joint Commission to construct a dam and certain improvements in Kootenay River below Nelson, in British Columbia, for the purpose of using Kootenay Lake, also in British Columbia, as a storage reservoir, which would result in raising the low water table of Kootenay River in Boundary County in North Idaho approximately six feet and consequently would destroy several thousand acres of reclaimed lands in the various drainage districts located in this valley. A hearing was held by the Commission at Bonners Ferry, Idaho, in November, 1929, and because of the fact that the time for appearance by respondents provided for in the treaty had been shortened by order of the Commission and neither the drainage districts nor the state were in a position to properly refute the evidence introduced by the power company, a postponement of one year was requested by the State of Idaho and the drainage districts in order that the United States Geological Survey as well as the state engineers might make the proper surveys and investigation to determine the effect of such an increase in the water table over that period. Since that time no hearing has been held but it is contemplated that the matter will come to final hearing about June, 1933. By that time the various cooperating agencies will have had an opportunity to determine the effect of this increased water table over a period of a dry year, 1930-1931, and a comparatively wet year, 1931-1932. This is a matter of very considerable importance as it involves the future of these drainage districts in Boundary County, which comprise approximately 25,000 acres of very fertile rich soil.

The case of United States of America v. Ladley, is another case arising in Boundary County. Evidence has been taken and the matter must be submitted to the Federal District Court of this state within the near future

for final determination. This involves the title to the bed of Mission Lake which was located adjacent to Kootenai River in Boundary County and was drained in the process of reclaiming these lands. The acreage is approximately 139 acres and was surrounded in part by allotments to the Indians residing there. Ladley entered upon the land in an endeavor to homestead the same and has been raising crops thereon. An action was commenced by the United States on behalf of the Indian allottees claiming ownership of this land as upland owners. Because of the fact that the title to the beds of all streams and lakes which were navigable at the time of the admission of Idaho to statehood is in the State of Idaho, the state intervened in this case claiming title to this land. The importance of this case lies in the fact that within the next few years the beds of other lakes in Boundary County and other parts of the state will be involved, and as this case will perhaps go to the United States Circuit Court of Appeals or to the Supreme Court of the United States, it should not be neglected from the standpoint of the state as the title to many thousand acres of land will subsequently be determined by the outcome of this case.

INCOME TAX CASE

The case of *Diefendorf v. Gallet*, 51 Idaho 619, 10 Pac. (2d) 307, was one in which an action was brought in the Supreme Court of this state to determine the constitutionality of Chapter 2, Session Laws of 1931, Extraordinary Session, known as the Income Tax Act. Plaintiff took the position that this was a tax upon property and amounted to duplicate taxation as prohibited by our Constitution. The court held that the statute did not violate uniformity of taxation, due process and equal protection clauses, and did not impose any unconstitutional burden by its terms.

GAS TAX CASES

The gas tax cases, *Independent School District v. Pfost*, 51 Idaho 240, 4 Pac. (2d) 893, and *City of Burley*

and Oakley Highway District v. Pfost, 51 Idaho 255, 4 Pac. (2d) 898, were cases in which the question of whether the gasoline tax could be collected from cities, school districts and highway districts was raised. The Supreme Court held that the presumption that state and municipalities are exempt from general tax law applies only to property taxation and not to excise or privilege taxes, and that school districts and municipalities were not exempt from the payment of gas tax.

NATIONAL GUARD CASE

Another case of some importance was the case of McConnel v. Gallet, 51 Idaho 386, 6 Pac. (2d) 143, which arose because of the fact that during the year 1931 the extensive forest fires and the serious situation which arose in conjunction therewith, necessitated the calling out of a portion of the National Guard in this state into actual service. A claim for a portion of the salaries of these National Guardsmen was presented to the State Auditor who was unable to pay the same as there were insufficient funds in the treasury to pay said claim. In this case the petitioner asked for an alternative writ of mandate directing the auditor to draw warrants on the Adjutant General's Contingent Fund regardless of its immediate insufficiency. The court held that the Governor's power to claim martial law included the power to incur such expense and that deficiency warrants might be issued against this fund.

INCREASES IN FREIGHT RATES

Many matters of importance were handled before the Interstate Commerce Commission during the past biennium. Ex Parte 103, before the Interstate Commerce Commission, was the application of railroads for a 15% increase in rates. This office represented the agricultural industries of the state in the hearing at Salt Lake in August, 1931. A considerable mass of testimony was introduced with respect to wheat, beans, deciduous fruits,

potatoes and dairying. The matter was also argued by this office before the Interstate Commerce Commission at Washington, D. C. Docket 17000, Part Seven, known as the Grain Rate case is of very considerable importance to the wheat farmers in this state. This office presented evidence at the hearings held in Seattle on July 14, 1932 and also in Chicago on April 20, 1932. This case involves better than \$1,500,000 to the wheat raisers of the State of Idaho.

LITTLE LOST RIVER CASE

The case of Faris, Commissioner of Reclamation, v. Blaine County Investment Company, is now pending in the Federal District Court in this state, in which the state is endeavoring to reduce the acreage in this district to a point where the average water supply will permit each landowner to receive sufficient water to raise his crops. This case has been the result of a great deal of expensive and ineffectual litigation in the state courts for the past several years and a final determination of this case along the lines attempted by the state will be beneficial not only to the farmers and landowners but to the other parties interested in the district as well.

COEUR D'ALENE RIVER AND LAKE COMMISSION

The 1931 legislature created a commission composed of the chairmen of the Boards of County Commissioners of Shoshone and Kootenai Counties and the Attorney General, to be known as the Coeur d'Alene River and Lake Commission (Chapter 199, Laws of 1931) to study the pollution question in the Coeur d'Alene River and Lake caused by industrial wastes in Coeur d'Alene River which tend to pollute the same, and determine and recommend methods of preventing such pollution and to make a report to the Twenty-second Legislature of the State of Idaho for its information. An organization of the Commission was held and the undersigned was elected Chairman and E. O. Cathcart, Chairman of the Board of

County Commissioners of Kootenai County, was elected Secretary. A hearing was held in Rose Lake, in August, 1931, at which considerable testimony was taken. An arrangement was made for studies of the situation by the United States Bureau of Fisheries, United States Bureau of Mines, the United States Public Health Service, and the Department of Public Welfare (State Chemist and Sanitary Engineer). Exhaustive examinations and reports are being made by these various agencies, together with recommendations to be included in the report to be presented to the next legislature.

RECOMMENDATIONS AND SUGGESTIONS

From the experience of this office in attempted solution of the multitude of problems involving questions of statutory interpretation and construction, the conclusion seems inescapable that a substantial part of the difficulties disclosed could have been avoided by the exercise of reasonable care upon the part of those responsible for the drafting and introduction of bills in the legislative sessions. This reference to reasonable care has particular regard to an adequate comprehension of the facts and circumstances to which the proposed measure will apply. In common instance, statutes have been amended to remove some discrimination, or to provide a remedy for some procedural defect, and the fault which occasioned the introduction of such measure effectually cured; but failure to survey the results of the application of the amendatory matter to all persons or industries or public corporations involved has merely substituted new problems for the one disposed of. The drafting of a new measure presents the same need of adequate preparation.

It is not to be expected in every instance that we can foresee all the difficulties that will arise from the application of a statute. To one familiar with the number of such problems which come to the office of the Attorney General, wherein the exercise of some governmental func-

tion has been hampered, the collection of a tax prevented or undue expense or hardship imposed, it is obvious, however, that in a majority of instances the fault arises from the failure of the proponents of a measure to meet their responsibility.

The legislature, immediately upon convening should enact a proper resolution adopting the "Idaho Code Annotated 1932 Official Edition," which was published in compliance with Chapter 213, 1931 Session Laws. I deem this necessary in order that no question may arise in connection with the official adoption of such code. The first three volumes of the code have been delivered and appear to be a true and correct compilation of the statutory law of this state, and in my opinion should be adopted as such.

Many of our tax statutes should be amended to remove defects which have been disclosed therein. Chapter 2 of the Laws of the Extraordinary Session of 1931 was obviously framed without regard to the physical facts concerned in the operation of an interconnected electrical system. While the act was sustained against challenge upon the ground of uncertainty, with the statement that the court would not assume in advance an arbitrary administration that would result in the taking of property without due process, this decision does not foreclose the possibility of further difficulty in such respect. Section 5 of the act is plainly adopted from Chapter 106 of the Laws of 1921. The latter statute deals with a single assessment for the entire season and is computed upon property in existence and use on the taxing day. A different situation appears where the tax is to be assessed on amounts varying from hour to hour, and where system losses and pumping uses are supplied in part from taxable generation and in part from sources not subject to tax. The provision for credits is unworkable where one company is engaged in generation and transmission and delivery to such pumping uses is accomplished by another company.

Our income tax statute was adapted from the Federal Act without full regard to the different situations that arise because of its application to interstate problems. As an example, consideration should be given the defects which have been disclosed in interpretation of the act with reference to the allocation of the income received by persons whose business operations or activities are partly within and without the state. In clarifying these provisions, consideration might well be given to a question of policy disclosed by the present provisions which assesses a tax upon a domestic corporation, measured by its entire net income derived from sources both within and without the state. Other states have largely eliminated this provision and removed the discrimination which results from the taxing of the same income by both the state of residence and the state within which such operations were conducted, by providing for allocation between the states according to the extent to which the operations within each state were responsible for such income.

The case of Varney Air Lines, Inc. v. Pfost, et al. manifests the need of amendment of the present Motor Vehicle Fuels Tax statutes. The defect disclosed by this decision threatens substantial losses to the state in the collection of this tax in respect to other uses than aircraft, unless a remedy be provided by amending the language of the statute whereby the tax is laid.

Our statutes provide that all abstractors must file a bond to the State of Idaho in the penal sum of \$10,000, with not less than three sureties, residents of the county. In view of the fact that such bond must continue for five years, and particularly during the present economic condition, it appears that all abstractors should be required to give a surety bond.

In view of the fact that official bonds of state officers and employees, also surety bonds on contracts for public works, are not such instruments as are required to be recorded, no provision is made for recording the power

of attorney of any attorney in fact executing such bonds. From an examination of such bonds, instances have occurred in which the power of attorney in fact executing the bond have been revoked prior to the execution of the bond, which necessitates a special investigation by this office in each instance to determine whether or not the power of attorney has been revoked or whether or not it is sufficiently broad in its terms to permit the execution of that particular bond. A provision should be made providing for recording these powers of attorney and authority of other persons to execute bonds generally.

The law should be amended in order that the State might be enabled to protect the capitol building and grounds from trespassers.

Section 11 of Chapter 236, 1927 Session Laws, known as the "Farm Produce Dealers Act," gives the Commissioner of Agriculture the right to refuse a license or refuse to renew a license to anyone who has violated the act or is guilty of dishonest or fraudulent transaction. It should be amended to also give him the power to revoke any such license under the same conditions upon proper hearing. Provision should also be made for the bond of dealers to be liable for unpaid inspection fees due the State.

In view of the vast number of death benefit associations coming into existence at the present time under and by virtue of Section 4877 of the Idaho Compiled Statutes, there should be some new legislation giving the Bureau of Insurance the power of regulation of such associations, and requiring a higher standard of organization for the protection of members.

As the law now stands, as interpreted under the Supreme Court ruling in *State v. Upham* (not yet reported), the instructions of the court given or refused on an appeal from a judgment of conviction are required to appear twice in the transcript on appeal where a reporter's trans-

cript is included. This is a duplication which should be corrected.

The only statute regulating building and loan associations is the old Land and Building Corporation Act, C. S. Sections 4906-4915. This act is so indefinite that it is questionable whether it has any application to building and loan associations and most of them are presently functioning under the Business Corporation Act. No two associations function in the same fashion and I believe a uniform building and loan association act would be invaluable, both to the associations themselves in defining their powers and duties, and to investors.

There is no statute definitely defining timber trespasses on state lands. I believe a statute of this nature providing both criminal and civil penalties should be enacted.

The law providing for valuation of public utilities by the Public Utilities Commission does not definitely provide whether a utility should be valued as a whole or, in the event it serves several communities, by each community. I believe the legislature should definitely provide what method the commission should follow in fixing a rate base.

The Industrial Special Indemnity Fund (C. S. Sec. 6234a) does not provide that expenses of administration of the fund shall be paid out of the fund. This leaves the state helpless to protect the fund in the court costs incurred in cases in which the fund is involved.

The recent decision of the Supreme Court in *McDonald v. State Treasurer*, holding a workman is entitled to compensation under the Workmen's Compensation Act for the loss of an eye which had never been injured and which was practically normal through the use of glasses should be corrected by the legislature defining what constitutes the "loss of an eye." The Indiana and Connecticut statutes fix the disability as a total loss when the remaining vision is 10/200ths with the use of glasses.

The statutes do not definitely provide that the Department of Public Works may condemn land within the limits of a municipality for right of way for state highway purposes. In some cases disagreements have arisen between the department and municipal officers which could be obviated if authority to condemn within the municipality were given the department.

There is some question as to whether our condemnation statutes are broad enough to permit the Department of Public Works or any other proper agency to condemn rights of way for the erection of snow fences adjacent to a highway.

CONCLUSION

Three thousand seven hundred twenty-eight written opinions have been rendered by this office during the past biennium. They are itemized as follows:

- 1354 Opinions have been rendered to elective officials, department heads, trustees or commissioners of state institutions and prosecuting attorneys.
- 1640 Opinions on abstracts, contracts, bond issues, tax anticipation notes, rights of way deeds, warranty and quit-claim deeds, leases and title insurance policies.
- 469 Opinions on official bonds.
- 110 Opinions on requisitions for extradition.
- 155 Opinions on articles of incorporation of foreign corporations.

The litigation in which the office has been engaged has been very heavy and necessarily there are a number of current cases pending. However, a special effort has been made to close as many cases as possible and all pending cases which could be reduced to final judgment have been disposed of with the result that this work is as nearly up to date as possible.

In conclusion I will say the cooperation which I have received from the various departments and commissions during the past biennium has been very pleasing. I also desire to express my appreciation to the members of this office for their splendid loyalty and devotion to duty which they have given so unreservedly and without which the work of this office could not have been carried on effectively.

Respectfully submitted,

FRED J. BABCOCK,
Attorney General.

Selected Opinions of Attorney General

AGRICULTURE

The adulteration of milk by any means whereby it is made to appear better or of greater value than it is, is prohibited by statute. The use of an homogenizing machine for the sole purpose of giving the appearance of a higher butter fat content than the milk actually contains, is within the intent of this prohibition.—5/15/31.

The legislature has provided certain enumerated classes for all potatoes offered for sale or shipped and for the branding of the classification upon the sack, and the Department of Agriculture is without authority to certify any other grade than one so prescribed.—11/16/31.

A potato sack brand may be registered as a trade-mark as a designation of the business in which it is used. There is no such property right in such a trade-mark as would give the State Chamber of Commerce the right to register it in pursuance of a plan to sell permission to use such trade-mark to others. The Department of Agriculture may not certify a grade of potatoes which does not conform to the grades fixed by the Legislature.—9/27/32.

BANKS

A bank organized under the laws of the State of Idaho is without authority to impose double liability upon its stockholders.—10/26/32.

The directors of a state bank, acting on the direction of the commissioner of finance, may levy an assessment on the stock exceeding its par value when necessary to repair a deficiency in its capital.—10/5/32.

Ten per cent of the excess of capital and surplus of domestic life insurance companies over minimum capital stock required by law may be invested in Federal Home Loan Bank Stock. State Banks or Building and Loan associations may not invest in such stock.—9/9/32.

Section 2, Chapter 60, 1931 Laws, provides generally that upon the deposit of items for collection, the relationship between the depositor and the bank of deposit shall be that of principal and agent, rather than that of debtor and creditor. A national bank is subject to the provisions of this act, since they do not interfere with the purpose of its creation or tend to impair or destroy its efficiency as a federal agency. Where the activities of the bank are suspended and the affairs placed in the

hands of a receiver, the authority of the bank to act further as the agent of the depositor is terminated and it is the duty of the receiver to return the items to the depositor. In such instance, the receiver could not, by collection of such items, acquire any claim to the proceeds thereof.—8/2/32.

Where securities pledged to secure a deposit of public moneys have been sold and the proceeds applied toward the repayment of such funds, the depositing unit is entitled to a preference for the balance of its claim, since the bank was without authority to hold such moneys otherwise than as a special deposit and trust fund. The pledged securities afford an additional and not a substitute assurance of payment.—1/28/32.

The assets of a defunct national bank in the hands of a receiver are not moneys of the United States, and a state bank cannot lawfully pledge its assets to secure a deposit of such moneys.—1/28/32.

Section 70, Chapter 133, 1925 Laws, in authorizing the commissioner of finance, with the approval of the district court, to sell any of the assets of a state bank which have been placed in his hands, authorizes such a sale in behalf of either the liquidation of the bank or its rehabilitation and resumption of business.—10/7/32.

Sales of property of a defunct bank made prior to the final liquidation should each be made upon application to the district court after five days' notice. Such application may not be made in a blanket form.—6/30/32.

Although a bank in the hands of the department of finance for liquidation owns all the stock of a subsidiary corporation, the latter is a separate entity from the banking corporation and cannot be liquidated by the department, except thru the appointment of a receiver therefor upon due proceedings had.—12/4/31.

BLUE SKY LAW

A mining company operating and developing mines in several states is exempt from compliance with our Blue Sky Laws if engaged in operating and developing mining property in Idaho, since the language of the statute does not authorize a construction of this exemption as tho it related to companies engaged solely within the state.—12/18/31.

The sale of profit sharing certificates similar to ordinary building and loan certificates, and which represent a membership in the association and a right to participate in its earnings proportionate to the investment, are within the terms of the Blue Sky Laws and the association must first qualify thereunder in order to legally sell such securities in Idaho.—10/5/31.

A certificate issued by a detective agency and which certificate entitles the holder to the collection of bad checks, without extra cost, to casual checking service, and to advice on business problems, is a membership or participation certificate within the purview of our Blue Sky Laws and may be lawfully sold in this state only under a Blue Sky Permit. Qualification under such law does not entitle the applicant to conduct a collection agency in this state without qualification under Chapter 181, 1929 Laws.—4/4/31.

In denying a Blue Sky Permit, the department of finance is not required to insist that the plan submitted shows an intent to commit a fraud. It is sufficient that the provisions contemplated plainly manifest a plan of business that is inequitable and oppressive, to its contributors and discloses probable deception. In the instant case, permission is sought for the sale of investment certificates in a pure or strict trust. The declaration of trust invests the trustees with absolute powers and divorces the unit holders of all control in management of the trust estate. Provision is made for an arbitrary forfeiture of his interest in case a purchaser on the installment plan fails to make payment in exact accordance with the trustees. The purposes of the trust may be altered upon the consent of three-fourths of the parties in interest, and the certificate to such fact of the trustees is made conclusive. Only such dividends are to be declared as the trustees determine, and no unit holder is permitted to sell his certificate without first offering it to the trustees who may purchase it at the price fixed by their last appraisal. The Department did not abuse its discretion in denying a permit.—10/8/32.

A Blue Sky Permit must be obtained for the sale of membership cards which entitle the holder to monthly proportionate participation on his gasoline purchases in such surplus as the vendor may see fit to grant for such distribution from its gasoline sales, and to such special customers discounts as may be given on the purchase of tires, batteries, etc.—4/1/32.

The exemption of notes secured by mortgage on real estate located within this state from supervision under the Blue Sky Law will not be extended to include generally all bond issues secured by trust deed to real property within this state. Since the act requires a permit for the sale of "bonds", it will be considered that the legislature in using the word "notes" in the exemption referred to intended to distinguish between notes and bonds.—5/7/31.

The sale of securities otherwise within the classification which requires a permit under our Blue Sky Laws is not exempted from the provisions of such statute by reason of the fact that the vendor is a foreign corporation selling its own stock.—4/5/32.

An exchange of the stock of an Idaho corporation for shares in a foreign corporation is without the purview of our Blue Sky Law where the transaction occurs without the state.—2/27/31.

When the department of finance has acted upon an application for a Blue Sky Permit and denied the same, the applicant may not withdraw the application and accompanying papers.—11/19/32.

If an investment company agency appointment is refused by the bureau of blue sky the bureau is not entitled to the fee.—11/21/32.

BONDS

A realtor is liable upon his bond for failure to account for or remit moneys coming into his possession as the rentals from real property collected upon the account of another.—1/6/31.

The bond of a farm produce dealer is liable only for a breach of his contract or for a fraud practiced by such dealer, and does not guarantee a return to one shipping upon consignment or give rise to any cause of action if no fraud or breach of contract is shown.—7/29/31.

A bond furnished by a farm produce dealer is not liable for inspection fees due the department of agriculture for inspection certificates issued.—3/8/32.

A bond given in order to the issuance of a farm produce dealer's license is for the term of the license and is not subject to cancellation by the surety company prior to the expiration of such period.—1/23/31.

A second bond given by a public officer upon his re-election does not provide a cumulative liability, as each bond refers only to the term of office for which it was given. Our statutes contain no provision for the cancellation of the earlier bond and no attempted cancellation could absolve the surety from liability upon such bond for a breach of duty previously committed but thereafter discovered.—2/19/31.

Where bond interest coupons issued under a statute providing that interest should cease after date of call were paid for subsequent periods, the state may claim a set-off in paying the principal of these bonds if held by the same persons as received the interest payment. In the absence of such a statutory provision, the payment of interest after the date of call was lawfully made and the state has no right of set-off.—2/23/31.

A produce dealer's bond remains in full force and effect until the termination of the license and is not subject to cancellation because of any clause or agreement incorporated in the bond for such purpose, since the undertaking is statutory and the obligation governed by the

provision of the statute. The produce dealer is not a public officer and hence the question of cancellation is not governed by the provisions of C. S. 442-7.—3/10/31.

The premium on the bond of a state officer may not be paid beyond the biennium for which the appropriation for his department was made.—5/21/32.

The treasurer of the Board of Regents is an officer of a corporate entity separate and distinct from the state and his bond is not an official bond of a state officer within the purview of C. S. 419.—3/28/31.

Cost bonds are required of a non-resident plaintiff in attachment cases and from plaintiffs who are non-residents in actions for injunction. No such bonds are required in personal injury cases.—5/11/32.

Counties may issue bonds redeemable after five years from date if time and option be stated therein and such bonds are not callable unless the option to redeem is stated.—4/6/32.

Bond interest coupons of a drainage district, when presented and payment refused for lack of funds, shall be registered and thereafter bear interest at the same rate as warrants so presented and unpaid.—3/30/31.

BUILDING AND LOAN ASSOCIATIONS

A building and loan association engaged in business under the laws of this state may borrow money for the purpose of carrying out its objects, and pledge as security therefor collateral consisting of its mortgages or real estate taken in the regular course of business.—1/16/32.

The building and loan code of Idaho does not permit the investment of funds of building and loan associations in stocks, bonds and securities, while the savings and loan code does not authorize the making of loans on the stock of the association as security. Such powers are inconsistent and a corporation cannot act in the dual capacity of a land and building corporation and a savings and loan association at the same time, to take advantage of both provisions of the law.—9/22/32.

CITIES AND VILLAGES

OFFICERS:

The positions of village attorney, or clerk and treasurer of the village, and the position of a member of the board of trustees are incompatible in that one is subordinate to the other and subject in some

degree to the supervisory power of its incumbent. Therefore, both positions may not be held by the same person.—5/12/31.

Where there is a vacancy in the office of mayor, the president of the council shall act in his place until such vacancy is filled.—3/31/32.

One appointed to fill a vacancy of a village trustee holds office only until the next general municipal election when a successor must be elected.—3/30/31.

One convicted of the crime of conspiracy to violate the National Prohibition Law cannot assume the office of chief of police of a city where the statute requires him to take an official oath that he will support the Constitution of the United States, and provides that such office shall be vacant in case the incumbent be convicted of a public offense involving the violation of his oath of office.—4/30/31.

The city clerk of a city of the second class holds office by virtue of his election and is directly responsible to the people for its proper conduct. He is therefore privileged to select his own assistants and their appointments do not rest in the power of the mayor.—4/29/31.

FINANCES:

A village may borrow money for the purpose of meeting current expenses to an amount not in excess of 65% of the unexpended taxes levied for the current year, issuing therefor the negotiable notes of such taxing district which shall bear interest at the lowest rate obtainable not exceeding 6 per cent per annum.—6/17/31.

Where a municipality owns and operates more than one utility service, the receipts from one utility not required for its operation or maintenance or the payment of any indebtedness incurred for its purchase or construction may be used by the municipality in aid of the funds set up for operation of or payment for another utility service.—7/28/31.

Moneys collected by a city from delinquent taxes should be applied in payment of outstanding warrants according to the date of priority.—9/28/32.

Defaulted special improvement bonds do not affect the acceptability of general obligation bonds of a city as security for public deposits where the security has been exhausted. Special improvement district bonds outstanding and unpaid share pro rata in any funds in the hands of the city belonging to that district.—8/29/32.

A municipality is not liable to the holders of local improvement district bonds except to the extent of funds created and received by assessments against the property, and for the responsibility of the city to make the levies provided for by law in order to the payment of such bonds.—1/23/31.

The moneys in a local improvement guarantee fund collected pursuant to Chapter 134, 1929 Laws, may be used for the payment of defaulted improvement district bonds as well as bonds and warrants in good standing.—2/14/31.

A village has no authority to invest any of its money in school warrants or county warrants. The interest and sinking fund collected cannot be used for any other purpose than the payment of the interest on or for the redemption of the bonds of the village. Excess moneys in the general fund at the end of the fiscal year not needed for current expenses, are to be transferred to the warrant redemption fund.—5/19/32.

When a city has registered unpaid warrants outstanding at the end of the fiscal year, a tax must be levied for the warrant redemption fund to retire them. Special improvement funds may not be invested in city warrants by the city.—6/5/32.

Funds of a village, if deposited at all, must be deposited in accordance with the public depository law, but a bank may refuse to accept such deposits.—7/13/32.

A city council may not designate a bank as public depository outside of the county when a bank within the depositing unit is fully qualified and desires the designation.—9/27/32.

POWERS—GENERALLY:

A municipality is without power to adopt ordinances prescribing penalties for the possession, sale or manufacture of intoxicating liquor. Police magistrates do not have jurisdiction in criminal matters which constitute indictable misdemeanors.—6/9/31.

Municipalities may not make a levy for band or musical purposes in the absence of an election authorizing such levy as provided in Chapter 47 of the 1927 Session Laws.—6/7/32.

A village has no authority to levy a license tax for revenue on motor vehicles operating through it.—4/4/32.

A city may enter into a contract with an insurance company for group life insurance upon those employees who hold office at the will of the mayor or city council, but may not procure such insurance for its elective city officials since the effect thereof would be to afford an increase in their salaries in violation of statute.—12/2/31.

The provision in Chapter 238, 1921 Laws, that a city council or village board may pass an ordinance closing theatres on Sunday upon petition of a majority of the electors, is to be considered as mandatory and the word "may" must be read here as equivalent to "shall."—2/28/31.

C. S. 8293, authorizing the council or board of trustees of a city or village to permit theatres to keep open on Sunday, upon petition of a

number of qualified electors equal to a majority of the votes cast at the last general election, is directory and not mandatory in its method of determining the number of signatures required for such petition. In a case where it appears that no general village election has ever been had, the council or board may determine the qualifications of petitioners by other proper means. Where the same person has signed petition both for and against such permission, the last petition signed by him shall govern. Where not made to appear which petition has last been signed, neither signature shall be counted.—3/14/31.

A village has no authority under our statute to lease or make a gift of real property acquired by it for delinquent taxes.—3/20/31.

Railroad crossings outside cities are under the control of the Public Utilities Commission, but cities have exclusive power to regulate those within their limits and, therefore, the Commission has no authority to vacate a city street.—4/6/31.

CO-OPERATIVE ASSOCIATIONS

Co-operative marketing associations have no authority to purchase or hire supplies, machinery or equipment for non-members.—3/20/31.

Non-profit agricultural co-operative associations do not have the rights and privileges of corporations, and its members do not enjoy the protection and immunities of stockholders of corporations, unless the association be incorporated. If unincorporated and doing business under a trade-name other than the true name of the individuals composing the association, a certificate of trade-name should be filed in compliance with the provisions of Chapter 212, 1921 Laws.—12/24/31.

CORPORATIONS

A corporation may not be formed under the laws of this state for the practice of a profession. The word "profession" as so employed should be considered as relating to the learned professions, as differentiated from a skillful trade. The rule cannot be extended to exclude every calling practiced under state license or regulation. A corporation may be formed to carry on the business of plumbing or running a barber shop if it engages duly licensed persons to perform the particular labor subject to state regulations.—2/16/32.

If within its charter powers, a corporation may act as the statutory agent of a foreign corporation.—3/9/32.

Savings banks may not borrow money except to meet seasonal requirements or unexpected withdrawals. Land and building companies,

(building and loan associations) may borrow money for the purpose of carrying out their objects. Insurance companies are not prohibited from or authorized to borrow money and pledge collateral therefore, but such power would be incidental to its general power to do business and limited to that purpose only.—11/19/32.

A foreign corporation may not act as guardian or receiver, nor transact business as a trust company within this state. A national bank domesticated in another state is within this inhibition of our statute.—12/29/30.

Denial to a stockholder of a corporation organized under the laws of this state of the right to vote in the election of directors is a violation of Article XI, Section 4 of our Constitution.—2/5/32.

The issuance of so-called preferred stock in a corporation which guarantees the payment of a fixed dividend, but denies the holder any interest in the assets of the corporation upon its dissolution, is not authorized by our Corporation Code and is probably illegal.—9/3/32.

A foreign corporation doing business in this state without qualifying so to do is not subject to penalty or punishment other than thru the disabilities imposed under C. S. 4775-4778.—10/30/31.

Where a foreign corporation has acquired mortgages and lands in this state while it was qualified to do business within the state, the title to said lands or mortgages will not be affected by its discontinuance of business and failure to maintain its qualifications to do business within the state but such corporation may legally transfer title to its property without such compliance. This would not constitute doing business within the state.—1/30/32.

COUNTIES

IN GENERAL:

The financial statement of the county need not be published in newspaper or pamphlet form. Joint statement by auditor and treasurer must be published in some newspaper.—5/5/32.

County tax anticipation notes are authorized securities under the Public Depository Law, they being classified in natural and general characteristics as bonds.—5/31/32.

In the publication of joint statement by the auditor and treasurer as required by Section 3629 C. S. it is not necessary to set out each warrant issued but the name of the party and the amount of the aggregate warrants issuing to that party for the month should be listed separately from others receiving county warrants. Salaries of county officers are to be paid separately and not in one warrant.—5/25/32.

Where the county commissioners have failed to make provision in the budget for the expense of the upkeep of the plat of the assessor, his only remedy would be a mandamus action to compel payment of the necessary expenditures incurred in keeping up such plat.—1/31/31.

WARRANTS:

A county has no authority to issue deficiency warrants in order to permit the expenditure of the full amount provided for in the budget, if in excess of the anticipated revenue of the county for that year, and the fact that by reason of the reduction of assessed values the maximum levies permitted by law will not raise sufficient funds to meet amounts called for by the budget, does not afford an exception to this rule.—9/25/31.

The county treasurer may disburse county moneys only on county warrants issued by the auditor. County warrants must be paid in the order of their registration and if at presentation there is money in the fund out of which to pay a salary warrant it may be paid in cash by the treasurer.—7/6/32.

When county warrants are presented for payment by the holder and are not paid for want of funds then only do such warrants begin to draw interest. They are not registered until presented for payment.—4/8/32.

The payment of registered warrants of a county in the order of registration required by statute applies only within the fiscal year and to the funds against which such warrants were issued. Warrants remaining due at the end of the fiscal year are payable only out of the warrant redemption fund.—11/26/32.

Where county deposits in a bank are secured by county warrants, upon the insolvency of the bank, the county cannot take up the warrants constituting the security ahead of their regular order of registration.—6/10/32.

COUNTY FUNDS:

A county may issue tax anticipation notes prior to making the levy for that year for taxes as soon as the commissioners have spread upon their minutes the total of the amount of money necessary to be raised as provided by Chapter 187 of the 1925 Session Laws. The word "levy" with reference to taxes means the extension of a tax against taxable property but as Chapter 187 of the 1925 Session Laws is not a revenue measure its meaning is interpreted differently than as used in revenue statutes. The word "levy" as used in this act refers to the estimate of the governing board of the amount of money necessary to raise for maintenance and operation for the current year as provided in the statute.—2/27/32.

The board of county commissioners is authorized to provide for the payment of salary and expenses of an extension agent out of the general tax fund of the county or out of the county fair fund. Where the statute makes no other provision for a county fair fund further than that found in C. S. 3438, providing for a levy for the purpose of creating a fund for exhibiting the products of the county or the payment of premiums, etc., the fund so derived will be considered the county fair fund referred to and the county extension agent may be paid therefrom.—1/26/32.

The county treasurer is not authorized to borrow money from one fund for the payment of expenses incurred against another fund, except under resolution of the county commissioners in the cases expressly authorized by statute. In common instance, warrants must be drawn upon the fund from which the item was authorized to be paid, and registered if the moneys then in the fund are insufficient to accomplish payment.—2/26/31.

Moneys in a county's good road fund at the end of the fiscal year and not needed for current expenses shall be transferred to the county warrant redemption fund and may thereupon be used for the redemption of deficiency warrants outstanding.—4/7/31.

A county may resort to its general reserve appropriation for traveling expenses for a county officer when a special occasion arises requiring such travel, unforeseen at the time the county budget was prepared.—2/28/32.

The balance in the road and bridge fund on the second Monday of January from the previous fiscal year should be transferred to the warrant redemption fund. Such a transfer may be made only after the end of the fiscal year and upon determination by the commissioners that such fund is no longer needed.—11/2/32.

LIABILITIES:

The county fair district is an agent of the county and, as such, not liable for damages for personal injuries. Members of the board of directors or management may be held liable for the negligence of their employees.—2/7/31.

An attorney does not have a legal claim against the county for services rendered at the instance of the assessor in the prosecution of an action against the county commissioners for the purpose of securing the allowance of further funds to the assessor, in the absence of a statute permitting such employment, or authorization thereof by the county commissioners.—7/14/31.

Expense incurred by a county auditor in attendance upon a state meeting of auditors is not a legal claim against the county, since not incurred in the performance of any duty prescribed by law.—1/14/31.

Attendance of a county school superintendent at the convention of the Inland Empire Teachers' Association is not in the performance of an official duty, and hence the expense of such attendance is not a legal charge against the county.—3/30/31.

The county in which the family then had residence should make provision for financial assistance for the wife and children upon sentence of the husband to the penitentiary, if such residence has been maintained for the period of six months. If such residence has been for a lesser period, the county in which they had previously maintained their residence should make such provision.—1/16/31.

In taking a tax deed to property for delinquent drainage district taxes, the county acts merely as trustee for the district and assumes no obligation to pay its bonds or warrants. As the record owner of such land, the county cannot be held liable for the payment of subsequent assessments upon such bonds or warrants without violation of Art. VIII, Sec. 4, of our Constitution.—3/30/31.

One who has suffered such loss of eyesight as renders him unable to provide the necessities of life may be entitled to a pension from the county as a needy blind person who has suffered the loss of eyesight.—5/14/31.

COUNTY OFFICERS:

It is not within the proper province of county officials to question the constitutionality of the Peddlers' License Law. Until the statute be adjudged unconstitutional by the court in an action maintained by a party in interest, it is the duty of the county officers to attempt its enforcement.—4/30/31.

All county officers are required to account for and pay into the treasury all fees received by them in the performance of their official duties. This includes mileage received by the sheriff. The actual and necessary expense of the officer incurred in the performance of such services is a just claim against the county and raises a question of fact which the county commissioners may determine from the circumstances and fix a flat mileage as an allowance of actual expense in traveling by auto.—4/16/32.

In making out the quarterly report to the county commissioners, county officers must make out a complete statement itemized showing each item of expense incurred and each item of fees received by him and making full and complete account for all fees earned whether or not collected but need not furnish vouchers showing the amounts received. Vouchers are necessary only with reference to amounts expended.—3/6/32.

The office of county surveyor is created by Section 6, Article XVIII of the Constitution, therefore the county commissioners may not abolish the same.—2/17/32.

The county commissioners may order the county auditor to withhold the salary warrant of an officer during the audit of such officer's accounts and the auditor must comply with such order.—2/10/32.

A county commissioner may maintain his residence in the district from which he is elected, if living there with the intent to make that his home although his family reside at a different place for a part of the year.—2/10/31.

Authority to determine whether or not a deputy assessor shall be employed by the county and to fix the salaries of deputy assessors is vested in the county commissioners. The selection of persons to fill such positions is a right vested in the assessor.—12/12/30.

The board of county commissioners may contract with an unlicensed layman for the burial of county indigents, provided that statutory provisions relating to death registrations and the rules and regulations of the department of public welfare be complied with. Such a contract cannot be entered into, however, with one acting as county coroner.—2/19/31.

The qualifications required by law of a county superintendent of public instruction must be held by him at the time of his nomination or appointment, and a candidate not possessing such qualifications at the time cannot be lawfully nominated or elected.—12/18/30.

It is the duty of the county recorder, upon application and payment or tender of the fee therefor, to make search and certify the same showing all conveyances, mortgages or other instruments, papers or notices recorded or filed in his office which affect the title to the particular property inquired about under Section 3648 C. S.—5/18/32.

The prosecuting attorney is not required by law to render services or furnish counsel to county fair boards, and for any such services is entitled to charge a fee as for private employment.—5/29/31.

It is not illegal for a prosecuting attorney to accept remuneration from an adjoining county for assistance in prosecuting a criminal action therein, since this is not an award or fee for services which he is under any official duty to attend or discharge. However, the county is not authorized to pay for such services as special counsel, save in the instances provided by C. S. 3654 and upon appointment by the district court as therein required.—3/18/31.

In habeas corpus proceedings brought to procure the release of an inmate in a state institution, it is the duty of the county attorney to appear and represent the state in such proceedings.—1/30/32.

A prosecuting attorney is not charged with the duty of representing the county superintendent in an action brought by one school district to require the transfer of funds due another district as tuition.—8/25/31.

A county coroner may not collect an additional salary for services as deputy sheriff, since any salary paid to a county officer is in full compensation for his services to the county and he cannot receive two salaries from the county.—2/11/31.

Moneys paid to the sheriff of a county for the board of federal prisoners must be accounted for to the county. Sheriff may be prosecuted for embezzlement for failure to account for such money and his bond would be liable for the recovery of all such sums due to the county.—1/20/32.

County commissioners may not contract with county officers to pay such officers a flat amount per month for the use of officers' private cars used in county business. May only allow the actual and necessary expenses.—1/25/32.

County commissioners may authorize and pay county officers a fixed charge per mile for the use of the officer's automobile while traveling on county business, provided the rate adopted fairly represents the value of the use of such automobile.—1/23/31.

County commissioners may receive only one mileage to and from their residences to the county seat during a regular session of the board. A flat rate per mile may be determined by the commissioners as the actual expense of operating an automobile. The actual and necessary expense of county commissioners should be handled the same as any other county officer and the same rules applied thereto.—6/9/32.

County commissioners are not entitled to reimbursement for the expense of meals at the county seat. Such disbursements are not to be regarded as traveling expenses since the statute intends that their time be spent primarily at the county seat.—6/17/31.

POWERS—GENERALLY:

There is no statutory authority by which the state or county may create a zone in a particular territory so as to prevent the erection of unsightly buildings or obnoxious business enterprises along the highways.—7/5/32.

A county has the power and authority to lease its hospital for hospital purposes and uses.—9/22/32.

The board of county commissioners may contract for county publication with a newspaper having statutory qualifications, that is, published in the county having a general circulation therein and if a weekly, published uninterruptedly during a period of 78 consecutive weeks, prior

to the first publication of the matter published by the commissioners and if a daily, published during the first twelve months prior to the first publication of such matter.—10/17/32.

A contract entered into by the board of county commissioners with the extension service of the college of agriculture of the university of Idaho should not extend beyond the term of office of the board.—11/14/31.

Contracts for keeping of federal prisoners should be entered into by the county commissioners, and a contract for their care executed by the sheriff should be cancelled and a new contract entered into with the board.—9/21/31.

A county may not join with the American Legion in erecting a public building to be used jointly as a courthouse and memorial hall.—3/20/31.

County commissioners have authority to alter, change or abolish streets or roads within the county and outside municipalities, and hence may change a street in a platted subdivision.—2/24/31.

At a sale of county property held by the county for delinquent taxes where in the notice published recited that the sale was to be made strictly for cash in lawful money and bidders appeared and offered bids on terms which were refused and then the land was sold to another party without further notice on terms, such sale is voidable. The notice must designate the terms and conditions of the sale.—11/17/32.

Where a bank fails with county money on deposit secured by personal bondsmen the county may institute suit against the bondsmen where payment is refused by the bank or pursue its remedy against the bank to recover such moneys as a trust fund without resort to the bondsmen.—1/8/32.

The tentative budget to be considered and allowed by the board of county commissioners upon the second Monday in January of a year following a general election should be considered by the new board and not by the board going out of office on said date.—9/25/31.

A county fair board is recognized by statute as a taxing unit under the provisions of the Idaho Budget Law and as such may issue tax anticipation notes or warrants.—6/9/31.

Upon showing made by a sheriff that a murder had been committed which required expert investigation to determine the person guilty; that funds therefor had not been provided in the budget of the sheriff; that no person in the employ of the county was qualified to make the necessary scientific investigation, and that immediate attention was required, the board of county commissioners has authority to declare an emergency and make the expenditures necessary.—1/17/31.

Where the county's share of a highway project lawfully contracted for has by mistake been stricken from the budget, the commissioners may create an emergency fund to meet such expense.—6/7/32.

The proceeds of a special levy made by the county for the purpose of meeting state or federal aid appropriations for highway construction may, upon compliance with the statute, be expended in construction work within the boundaries of a highway district in said county.—7/22/31.

COURTS

Where an action involving the title of real estate was instituted in the justice court, such court is without jurisdiction and cannot transfer the same to the district court; the action must be commenced originally in the district court.—4/25/32.

CRIMINAL LAW

OFFENSES, IN GENERAL:

The manufacture of pure alcohol within the state is prohibited even though the manufacturer intended to further treat or denature such alcohol.—11/1/32.

A sale or any disposition of a dairy cow infected with undulant fever, other than for the purpose of immediate slaughter and disposal of the carcass is a misdemeanor and punishable by a fine of not less than \$100 nor more than \$5000.—9/28/32.

A pool and card room must be so operated that there be no obstruction so that there may be free inspection by passers-by.—7/27/32.

The statute does not prohibit dancing on Sunday, but does prohibit the keeping open of a dance hall.—6/4/32.

Marihuana is prohibited from being grown, sold or offered to be sold or given away in this state, except that licensed pharmacists or physicians may handle the same in the manner provided by Chapter 105 of the 1927 Session Laws.—2/8/32.

The payment by a creamery of a higher price for butter fat at a point upon its route distant from its station than is paid at the station, without consideration of the cost of transportation, is a discrimination which violates Chapter 121, 1923 Laws, as amended by Chapter 78, 1925 Laws.—11/13/31.

The purchase of claims and accounts for the purpose of instituting suit thereon is a misdemeanor altho the purchaser be a duly licensed collector.—5/4/31.

The lease of a bowling alley or pool hall to a private club for use on Sundays constitutes a violation of C. S. 8293.—1/19/31.

Proceedings to punish for contempt in a civil action are remedial and civil in their nature. Inasmuch as contempt in a case of failure to pay alimony is not a crime, there is no authority for the chief executive to honor a request for the extradition of a person so charged.—2/20/32.

Sales of firearms in this state need not be registered. A sheriff's permit is necessary to carry concealed weapons, but not to keep one in the house. A gas weapon is included in the above, altho not of deadly effect.—1/25/32.

NEPOTISM:

The employment of a son of a county commissioner by one contracting with the county to grade roads is not a violation of our nepotism law unless the grant of such contract was conditioned upon this employment.—3/18/31.

The award by the board of county commissioners of a contract for the operation of a county poor farm to a brother-in-law of one of their members is in violation of our nepotism laws.—3/19/31.

The wife of the president of a county predatory animal board may be appointed to the position of secretary for such board and receive a salary therefor without violation of our nepotism law. The board is not within any of the classifications of C. S. 416, nor has a county board power or authority to fix a salary for such secretary, create any indebtedness, or make any appointment by virtue of which an expense is incurred.—10/30/31.

The employment by a road overseer of a relative of his within the third degree of relationship by affinity or consanguinity is a violation of the anti-nepotism act.—11/9/31.

The employment by a county road overseer of a relative of a county commissioner is not a violation of the anti-nepotism law. The road overseer is not an associate in office of the county commissioner.—12/1/31.

A member of the board of county commissioners may approve claim for salary of his daughter employed in the county auditor's office.—5/9/32.

Appointment of a brother of one of the county commissioners as clerk of the district court would be a violation of the nepotism act.—11/30/32.

The employment of two sons of a niece of the governor's wife in the department of public works does not constitute a violation of the

nepotism statute, because they are not within the degree of relationship set forth in the statute.—1/17/31.

A judge of election who appoints his wife as an election clerk violates the nepotism act.—11/3/32.

PROCEDURE:

Congress governs Indians by Act of Congress now rather than by treaty. If an Indian has received his patent in fee to tribal lands the exclusive jurisdiction of his person immediately ceases and he becomes amenable to the criminal laws of this state and regardless of whether the crime is committed on the reservation or not he is punishable as a white person. If he is an allottee who has not obtained his patent in fee he is still a ward of the government although a citizen and subject to the exclusive jurisdiction of the United States.—4/7/32.

When a boy or girl of sane mind, between the ages of eight and eighteen years, is convicted of any felony except murder or manslaughter, the court may commute the sentence and confine the defendant in the State Industrial School. Such confinement cannot extend beyond their twenty-first birthday.—5/14/31 and 6/29/31.

The period of limitation for prosecution of a felony is three years.—8/30/32.

Sentence for assault with deadly weapon may not be for less than six months in the penitentiary.—3/9/32.

Where a court erroneously sentences one convicted of a felony to a fixed term of confinement which is less than half of the maximum term prescribed by law, the period prescribed should be considered as the minimum and the maximum period provided by the statute shall be read into the sentence.—4/6/31.

When a prisoner confined to the penitentiary is adjudged insane, he must be transferred to the insane asylum. Upon regaining his sanity, he may not be released but must be returned to the penitentiary to serve the balance of his term of confinement.—6/16/31.

Where a prisoner in the state penitentiary is committed to an insane asylum and later returned to the penitentiary upon recovery, the time spent in the asylum is not to be considered as a part of the sentence which he is serving.—12/8/30.

A convict is not eligible for a parole from the state penitentiary until the minimum sentence has been served.—2/10/32.

A commutation of sentence may be secured by the pardon board upon the application of the warden, in order to honor the requisition of another state for one wanted therein for murder and at the time in confinement in the Idaho penitentiary for a lesser offense.—8/10/31.

The governor is without power to restore citizenship to one convicted of a felony but whose sentence was suspended by the court. Action in such case must be taken by the board of pardons.—9/15/32.

DRUGS

Osteopaths are permitted to prescribe and dispense narcotics in this state within the scope of their practice only.—11/17/31.

EDUCATION

The question of approval of a college or university in order to the qualification of its graduates for state high school certificates is vested wholly with the discretion of the board of education.—3/19/32.

The board of education may receive grants, bequests or gifts for trust uses for the benefit of students in various educational institutions of the state under testamentary dispositions.—11/17/32.

The state board of education may not require out-of-state teachers to meet all the requirements for elementary certificates in their own state before issuing an Idaho certificate. In the absence of a statute therefor, the board may not require out-of-state teachers to attend an Idaho normal school before issuance of an Idaho certificate to one otherwise qualified.—11/26/32.

The character of use to be made of the income from the permanent investments of the various land grant institutions is fixed by the terms of the Admission Bill, and the legislature may not limit the use of such interests so as to prevent its employment for the payment of personal services at such institutions.—2/13/31.

The preparation of a course of study for the public schools of this state is a duty prescribed for the state board of education. The state superintendent of public instruction may not authorize the use of a course of study prepared at her instance when such course has been disapproved by the board of education.—2/2/32.

Parents who refuse to permit their children to attend school may be prosecuted for contributing to and encouraging delinquency, although the child is not in fact a delinquent or disorderly child.—2/2/31.

A provision annulling a teacher's life certificate for non-use during five consecutive years applies to a certificate issued in 1911. Teaching as a substitute in public schools would prevent a lapse of the certificate.—11/10/32.

The only funds provided for to retire dormitory bonds at Lewiston and Albion normal schools are those in the dormitory fund as provided in the amendments in Chapter 132 in Laws of 1929. Inasmuch as the state may ultimately purchase these buildings, there is nothing to prohibit the legislature from making an appropriation to pay deficits in such fund.—11/22/32.

ELECTIONS

IN GENERAL:

The requirement that changes in the boundaries of election precincts be effected by county commissioners during their July meeting will not be construed to prohibit the creation of new precincts within territory formerly a part of another county and annexed subsequent to the July meeting.—10/10/31.

Platform conventions under the 1931 Primary Law may be held any time after June 10, 1932.—1/23/32.

The use of proxies at meetings of the county central committee of a political party is unauthorized. Members are selected because the voters of their precinct reposed particular faith and confidence in their integrity and ability, and are expected to exercise their own judgment in behalf of the voters responsible for their selection.—6/3/32.

A meeting of the county central committeemen is held on the 10th day after the nominating election to elect a chairman. Such day is determined by excluding the first and including the last day unless the last day is a holiday under C. S. 9451.—5/28/32.

It is within the discretion of the county central committee to elect a county chairman when the present incumbent is willing to act.—7/12/32.

Where judges of election work beyond 12 M. on election day they may be paid for two days' work.—11/10/32.

QUALIFICATIONS AND REGISTRATION OF VOTERS:

A person must be a resident of a school district at the time of a school election to be entitled to vote.—4/25/32.

Qualifications of a voter at a county bond election are that he shall be a (1) qualified elector of the district; (2) bona fide resident thereof for more than 30 days and (a) a taxpayer or (b) the wife or husband of a taxpayer. A taxpayer is one whose name appears on the tax rolls and is there assessed with unexempted property subject to taxation within the district.—10/15/32.

In a municipal bond election either the husband or wife may qualify as taxpayers under the community property system. If a widow owns property upon which she and her husband, during his lifetime, paid taxes but upon which now she is exempted, she would be classed as a taxpayer.—2/27/32.

Qualifications of an elector with regard to residence relate to the date of election and not to the day of registration.—9/29/32.

A woman who is a subject of Canada and married a United States citizen after September 22, 1922, did not become a United States citizen thereby and may not vote.—11/2/32.

The right to vote in Idaho is not lost when a person goes through bankruptcy.—10/17/32.

When a person loses his residence in one county he also loses his right to vote in that county which amounts to a cancellation of his registration there.—5/12/32.

Wives of the employees of the United States Government may not register for 1932 primaries by mail. Such right of registration is limited to, "an officer, agent or employee" and requires a statement under oath of his official or other position.—4/7/32.

The date required in the transfer certificate provided for by Section 9, Chapter 220 of the 1931 Session Laws, relates to the execution of the certificate which certifies that upon that date the individual was a duly registered voter in that precinct.—1/5/32.

An elector who voted at the last general election need not re-register for the next election—6/20/32.

One cannot vote at any election until he or she has attained the age of 21 years. They may register prior to an election and vote at an election if at the time of the election they are actually 21 years of age.—5/6/32.

A registered elector upon removing his residence from a precinct where he is registered may have such registration transferred to his new residence within the same county or he may re-register if outside the county and his right to vote in the county from which he moved his residence is lost and in effect his registration therein cancelled.—10/29/32.

BALLOTS:

Ballots cast at nominating elections are not required to be kept sealed in the ballot box for at least eight months as is provided with respect to general elections, nor after the expiration of the twenty days allowed for contest, unless the initiation of a contest requires that they be so retained for employment therein.—9/29/31.

In printing the ballots for primary elections, the provisions relating to candidates for "non-political" offices should be ignored since we have no offices which may be so regarded. The word "political" is defined as pertaining in the administration of government or relating to politics or the science of government, and any candidate for a state or county position is a political candidate.—10/9/31.

Ballots for a primary election need not have stub or counterfoil numbered consecutively. Separate changes in the positions of names of candidates are not required for precinct officers on primary election ballots.—4/2/32.

A county auditor has no authority or jurisdiction to determine the qualifications or lack of qualifications for a candidate, but is required to print the names of all candidates nominated at the primary election until restrained from so doing by judicial determination of such qualification. Until an office has thus been judicially declared vacant, there is no vacancy which the county central committee may fill.—9/28/32.

Only one publication of form of ballot is required by statute. There is no requirement that any certain party shall be placed in any specific position on the ballot.—10/17/32.

A candidate for precinct committeeman may not file a declaration of candidacy for that office and have his name printed on the ballot. A county chairman need not have been elected a precinct committeeman to qualify him for that office.—3/23/32.

Application for absentee ballots may be sworn to more than 15 days prior to the nominating election, although the statute prohibits the filing of such applications more than 15 days preceding the election. The term "because of physical disability" may be interpreted to include a person who lives such a distance from the polls that it is impossible to make the trip to the polls on election day.—10/15/32.

Two judges of different parties must mark the ballot of a blind person.—10/24/32.

Where a candidate dies prior to election but after the printing of ballots, voting a straight ballot cannot be considered as casting a vote for the one running for such office on that ticket and whose name is neither printed nor written in on the ballot. Nor could the judges of election affix stickers bearing his name to an absentee ballot already cast.—11/5/32.

A person may vote a straight ticket by marking a cross in the circle at the top of the ticket he votes and then scratch that ticket by drawing a line through the name of a candidate for whom he does not desire to vote putting a cross opposite a name for the same office on the other ticket.—11/5/32.

A State Senator is a state officer and a tie vote for such office must be determined before the state canvassing board—5/31/32.

In considering election returns to determine the identity of persons having similar names, the board of canvassers is without authority to consider any facts extraneous to the returns themselves and therefore have no authority nor discretion to determine the identity of the person intended to be voted for except as the name voted indicates.—6/6/32.

NOMINATIONS:

Under the Primary Law of 1931 the Liberty Party is not a political party within the meaning of that law; but that group may organize under the primary election law and certify its nominations with the Secretary of State whereupon the provisions of the primary law would apply to it the same as to political parties.—8/25/32.

Where the Socialist Party did not cast for any candidate on their ticket for office within the state at least 10 per cent of the total vote cast for all candidates for that office at the last preceding general election, it is not a political party as defined by our Direct Primary Law, and could not nominate by writing in names on the ballots at the primary election. The only manner in which such a party could place a ticket in the field would be to hold a convention in the manner provided by statute—9/19/32.

Candidates for United States Senator, Representative in Congress and state offices are nominated at a state convention composed of not less than 200 delegates. Candidates for congressional districts or district offices, which may include representatives in Congress and District Judges, may be nominated by convention composed of not less than 100 delegates.—5/19/32.

A person who circulates a petition to be filed for a candidate for congressional or state office, must file the affidavit of the signers, setting up their qualifications.—2/12/32.

A candidate for State Senator should have someone else circulate a petition for his candidacy.—4/6/32.

Certificates of nomination for candidates for Congress should be filed in the office of the Secretary of State and those for the legislature and for county officers with the county auditor in the county in which they are to be candidates, and any such candidate who files must pay the filing fee. A separate certificate of nomination must be filed for each candidate and the fee must be paid before the officer can properly file the certificate of nomination.—9/9/32.

A vacancy is created by the resignation of a candidate for presidential elector, which may be filled by the state central committee.—11/4/32.

Where the person having the highest number of votes for prosecuting attorney at a primary election was ineligible for such office, upon his filing a declination to run upon that ticket a vacancy existed which might be filled by the county committee under the provision of Section 47, Chapter 18, 1931 Laws.—10/13/32.

Where a party fails to nominate a candidate for a county officer prior to 40 days before the ensuing general election no such nomination may be made. If a vacancy exists by reason of death, resignation, etc., the party committee designated to fill vacancies may fill the same by certifying to the county auditor the cause of the vacancy, the new nominee and such further information as required. Thereupon the county auditor shall place the name upon the ballot after it has been printed and if printed, stickers may be used.—10/31/32.

Voters may nominate one not a member of their party by writing in his name on the ballot. Failure to pay the filing fee or to file an expense account, in the absence of some judicial determination, does not authorize the county auditor to omit the name of a nominee from the ballot.—9/29/32.

Where a person files for and is nominated on one ticket and is also nominated on another ticket through having his name written in, upon his direction to the county auditor as to which ticket he shall be placed on, a vacancy exists on the other ticket which may be filled.—9/22/32.

Where county commissioners change the boundaries of justice of the peace precincts after the primaries so as to create a new office, the county central committee should fill the vacancy thus created.—9/8/32.

Where no candidate is nominated at the primary election no vacancy exists and the central committee may not appoint a candidate for the office on its party ticket.—5/11/32.

A candidate for nomination who was defeated in his own party may be nominated by the opposite party by having his name written in sufficient times, but must pay an additional filing fee therefor.—6/6/32.

A judge of election may not be a candidate for precinct committeeman. The two offices clearly are incompatible.—5/23/32.

There is no statutory objection prohibiting a candidate on the state legislative or county ticket in the nominating election from being a candidate for precinct committeeman as well.—5/21/32.

At a nominating election names of candidates may be written in. The candidate in each instant must file an expense account. Where petitioner signs one petition as a Democrat and another as a Republican neither signature may be counted.—5/2/32.

Where a candidate did not file for nomination but received the highest number of votes by having his name written in, he must pay the filing fee required of candidates who did file.—5/9/32.

Justices of the peace and constables need not file nominating papers for primary election.—3/9/32.

It is necessary for a justice of the peace to pay a filing fee for a certificate of nomination.—9/9/32.

ELECTION OFFENSES:

There is no objection in the statutes, to checking or making a poll list of voters at the primary election.—5/23/32.

Reduction of salary by an incumbent officer is not unlawful if not made in an attempt to induce voters to vote for him.—5/31/32.

A party seeking nomination who offers to serve at a reduced salary cannot be prevented from running for such office and no action other than criminal could be instituted against him until after election.—5/28/32.

A candidate for an elective office who promises to discharge the official duties of the office for which he is running, in case he is elected, for less than the salary fixed therefor is criminally liable and disqualified from holding the office should he be elected.—5/14/32.

Under Section 18, Chapter 18 of the 1931 Session Laws, a candidate for nomination is prohibited from conveying voters to and from the polls and may not employ others for such purpose at primary elections.—5/21/32.

Checkers may work at election polls but are not allowed within guard rails.—11/3/32.

The use of radio broadcasting station by a candidate for nomination at a primary election is not prohibited by section 18, Chapter 18 of the 1931 Session Laws.—4/11/32.

ESCHEATS

The provision of our statutes that no non-resident alien can take by succession unless he appears and claims within two years from death of decedent does not compel a personal appearance of claimant, and claim may be made by an attorney-in-fact or by an assignee.—11/23/31.

FEES

Where Federal authorities employ the means provided by the statutes of this state for the service of process upon a foreign insurance company

by delivery of a copy of summons to the Commissioner of Finance, the statutory fee of \$2.00, provided to be collected by the department for receiving and forwarding copy of such process, must be exacted. Such a fee is not to be considered as the imposition of a tax upon a federal agency.—9/27/32.

A probate judge may not charge court fees for papers filed under and in pursuance of the inheritance tax act. This act does not prohibit the charging of the probate fees but applies only to services rendered under the inheritance tax act.—10/13/32.

The fact that a merchant who had procured a license to sell oleo-margarine made no sales under such license does not entitle him to a return of the license fee.—1/30/31.

A license fee is not subject to partial refund because the licensee does not use his license for the full period covered thereby—7/21/31.

The fee provided by the Weights and Measures Law to be collected for an inspection must be paid by the person using the measure, who cannot avoid payment upon the premise that he is not the owner of the device.—4/3/31.

A local registrar of vital statistics may not legally make any charges for service rendered other than the fees provided to be paid to him by law.—6/30/31.

In an action relating to the separation from a municipal corporation of lands used principally for agriculture, in which an additional party defendant is required to be brought in, the filing fees are \$10.00 for the petition and \$5.00 for each defendant making an appearance, including the additional defendant brought in.—9/7/32.

Under *Duncan v. Idaho County*, 42 Idaho 164, a sheriff in selling real estate under mortgage foreclosure shall in no case receive in excess of \$100 commission. When the amount of the sale is credited on the debt and no money is transferred, then one-half of such commission or \$50 is his maximum fee.—6/30/32.

Under Section 3704 C. S. as amended by Chapter 83, 1929 Laws, a sheriff may require a fee of 20c per folio for making copies of summons and a return on any writ but such fees are allowed only when the sheriff makes such copy, not when he serves copies made by someone else.—6/20/32.

FISH AND GAME

The Department of Fish and Game has authority to purchase lands and water rights and a fish hatchery and to erect buildings thereon for

such purposes, and to pay for the same out of the State Fish and Game Fund.—9/21/31.

A deputy game warden is liable upon his bond for license fees from the sales of licenses sold by others with whom licenses had been left for sale. The state is not required to look to the individual vendor in each instance.—8/23/32.

In the absence of some other specification, the boundary line of a state game preserve bordered by a stream would be considered to be the center of the stream.—9/26/32.

The Department of Fish and Game is without power to forbid the operation of a hunting lodge or dude camp within a forest reserve under permit of the United States Forest Service, although within a game preserve thereafter created by this state.—5/19/31.

A legal residence within the State of Idaho is required to entitle one to purchase a resident fish and game license, and the mere ownership of property and the payment of taxes thereupon within this state, accompanied by a temporary sojourning during the summer months, do not entitle one to such privilege.—8/24/31.

A person must reside in Idaho six months before he may obtain a resident fishing license. A citizen of the United States who is not a resident may obtain a fishing license for \$5.00.—6/21/32.

An alien who is a bona fide resident of the State of Idaho is entitled to a fish and game license upon the payment of the \$2.00 fee provided therefor, although not a citizen of the United States and, by virtue of his nationality, unable to become a citizen.—5/27/31.

The operator of a farm for silver fox or other fur bearing animals not specified in Chapter 212, 1931 Laws, must nevertheless obtain a permit from the Department of Fish and Game in order to operate such a farm.—10/17/31.

A city may dispose of deer from its private park to other parks or individuals since the statutes expressly permit the maintenance of game parks by any person or corporation, and impliedly authorizes the acquisition of game in such manner.—12/19/31.

The State Fish and Game Warden may issue permits to irrigation companies for the taking of muskrats out of season when satisfied that such muskrats are damaging canals.—3/22/32.

A drainage ditch passing through private property must be classed as private lands and any intrusion for the purpose of trapping is a trespass against the owner of the right of way or if that exists as a mere easement for drainage purposes against the landowner.—12/14/31.

A fisherman may lawfully catch twenty-five pounds of Dolly Varden trout in one day in addition to the limit prescribed for other trout, bass, etc.—6/5/31.

A fine for violation of the game laws may not be imposed upon a juvenile for the reason that non-payment of such fine carries the alternative of a jail sentence which cannot be meted out to such child. Proceedings for such an offense must be maintained as permitted by our statutes for the correction of delinquent children.—12/4/30.

A person violating the provisions of the game laws within a game preserve shall be deemed to be guilty of a misdemeanor and subject to the penalties provided for game violations.—7/25/31.

A search warrant may lawfully issue for the search and seizure of property held in violation of the game laws.—12/18/31.

HIGHWAYS

STATE:

The State Highway Department is not authorized to contract for the construction of highways requiring an expenditure in excess of its estimated income for the current fiscal year. The provision of Section 11, Article VII, of our Constitution prohibiting an appropriation in excess of the total tax then provided for by law, must be construed in this instance as referring to the gasoline tax and automobile license moneys to be received during the fiscal year, and not as including mere anticipated legislative appropriations.—12/2/30.

The statutory provision for the letting of contracts for the construction of highways to the "lowest and best bidder" does not impose the absolute requirement that a contract be let to the lowest bidder. A measure of discretion is vested in the Commissioner of Public Works as to whether circumstances justify the letting of a contract to one who may be considered the best bidder although not the lowest, and the Commissioner would not be liable upon his bond for the exercise of such discretion.—9/24/31.

The Department of Public Works is not required to take steps to ascertain the existence of indebtedness on the part of one contracting with it for the construction of highways nor to retain any percentage of moneys due contractors for the benefit of laborers and material men. The protection afforded by statute lies in the bond to be given by the contractor for the use and benefit of the state and of the laborers and material men with whom he deals.—8/1/31.

The United States retains a permanent interest of a federal power site withdrawn from the State of Idaho, with the consent of the Federal

Government. However, the Department of Public Works may lawfully construct a highway over such lands, since our statutes do not require the department to have title to lands in order to construct a highway.—8/8/32.

Where a contractor complied with the provisions of his contract in furnishing samples of his materials to the state testing laboratory for inspection and the state permitted the material sampled to be used without objection, and thereafter finally accepted and approved the work and made payment therefor, no cause of action exists against the contractor on the ground of fraud for failure to use material fully meeting the general specification requirements of the contract.—6/29/32.

The state may not contract with a good roads district for improvements of roads other than as part of the state highway system. No funds are provided for such purpose.—6/9/32.

A bridge, constituting part of a state highway but located within the boundaries of a city, may be maintained at the sole expense of the state if such city has a population of less than 2500. There is no legal objection to an arrangement which would leave the operation of a draw span within the bridge to the city.—3/7/31.

In the construction of cooperative state highways through Federal, State and County aid, a county or highway district may not enter into a formal agreement to repay the state out of revenue of any other fiscal year for the right of way purchased by the state for highway purposes. Such a resolution by the board of county commissioners would impose no legal obligation upon the county. The county having no power to create the indebtedness, it would have no power to levy a tax in payment thereof. The state has no authority to advance the county's portion of money which the county has agreed to bear. The county must either pay in cash to the state treasurer or in warrants to the contractor.—10/31/32.

Unless the county is able to pay in cash, it makes payment by issuing warrants directly to the contractor and the Department of Public Works is not authorized to accept county warrants as payment by the county of its portion of such cost.—7/26/32.

Moneys received from counties under joint contracts with the state for construction of highways must be paid to the state treasurer and converted into the State Highway Fund upon presentation of certified estimates furnished by the Department of Public Works. The deposit of such funds in a local bank to the credit of the Department of Public Works by the county is contrary to law. Nor is such practice in conformity with the requirements of Title 23, U. S. C. A., requiring the funds to be expended by the state, under federal aid projects, to be under the direct control of the State Highway Department. The disbursement

of such funds must be made in the manner provided by law and the moneys are not available to the State Highway Department until deposited in the state treasury.—1/8/32.

HIGHWAY DISTRICTS:

No power has been given to highway districts to contract to construct highways nor to bid on such contracts.—8/22/32.

Vacancies occurring in the office of highway commissioner other than by expiration of the term of office are to be filled by the highway board. If they are unable to agree the chairman of the board of county commissioners of the county in which the district is located becomes a member of such highway board, to assist in the filling of such vacancy only. If no agreement is then reached within five days a special election must be had.—4/19/32.

Highway Commissioners may receive only actual and necessary expenses for services in overseeing and inspecting road work. The bond of the secretary-treasurer should be renewed when a new board is elected.—3/24/32.

The commissioners of a highway district may not act as secretary and treasurer of the board and draw salaries for such services. The offices are incompatible.—3/3/32.

A vacancy occurring in the office of highway commissioner, other than by the expiration of the term of office, shall be filled by the remaining members of the board.—4/9/31.

When a highway district commissioner changes his place of residence from one district to that of another already represented by a commissioner, his office becomes vacant.—4/10/31.

It is the mandatory duty of highway district commissioners to apportion motor vehicle license moneys to the bond interest and sinking fund requirements of the district. For a failure to make such appointment and the use of such funds for other purposes, both the commissioners and treasurer of the district are personally liable.—10/30/31.

Where a highway district has unpaid warrants outstanding in excess of its current revenues, it may not use its current funds to pay the interest on said warrants only; interest is payable when the warrant is paid.—3/22/32.

The treasurer must call warrants of a highway district for payment whenever there is an amount in the treasury sufficient to pay the warrant next entitled to payment.—5/11/32.

Where a highway district defaulted in its bond payments because of tax delinquencies, it may not await collection of delinquent taxes to

take up the unpaid bonds but must increase the levy in the following year sufficient to meet current expenses and delinquent bond obligations.—8/9/32.

The moneys available for the payment of highway district bonds are derived from levies made for the purpose of creating and maintaining a sinking fund and a portion of the moneys credited from the licensing of motor vehicles.—5/25/32.

COUNTY:

The authority granted county commissioners to lay out and maintain public roads within the county and levy such taxes therefor as authorized by law, permits the expenditure of county funds in the construction and maintenance of a dock or wharf situate upon a navigable body of water and connected with public streets, for public use, since the structure is considered as an extension of the street and a part of the public highway.—12/29/30.

INSURANCE

IN GENERAL:

It is the duty of the Director of Insurance to procure contracts of insurance on property belonging to the state, and to determine the terms, rates and conditions thereof, but the board or officer having control of such property shall determine what property shall be insured and the amount to be obtained thereon.—3/27/31.

The fee for filing the articles of incorporation of a foreign insurance company is computed upon the amount of its authorized capital stock. An insurance company domesticated in a foreign country is not entitled to calculate the fee upon the sole basis of the amount of its capital or deposit in the United States.—9/23/32.

Upon settlement of a claim under an accident insurance policy written for a minor and payable to him, the only authority of a parent to receive payment is as guardian of the estate of the beneficiary upon due appointment by the probate court.—11/13/31.

An execution sale of securities of a fidelity and surety company held on deposit by the State Treasurer, upon levy to answer the default of such company as surety upon an obligation established by final judgment, can lawfully be conducted only upon forty days' notice to the surety company specifying the date, place and manner of such sale in accordance with the provisions of C. S. 5014. The surrender of securities to a sheriff pursuant to a lawful order of the court in such circumstances is not a violation of the provision of statute that the state shall be respon-

sible for the safety of all deposits so made, nor does it render the state liable to the surety company on account thereof.—6/19/31.

AGENTS:

A finance company which covers insurance upon cars on which it holds the paper by arrangement with an insurance company, preparing policy forms in its own office and forwarding the policies to a local agent for signature, and shares in the premium received by the agent, is negotiating contracts of fire insurance as an insurance broker and must obtain a license in order to lawfully act in such manner.—12/22/31.

A radio broadcasting station may not solicit applications for insurance under contract with an insurance company providing a commission upon policies written unless the company qualifies to do business in this state and the agent is licensed in accordance with the provisions of our statute.—9/24/31.

An insurance agent licensed to represent one company may not lawfully solicit or assist in soliciting or in any way obtaining or placing a policy of fire insurance for another company for which he is not a licensed agent.—9/18/31.

A contract which includes both a subscription to a magazine and an application for an insurance policy for a single premium or charge is in violation of C. S. 5026 prohibiting any insurance company or agent from offering or giving any property or other thing of value in connection with or as an inducement for the purchase of insurance.—12/8/31.

The Director of Insurance may properly deny a permit to a foreign insurance company which proposes to transact all of its business by mail except the countersignature of policies by a licensed agent in the state, for the reason that such plan is not in conformity with the requirements of our statute that insurance (other than life insurance) must be written by and through a resident agent of the company duly licensed as such in this state.—8/8/32.

COMPANIES:

The statutes of this state do not authorize the writing of insurance by an aggregation of individuals doing business upon the Lloyd's plan.—4/4/31.

The failure of a surety company to pay a final judgment rendered against it upon a supersedeas bond written by such company within a period of ninety days after the redemption of such final judgment forfeits the right of the company to do business in this state, and its certificate of authority must be thereupon revoked.—3/3/32.

An insurance company writing insurance upon automobiles covering the risk of loss by fire is subject to the supervision provided for by Chapter 48, 1923 Laws, in order to the removal of discriminatory rates.—5/28/32.

A death benefit association incorporated under the provisions of Chapters 186 and 196 of the Compiled Statutes is not authorized to write health and accident insurance.—9/3/32.

POLICIES:

The statutes of this state prohibit the issuance by insurance companies of non-cancellable health and accident policies.—6/24/32.

A rider attached to or made a part of an insurance policy prior to its original issuance is as much a part of the policy as if originally printed thereon. A provision in such rider limiting the liability of the company in case of death as the result of travel in aircraft does not constitute a provision by which the settlement of the policy shall be of less value than the amount insured on the face of the policy, in violation of C. S. 5038.—1/28/32.

JUSTICES OF THE PEACE

A justice of the peace who tries a criminal case is entitled to only \$6.00. Where a plea of guilty is entered he is entitled to a fee of \$3.00 and he is entitled to no fee for the issuance of a warrant of arrest. The apprehension of a criminal is no part of his trial. However, the filing of a criminal complaint and the issuance of warrant of arrest are services and proceedings in a criminal action. An execution with the true amount due left blank is void.—1/4/32.

Legal forms in criminal matters should be furnished by the county to the justice of the peace. In civil matters the county has no obligation to furnish any forms connected with civil cases.—1/7/32.

County Commissioners may extend the area of justices' precincts to all election precincts in the county when necessary; but the number of justices in any one precinct should not be increased beyond the number provided by statute.—4/7/32.

LICENSES

A board of examiners may not require persons authorized to practice a profession, by reason of their engagement therein prior to the passage of the act, to take an examination before the board.—3/14/31.

A candidate for an architect's license must submit evidence of at least three years' practical experience in the office of a reputable architect.—1/5/31.

AUTOMOBILE—SEE MOTOR VEHICLES.

A chauffeur's license is required only where there is a rental of the vehicle rather than the employment of the operator. Such rental refers to a personal use of the vehicle by the contracting party rather than a mere contract for a certain service in the course of which the owner or driver uses the vehicle.—6/12/31.

A school of chiropractic which does not require graduation from an accredited high school as a prerequisite of students entering such school, may not qualify under the statute by simply requiring all students who intend taking the examination for Idaho license to be high school graduates; all other graduates from such school to be barred from making application for such license in this state. The intent of the statute is to determine the standard of the school.—11/22/32.

A merchants' association maintaining a collection department would be required to procure a permit and file a bond as required by statute, as a collection agency.—3/18/32.

An attorney who holds himself out as an insurance adjuster and is regularly employed as such without regard to his qualifications to practice must obtain a license as an adjuster.—10/1/32.

The Department of Law Enforcement is without power or authority to change or modify the qualifications of land surveyors which the statute makes requisite to the issuance of a license.—3/20/31.

Both parties must personally appear and declare their intention to make application for a marriage license.—3/31/32.

The sale and delivery of oleomargarine by a person resident in another state to persons within this state is an act of interstate commerce which the state may not subject to an excise or license tax. The fact that the articles ordered are not shipped separately and directly to each individual purchaser, but are sent to the agent of the vendor for delivery and are thus shipped in cases containing individual orders separately wrapped, and which cases must be broken by the agent to accomplish delivery, does not deprive the transaction of its character as interstate commerce.—1/21/32.

Where a merchant has not obtained a license to sell oleomargarine, he cannot purchase oleomargarine from another merchant and resell the same to a customer as part of his order without violation of Section 1, Chapter 70, 1929 Laws.—12/8/30.

An ex-soldier not being required to apply for or obtain a license to peddle is not required to make the deposit of \$500.00 required by Section 2356 C. S. This deposit is required only when the license is issued or applied for.—6/10/32.

Honorably discharged soldiers of the United States are exempt from county peddlers' licenses but not from city licenses.—5/5/32.

An agent of a non-resident foreign corporation contracting with farmers in this state for the purchase of seed beans must comply with the Farm Produce Dealers' Act and obtain a license thereunder.—7/20/32.

A poultry dealer is not required to obtain a license as a farm produce broker.—2/25/32.

The fact that one is buying potatoes for cash does not exempt him from the requirement of a farm produce dealers' license.—12/4/31.

Beans are to be classified as vegetables and not as grain, and dealings therein are with farm produce within the intent of the Farm Produce Act and require the license provided by such act for engaging in such business in this state.—9/12/31.

The Department of Agriculture may refuse to grant a produce dealer's license to a person or firm which, in the opinion of the Commissioner, has been guilty of fraudulent transactions.—2/28/31.

A certified public accountant of another state, working out of an office in such state, is not permitted to do accounting work in Idaho as a certified public accountant merely because in the performance of such work he has established or maintained no office in Idaho. Such applicant would be required to comply with the statute.—4/29/31.

A licensed realtor may engage in the operation of a collection agency without compliance with the collection agency requirements as to the posting of a bond.—7/29/31.

LIVESTOCK

It is a criminal offense for a sheepman, trailing sheep through a county, to injure a resident by driving his sheep from a public highway onto the property in possession of the settler. It is unlawful to graze sheep within two miles of a dwelling regardless of whether it is on public or private lands. If such land is private land and could not have been used for grazing purposes by the owner of the dwelling, he could recover no damages, having suffered none. Timber companies owning cut-over timber lands have the right to lease these lands to sheepmen who may legally graze their sheep thereon. That right, however, extends

only to the boundaries of the timber companies' property and if the range beyond has been used exclusively as a cattle range, it is a crime for sheep to trespass thereon.—1/7/32.

OLD AGE PENSIONS

The Probate Judge must keep a record of Old Age Pension applications separate from court records; but he is not required to copy them at length in a record book.—1/29/32.

An applicant for an old age pension may not appeal from the order of the Board of County Commissioners but the decision of such Board is final.—1/20/32.

An applicant for an old Age Pension has no vested right in the pension and the granting of the same is not mandatory. However, when the Old Age Pension Commission grants a pension to the applicant it then becomes a mandatory expenditure required by law for which emergency warrants may issue and such payments may be made from the current expense fund or poor fund—2/26/32.

County commissioners may issue warrants in payment of allowed pensions on the charities and pension fund even though there will be no money in the treasury to take up such warrants until the receipt of taxes from the levy.—2/25/32.

While it is not necessary that a person be physically present in the county for the full required time to obtain an Old Age Pension, yet that person must show that he is not merely living at a certain place with intent to leave when the purpose for which he has taken up his abode ceases, but that such place is his permanent abode to which he returns whenever any temporary sojourn ends. There must be, in fact, actual residence with the intention of making it his permanent home, and something more than a mere claim or expression of intention is necessary.—2/26/32.

Property of an applicant for an Old Age Pension would be taken off the assessment roll when it was deeded to the county and if such a pension is granted there is no manner of protection provided for the county where such property is not deeded to the county. It has only a preferred claim against the estate.—2/27/32.

Grandchildren and brothers and sisters are not responsible for the support of an aged person under the Old Age Pension Law. "Ability to support" is determined solely from the circumstances of each individual case.—1/14/32.

Where a county has not included within its budget an allowance for the payment of old age pensions, an applicant for a pension, although legally qualified under the terms of the statute, has no claim against the county and the allowance of an application for pensions is not an emergency expense for which emergency warrants may be issued.—5/7/31.

It is doubted, under the provisions of our statute, that insurance on the life of a pensioner, premiums of which have been paid by a relative from a part of the estate of the petitioner, would go to the State of Idaho if the beneficiary were other than the estate of the petitioner.—1/7/32.

LEGISLATURE

A bill containing provision for an appropriation may originate in the Senate. The constitutional inhibition is against bills for raising revenue.—2/7/31.

The provision for mileage for legislators in Section 23 of Article III of our Constitution is intended as a reimbursement for expense of actual travel. Therefore, where a special session of the legislature was convened immediately upon adjournment of the regular session, no mileage is payable under an act providing therefor, unless it appear that a legislator did go to his home at the close of the regular session and return again to the capitol for the special session.—3/14/31.

MARRIAGE

The statutes do not prohibit marriage between a man and his step-daughter.—7/23/31.

In computing the time when a marriage license may issue after filing the notice of intention to marry, it should be considered that the legislature intended to exclude the day on which the application is made and to include the day the license issues.—10/8/31.

A Justice of the Peace may perform a marriage ceremony outside of his precinct but not outside of his county.—12/10/30.

One merely acting in the capacity of a pastor of a church, but one who has not been ordained as a minister of the gospel of that denomination, has no authority to perform marriage ceremonies in this state.—10/6/31.

MOTOR VEHICLES

Statutory provisions for the registration of title of automobiles with the Department of Law Enforcement does not require chattel mortgages upon automobiles to be filed with the department. The owner of an automobile cannot divest the mortgagee of his interest therein by failure to show such interest in an application for a certificate of title.—4/25/32.

A sheriff's certificate of sale is sufficient evidence on its face to show a transfer of title and interest to the purchaser and the only duty of the Department of Law Enforcement in issuing certificate of title is to determine whether or not sheriff's certificate is genuine.—6/23/31.

The seizure and sale by the Federal Government of a motor vehicle used in violation of the Prohibition Act under Sec. 40, Title 27, U. S. C. A., divests the title of a conditional vendor, whose lien against the property is transferred to the proceeds of the sale. Such a sale transfers to the purchaser a title which the Commissioner should recognize as entitling him to a certificate of title.—4/8/31.

Refunds may not be made to purchasers of automobile licenses and an assessor refunding a license fee would be liable for the payment of the same.—4/29/31.

County assessors may not accept one-half of the annual registration fee for motor vehicles on August 1st, if the ad valorem tax on such vehicle has not been paid.—7/27/32.

When a converted passenger automobile is intended primarily to be used as a passenger vehicle, it should be licensed as such, but when intended to be used as a truck, it should carry a truck license.—8/6/31.

Oil companies are exempt from paying commercial license fees on their trucks so far as they use their own trucks to deliver their own gasoline, but a truck owned by an agent is subject to commercial license.—3/3/32.

The provisions of C. S. 1592, sub-section (e), as amended by Chapter 185, 1931 Laws, with respect to age deductions and transfers of licenses, apply both to auto stages for carrying passengers and property.—3/25/31.

The Department of Law Enforcement is authorized to issue motor truck licenses to non-residents for periods of less than one year only where the state of residence of the owner grants a reciprocal privilege of an exemption to owners of motors duly licensed and registered under the laws of this state.—9/9/32.

The operation of a truck over the public highways of this state in the transportation of persons or property for compensation requires the procurement of a license, although the owner of the vehicle is a non-

resident and no stops are made in this state for the purpose of picking up or discharging passengers or merchandise. The imposition of such a license is not repugnant to the commerce clause of the Federal Constitution because a state has the power to exact a reasonable compensation for the use of its highways.—2/26/32.

Fees for trailers and semi-trailers operated in connection with commercial trucks shall be the fees prescribed in Subd. (h), Sec. 2, Chapter 185, Laws of 1931, plus 50% thereof.—5/19/31.

A portable cook house and commissary house built upon a trailer and moved from job to job would come under definition of a trailer and would be subject to trailer registration.—8/5/31.

The definition of "auto stage" includes P. U. C. trucks which operate over public highways between fixed termini and over a regular route, and trailers attached to such P. U. C. trucks must pay the fees provided for trailers used in connection with auto stages.—11/2/31.

A dealer's automobile license is personal to the dealer and may not be transferred or assigned to another.—3/18/31.

A dealer may use dealers' license plates only on automobiles in his possession for sale or trade and the carrying of merchandise in those cars is lawful only when done in furtherance and as a part of his business in selling or trading the vehicles.—4/9/31.

A dealer may not register individually the new cars he receives for resale in his business as dealer and thereby escape payment of the proportionate part of the year's taxes due on such cars.—11/30/31.

Any person buying, selling or dealing in trailers or semi-trailers must procure a dealer's license.—4/18/31.

The owner of a motor vehicle employed on government land not open to the public for vehicular travel is not required to obtain a motor vehicle license therefor. If operated on a public highway, the vehicle is required to be licensed regardless of the use to which it is put.—9/17/31.

NATIONAL GUARD

The provision for filling vacancies occurring in the commissioned staff of the Idaho National Guard has reference to continuous commissioned service in the national guard and not merely to continuous service therein.—12/8/30.

Under the National Defense Act an officer of the National Guard is primarily in the service of the United States. His employment by the State of Idaho is not incompatible with the holding of such position and he may draw salary for both services.—3/10/31.

A member of the National Guard injured while in the service of the state is not entitled to compensation from the State Insurance Fund. The legislature has created the Adjutant General's Contingent Fund for such purposes and regard must be had to this fund.—9/17/31.

PRINTING

The requirement of law that printing and binding executed for or on behalf of the state shall be executed within the state, except as provided in C. S. 2337, is not complied with by the letting of a contract to a concern located within the state but which procures the work to be done without the state.—4/16/32.

Printing done for state educational institutions is work executed for or on behalf of the state, and contracts must be made for such printing within the State of Idaho except as provided by C. S. 2337.—3/10/32.

PROPERTY

Japanese born in the United States are citizens thereof and of the state wherein they reside. Under the laws of this state, they may hold and dispose of property, real and personal.—3/5/31.

Property owned by either spouse before marriage as well as property acquired after marriage by gift, bequest or device is the separate property of that spouse, but after marriage all property acquired by individual and joint efforts is community property.—5/2/32.

Title to real property in Idaho is not transferred by probate proceedings had in another state.—3/20/31.

The interest of a purchaser of a certificate of sale of state lands may be subjected to a mortgage lien, but no such mortgage may impose a lien upon the interest of the state in the lands covered by the certificate.—5/7/31.

A meander line is not a line of boundary but the patentee takes to the high water mark or the thread of the stream, according to whether the stream is navigable or non-navigable.—10/24/31.

Bathroom fixtures and furnace affixed to a house appurtenant to the premises upon which the same is situated, and so affixed that they could not be removed without injury to the house, are a part of the realty and title thereto passes to the state upon sale under foreclosure of a mortgage upon the realty.—5/20/32.

PUBLIC FUNDS

IN GENERAL:

Article VIII, Section 3 of the Constitution prohibits any city or county from incurring indebtedness exceeding in any year the income and revenue provided for such year without the vote of two-thirds of its electors, and provision for the collection of annual tax to meet interest and sinking fund requirements. Moneys made available to the Governor under Title I of the Emergency Relief and Construction Act of 1932 are not state moneys, and the act does not contemplate that such moneys may be loaned by the state to its municipalities or counties, nor in any event could such loans be consummated except upon compliance of the constitutional provision referred to. Such moneys may be distributed through the county as an agent, without requirement of repayment.—9/29/32.

The moneys provided by the annual license fees paid by attorneys constitute state funds. Where a state employee is paid a salary under an appropriation act providing that the compensation therein allowed shall be in full for services to be rendered by such employee to the state during the period for which the appropriation is made, an additional compensation cannot be allowed for such employee for special services rendered the Judicial Council of the Idaho State Bar.—6/11/32.

Funds on deposit in the revolving account of the state insurance manager in the Boise City National Bank, are public funds within the purview of our statutes and are required to be kept on special deposit.—10/31/32.

Moneys held by the warden of the state penitentiary in his official capacity and deposited in a National Bank to the account of such officer in the name of his official position are public funds and held in trust by such bank.—11/14/32.

Fish and game license fees collected by a deputy game warden become public moneys and where deposited in the bank with knowledge upon its part of their character must be held as trust funds.—4/7/32.

Moneys received from the 60c per acre charge provided by C. S. 2939 as a condition for the extension of timber sales contracts should be considered as an earning and not as accruing to the principal of the endowment fund.—12/5/31.

Profits or losses sustained in the sale of securities by the Department of Public Investments should be charged to the endowment fund from which the investment was made and not to the interest fund.—2/26/32.

Moneys received by the state from the sale of gravel from state lands should be treated as income and credited to the income fund, rather than the permanent endowment fund to which the land belonged.—4/16/32.

The Department of Public Investments is without authority to enter into an agreement with bondholders compromising the payment of an indebtedness due the state.—7/13/32.

Fees received by any department for services rendered the public must be paid to the state treasurer and may not be expended by the department, except in consequence of an appropriation made by law. No employee of any department is privileged to charge fees for services rendered to the public in the absence of express statutory authorization.—4/12/32.

The act of a mortgage in selling and removing a house appurtenant to and constituting a part of the real property subject to mortgage to the state is a fraud which subjects the actor to criminal liability as a fraudulent sale, disposition or concealment of property with intent to defraud, hinder or delay the creditor.—3/19/32.

This office in approving title to real property in this state for the security of farm loans made by the state has followed the theory that the ten year lien law is retroactive. This law provides that no mortgage or other lien upon real property shall be a lien after the expiration of ten years.—10/1/32.

INVESTMENT OF:

Under the decision of our Supreme Court in *McConnell v. Gallet*, warrants issued by the auditor upon the claim of the Adjutant General for funds to pay the members of the National Guard, called into special service by the Governor, are state warrants upon the Adjutant General's Contingent Fund and the State Treasurer has power and authority to invest idle and surplus funds in the treasury in such deficiency warrants.—12/12/31.

Crop mortgages may be taken as additional security to state farm loans or as security for the payment of interest due, but should not be taken as consideration for the extension of time of payment of the loan. Moneys of the permanent education or school endowment funds may not be loaned upon such crop mortgages.—1/9/32.

The provision of our statutes for the investment of permanent educational funds from lands belonging to the University in those securities permitted by Section 11, Article IX, of the Constitution by the Department of Public Investments, is not a violation of the compact of the United States by which such land was secured, nor in contravention of any provision of our Constitution.—6/29/32.

The priority of lien given subsequent assessments levied by an irrigation district does not render the investment of permanent educational funds in loans secured by first mortgage on improved farm lands within the district a violation of Section 11, Article IX, of our Constitution.—7/19/32.

Public funds of the state cannot be invested in a receivers' certificate constituting a lien upon lands embraced within an irrigation project.—7/23/31.

DISBURSEMENTS IN GENERAL:

A department revolving fund may be employed for the payment of any of such items as concluded within the purpose of the appropriation made for such department. In the absence of express statutory authorization, a revolving fund may not be employed for the purpose of making refunds of excessive amounts collected for taxes or fees and paid into the state treasury. Nor may the treasurer legally issue treasurer's checks in order to pay such refund.—1/12/32.

Where an appropriation is made for the general purpose of carrying out the provision of an act, the moneys appropriated may be employed for the payment of salaries of clerical help required in such enforcement.—5/28/31.

The cost of printing a biennial report of a board or officer must be charged against the appropriation made for the period covered in the report.—5/13/31.

In the absence of express statutory authorization, a public officer cannot make refunds of overcharges of fees or taxes collected by him after the moneys have been covered into the state treasury. It follows that the claimant must present his claim to be examined and passed upon by the State Board of Examiners and they are approved and acted upon at the next session of the legislature.—1/14/32.

The drawer of a check for the payment of moneys due the state is not privileged to deduct the amount of tax imposed upon such check by the Federal Revenue Act of 1932. The tax is laid upon the drawer and he has no authority to pass this on to the state.—9/6/32.

SPECIFIC FUNDS:

The state athletic commission operates under the direction and is a part of the department of law enforcement. Claims against the state athletic fund must be approved by the commissioner of law enforcement, and except with regard to claims for salaries and compensation fixed by law must be allowed by the board of examiners.—5/29/31.

Under the act providing for the creation of a state council of defense and providing an appropriation for the purpose of carrying out the pro-

visions of the act, the moneys appropriated may be employed for the payment of necessary travelling expenses of the members of the council upon certification and approval of claims in the manner therein provided.—12/4/30.

The reclamation of land acquired by the state upon foreclosure is not a purpose expressed in the acts appropriating money for the farm mortgage fund. The words "expenses of mortgage foreclosure" cannot be construed to include drainage.—4/7/32.

The moneys in the "farm mortgage fund" may be employed for the payment of fire insurance premiums for policies on improvements on lands securing farm loans held by the state.—12/23/31.

The moneys provided by the governor's law enforcement emergency appropriation may be used for the payment of expenses in an action pending in a federal court to determine title to certain lands to be in the state of Idaho, where necessary to protect lands belonging to the state and to enforce the provisions of the penalty statute prohibiting occupancy of state lands without a lease. Judgment of the necessity of such expenditure is within the discretion of the governor.—1/9/32.

The state historical society may cooperate with the Smithsonian Institute in obtaining fossils in Idaho and information relative thereto under contract with the Institute, or thru the employment of one member of its expedition, and pay therefor from the legislative appropriation for salaries and wages, expert and special.—6/9/31.

Funds of the public endowment fund may be used in the Capitol building if the improvement is in the nature of original construction and not maintenance. Cost of equipment may not be briefed against such funds but fixtures becoming part of the building, if not a replacement, may be paid out of this fund.—11/25/32.

Under Art. IX, Sec. 3 of our Constitution and Sec. 1107 of the Compiled Statutes, the interest in public school funds may be expended only for support and maintenance. An item such as the replacement of linoleum, although cemented in place, should be considered as an item of maintenance and not of capital outlay.—3/10/31.

The tuberculosis indemnity fund is appropriated by law for the payment of indemnities for cattle destroyed. The moneys in such fund cannot be employed for the payment of traveling or like personal expenses of the department without violation of the provision of the Constitution that no money shall be drawn from the treasury except in pursuance of appropriation made by law.—10/16/31.

A state warrant drawn on the state asylum sanitarium fund for the repayment to a former inmate of moneys held in trust is subject to the provisions of C. S. 169, providing that warrants outstanding for more

than two years are void and cancelled, and should be paid only upon the issuance of a new warrant made upon the signing of a voucher as provided in C. S. 1195.—9/23/31.

Where the Tuberculosis Hospitalization Act contains an appropriation for medical services and assistance, and the character of medical services required necessitates travel to different parts of the state, an allowance of travel expense against such appropriation is proper.—9/22/31.

PUBLIC DEPOSITORIES:

The department of finance is the proper legal custodian of securities of state depository banks covering the deposit of state funds, and not the bureau of public accounts.—7/27/31.

The discretion reposed in the department of finance with respect to the approval of securities under the Public Depository Law is related to the qualification of such securities within one of the classifications made by statute, and the department may not approve securities clearly without any of such classifications.—4/30/31.

A depository bond which is executed by personal sureties must contain the justification of each surety in double the amount for which he becomes liable.—2/29/32.

Upon the suspension of a bank's activity and the placing of its affairs in the hands of a receiver, the obligation to pay 2% interest upon daily balances of public funds on deposit in such bank is terminated.—3/11/32.

The receiver of a state depository bank may sell the interest of the bank in bonds held by the state as security for its deposits. Upon repayment of its funds held in a closed bank, the state officers may then return the pledged securities for delivery to the purchaser.—8/11/32.

The county auditor may permit the withdrawal of securities deposited to protect the funds of an independent school district in accordance with the Public Depository Law.—5/9/32.

PUBLIC UTILITIES

The public utilities commission possesses only such powers as are conferred by law and has no authority to issue certificates of convenience and necessity for the operation of a barge or vessel in the absence of provision therefor by statute.—9/3/32.

The public utilities commission may prescribe rates to be charged for storage of beans and peas in a public warehouse but may not prescribe the service charge for cleaning them.—11/1/32.

Transportation company may issue free transportation to persons acting as its attorneys, but not to the attorneys' employees since the latter cannot be considered in the employment of the company.—2/25/31.

The operation of motor vehicles in a strictly interstate business is not subject to regulation by the state, except in behalf of protection of the public, and may not be made dependent upon the issuance of a permit by the public utilities commission.—2/26/31.

PUBLIC WELFARE

It is the duty of the commissioner of public welfare to inquire into the financial ability of a husband, wife, parent or child of a person committed to a state sanitarium or asylum to pay for the care and safe-keeping of such person. If any such relative be able to pay such expenses, it is the duty of the commissioner to collect these charges and if necessary to institute suit in the name of the state.—2/3/32.

The Tuberculosis Hospitalization Act of 1931 provides that no person shall be entitled to the benefits thereof unless the board of county commissioners of the county of which he is a resident shall assume and agree to pay one-half the cost of treatment. Where the commissioners refuse to cooperate with the state in such regard, the state is not obligated to pay the half of such treatment by reason of the fact that the applicant offers to pay the remaining half.—11/31/31.

The department of public welfare may prescribe qualifications for admission to the Soldiers' Home, and it cannot be considered that as a matter of law a veteran of the World War is entitled to admission regardless of the degree of disability or dependency.—7/16/31.

SCHOOL DISTRICTS

IN GENERAL:

The provision for periodical examinations of the books of school districts, in its reference to a thorough and complete examination of all books and accounts by competent accountants, has regard to a detailed and not a mere balance sheet audit. Doubtless the legislature had in mind the fact that in most instances the books of the school districts are kept by someone other than an experienced accountant and may thru error or lack of understanding fail to disclose the financial condition of the district.—11/25/31.

Our statutes do not prohibit the removal of buildings or the transfer of water rights from lands within a school district to a place without

the district, and although the total valuation of property within the district be decreased thereby, no remedy is afforded school districts therefor.—3/13/31.

In making its levy for the county school fund, under the direction of the statute to levy a tax sufficient to raise \$15.00 per capita of school enumeration, the board of county commissioners should base such levy upon the school census rather than the last general census of the county.—10/13/32.

The board of county commissioners is without authority to direct the county auditor to audit the books of a school district. Such audit must be provided for by the board of trustees of the district or the state board of education.—7/14/31.

ORGANIZATION AND BOUNDARIES:

County commissioners may modify the boundaries proposed in a petition for organization of a rural high school district to exclude one common district in which a majority have indicated by petition that they are not in favor of the proposed high school district.—7/9/32.

The class or type of school district may be reduced by the petition of the qualified voters and the procedure prescribed by statute, but is not automatically changed by a reduction in the assessed valuation. Independent school districts have no statutory authority for the employment of a superintendent.—4/19/32.

County commissioners may not provide a school in an unorganized school territory of the county. The moneys in that fund may be used for school purposes only in the payment of tuition for pupils residing therein.—10/5/32.

A joint common district is considered as an entity, and the part of such district within one county may not be treated as lapsed by the county superintendent of such county while the part of such district in another county has no reason for lapsing.—9/16/32.

CONTRACTS:

The board of trustees of a school district has no authority to enter into a contract with a private company to assist in advertising the sale of merchandise to parents of children enrolled in the school, for a percentage of the profits received from such business, and such a contract will be unenforceable.—9/22/31.

A contract entered into by the school district and a teacher prior to the annual school meeting and prior to the fixing of the school year and school levies, would be void and unenforceable as against the school

district. The board of trustees is prohibited by the Constitution from incurring liability or indebtedness of one year payable out of the revenue of the succeeding year.—4/18/32.

The board of trustees of a school district may contract with a corporation for the audit of its books. The requirement of the statute is that a thorough and complete examination be made by competent accountants and a determination of the person with whom they will contract and of the qualification of persons making the audit rests in the judgment of the board.—2/27/32.

The school district is without authority to enter into a contract for the purchase of a school bus on the instalment plan with payments extending over a period of three years.—10/17/32.

A school district may not become a member of a mutual fire insurance company for the reason that it is prohibited from pledging its credit in aid of such an association or from becoming responsible for the debts of individuals or associations, and such an insurance company is prohibited from insuring property of others than members.—10/1/31.

A school district may insure its buildings with a mutual fire association if such association has complied with C. S. 5091 and has not less than \$200,000 capital of which not less than \$50,000 is net surplus over and above a pro rata reinsurance reserve, and agrees to limit the liability of the insured to the premium stated in the policy.—11/30/32.

ELECTIONS:

A member of a co-partnership which owns property within a school district and pays taxes thereupon is a taxpayer within the qualifications of the school election laws, since the parties hold title to such property in their individual capacity. The stockholder of a corporation is not so regarded since the corporation exists as a separate entity and is itself the taxpayer.—5/6/31.

In all school elections a majority of the votes cast is required in order to the election of a school trustee.—5/7/31.

A qualified elector of a school district must be a resident in the district at the time of election and is not entitled to vote by absentee ballot.—8/29/31.

LIABILITIES:

The transportation of school children to and from school is a governmental function of the district and it is not liable for damages in case of injury of the pupils thru accident. The driver of the school bus may be liable in case of negligence upon his part.—12/3/30.

OFFICERS:

The offices of clerk and treasurer of a school district are incompatible and the same person may not discharge the duties of both offices.—10/5/32.

It is unlawful for any school trustee to have a pecuniary interest in any contract pertaining to the affairs of the district or accept any compensation for services rendered, except as expressly provided by statute. The members of the board of trustees may not employ themselves to work for the district, altho their charge for the work done might be less than would be charged by others for the same work.—1/14/31.

A vacancy on the board of trustees of a rural high school district should be filled by appointment made by the remaining members of the board.—10/14/31.

In independent school districts the board of trustees may fill vacancies from candidates or other individuals having the necessary qualifications, where a candidate fails to secure the majority vote.—9/23/32.

Where tax anticipation notes issued by a district are not paid at maturity there is no personal liability upon the county superintendent or trustees of the district if the law has been complied with in the issuance of such notes. They are still district obligations.—11/4/32.

POWERS—IN GENERAL:

A school district may not pay parents of non-resident pupils for transportation nor may it extend rural routes beyond the district's boundaries unless provision is made in the tuition charge for transportation, or unless, by some cooperative arrangement between the districts, the district from which the student is received bears its proportion of the costs.—2/11/32.

The provision for transportation for resident pupils within a common school district has reference to an authority optional with the trustees and is not mandatory unless the annual school meeting had voted for such transportation.—8/13/31.

Children of school age are required to attend school for the entire term during which the public schools are in session. The annual meeting of a common school district shall determine the length of time school shall be taught for the ensuing year, but the board of trustees shall fix the time when the school term shall begin. Where, at the conclusion of one term, the trustees fix the beginning of the ensuing term for May 4th, the children within such district shall be required to attend this summer school altho having just completed an eight-month's term.—5/5/31.

In common and joint common districts the length of time school shall be taught in the district for the ensuing year shall be determined by the annual school meeting and consideration of such question at a special meeting is not determinative of the matter.—3/20/31.

The board of trustees of a school district is not authorized to close a school because the district is heavily indebted. The district would lapse if it failed to maintain school for at least four consecutive school months. Upon discontinuance of school, pupils would be entitled to attend another district and their tuition would immediately become a charge upon their own district.—8/18/31.

The implied powers of the board of trustees of a school district are limited to such as are reasonably necessary to exercise powers expressly granted. Where the determination of the length of a school term is vested in the annual meeting and is fixed thereby, the trustees are without authority to continue school for an additional month, although adequate funds are available and a majority of the people of the district consent thereto.—3/10/31.

The selection of a high school to which its pupils shall be entitled to attend, where the district of their residence fails to provide high school facilities, is an authority vested in the county superintendent and not in the board of trustees or the parents. A contract entered into by a school district which does not maintain a high school for the education of its pupils in the high school of an adjoining district is subject to the approval of the county superintendent.—5/26/32.

A board of school trustees may not allow payment from funds of the district for expenses of a member of the board to attend meetings of the Idaho Public School Trustees' Association in the absence of legislative authorization therefor.—10/26/32.

School districts may exchange bonds of any issue for older issues having higher rates of interest without an election and without advertising any bonds for sale, providing the first option to purchase such bonds is given to the state.—1/6/32.

SCHOOL PRIVILEGES AND TUITION:

The legal residence of children for school purposes is the residence of their parents or guardians, and their temporary residence within a district as boarders for the school term does not exempt them from liability for tuition if their parents or guardians reside elsewhere.—4/18/31.

A girl over eighteen years of age may acquire a residence in a school district and be relieved from the requirement of tuition altho her parents reside in another district.—1/17/31.

Lands acquired by the United States thru condemnation for use in connection with the operations of the Boise Project should not be considered as lands acquired by purchase with the consent of the state, and hence are not subject to the provisions of Article I, Section 8, Clause 17 of the Constitution of the United States, providing that Congress shall have exclusive jurisdiction over all places purchased by the consent of the legislature of the state. Such lands do not cease to be a part of the state, and families resident thereon are legal residents within the provisions of our school laws granting free school privileges to all children whose parents or guardians maintain their legal residence within the district.—10/13/32.

A school district may not refuse admission to its high school of students from neighboring districts upon the ground that such other districts have not paid their past high school tuition; nor unless the county superintendent is unable to transfer funds in payment of high school tuition and determines that such failure will work a hardship upon the district maintaining a high school.—8/30/32.

The duty of a school district to provide high school education or to pay tuition for its students who attend the high school of another district is mandatory, and a failure of the district to include such tuition in its budget would not relieve it from this liability.—8/8/31.

A joint common district is a separate entity, tho situate in part within a rural high school district. The joint common district is not obligated to pay tuition for such of its pupils as live within the boundaries of the rural high school district, but is required to pay tuition for its pupils who live without such boundaries.—2/18/31.

The board of trustees of a school district does not have authority to exclude from its high school a pupil otherwise qualified for the reason that she is married.—12/15/30.

A school district which does not provide high school facilities and which does not maintain grade school for more than 7 months, is liable for high school tuition for the full length of time the high school is maintained at which its students attend, and its liability for high school tuition is not terminated by the length of time it operates its grade school.—11/18/32.

A common school district, in lieu of paying high school tuition for a resident student, may not purchase for him a high school correspondence course.—11/21/32.

A school district is not entitled to collect tuition from another district for schooling afforded its students, save upon compliance with the provisions of our statutes. Authority for the transfer of such funds from one district to another rests upon a certificate of the county super-

intendent made after due hearing had upon application of the parent or guardian of such child for permission to attend school in the district other than that of their residence.—12/3/30.

Liability of a school district for high school tuition is of equal rank with its duty to provide for the maintenance of its common schools, and it cannot allocate all of its income to general current expenses for maintenance and thereby avoid liability for the payment of high school tuition.—1/1/32.

TEACHERS:

The provision in a teacher's contract that if she become married during the term of her contract the district may cancel the contract at its option, is not void as to public policy. It may be enforced by the district.—9/24/31.

The state board of education has power to prescribe a form of teacher's contract prohibiting participation in any contract or sale of books to any school district within the state during the term of such contract, or services as an agent for any book house.—2/26/31.

The destruction of a school building by fire is not such an act of God as renders its contract with a school teacher impossible of performance, so as to relieve the school district from its obligations under the contract.—11/13/31.

A school district is not relieved of its obligations to a teacher under her contract by reason of the fact that its funds are inadequate to provide for the conduct of the school throughout the entire term of the school contemplated, unless such contract represented a liability incurred exceeding the income and revenue provided for it for such year.—11/6/31.

Authority given an independent school district by special charter to fix and allow the salaries and compensation of teachers permits the district to enter into contract with an insurance company for group insurance covering its teachers under a plan providing payment for such insurance in part by deductions from salaries and in part by the contribution of an additional amount by the district. The moneys so contributed by the district may be regarded as part of the compensation given its teachers.—10/13/31.

Where a teacher is unable to procure payment of her salary, by reason of the fact that funds levied for the maintenance of the school for the current year were improperly employed in the payment of the indebtedness of a prior year, the teacher has a cause of action both against the district and against the banks receiving such money for the amount due her and so diverted.—4/12/32.

SCHOOL FUNDS:

The adoption of a budget by the annual meeting in a common or joint common school district does not constitute a mandatory direction to the trustees to expend the full amount called for by such budget, and the trustees have discretion to reduce expenditures below the amount therein provided.—8/1/31.

A school district may issue tax anticipation notes not exceeding in amount 65% of the unexpended taxes levied for the current year. Moneys derived from levies made for the purpose of meeting current expenses, interest, and sinking fund requirements cannot be diverted to the payment of past indebtedness. The department of public investments may invest surplus or reserve funds belonging to the state insurance fund in school district warrants.—1/11/32.

The July apportionment of the income of the state school fund of moneys received by the first day of January and the first day of July may be considered part of the income of the district for the fiscal year during which such income accrues.—5/5/32.

In making an apportionment of the 17% relief fund to various school districts of the county, the county superintendent is authorized to act only with the concurrence of the board of county commissioners in judging the needs of the various districts.—9/9/31.

Where all of the revenue from its 10-mill levy and state and county apportionments was required by a common school district for maintenance of its elementary schools, and the 5-mill tax levied for high school tuition is insufficient for such purpose, the district may participate in the 17% relief fund provided for by C. S. 908, as amended.—2/12/31.

Where no school district in the county has voted a full 10-mill levy, no apportionment may be made by the county superintendent of the 17% relief fund placed in her hands for assistance of such districts as having levied the full amount permitted are unable to maintain school for a full term.—9/22/31.

The county superintendent may apportion the forest reserve school fund to such districts as in her judgment have most urgent need of the same, and is not required to give aid only to districts within the forest reserve, nor to apportion the funds on the basis of the school census, nor to divide the money equally among the districts of the county.—8/21/31.

Specially chartered school districts may issue tax anticipation notes under Chapter 187 of the 1925 Session Law if the provisions of their charter are not inconsistent or in conflict therewith.—11/22/32.

Separate levies for general school purposes and for high school purposes are provided by statute for common and joint common districts. It will be considered that general school purposes have first claim against the levy made therefor. The board of trustees cannot use moneys for high school purposes that are required for general school maintenance. In the event the annual school meeting has failed to make the levy for high school purposes and the general school levy is inadequate to provide for a high school as well, the board of trustees may make the levy for high school purposes.—9/19/32.

TAXES:

Where the annual school meeting voted a levy of $1\frac{1}{2}$ mills and thru error the clerk of the school board certified such levy to the county commissioners as in part for common school purposes and partly for high school tuition, a second certificate to the state auditor correcting such error may be made by the clerk.—10/5/32.

The school levy for independent districts made in September raises funds for the payment of current school expenses for the fiscal year from the prior July 1 to the following June 30.—1/25/32.

A common school district is a taxing district within the meaning of Chapter 187 of the 1925 Session Laws, as amended by Chapter 164 of the 1927 Session Laws, relating to tax anticipation notes.—2/19/32.

The levy of an independent school district is determined by the board of trustees up to the amount of 8 mills. Any amount in excess of that is determined by the electors at an election called for that purpose. The board of trustees thereafter makes and certifies the same.—5/9/32.

Where an election was held in an independent school district to determine whether or not a levy of 7 mills for maintenance should be made, in addition to the regular levy made by the board and the question submitted and voted down by the electors, a subsequent election may be called for the purpose of determining whether the board shall be authorized to make some additional levy and of fixing the amount thereof.—3/19/31.

A special 2-mill levy for transportation of pupils made by an independent or rural high school district must be expended for the purpose for which levied. The board of trustees cannot employ the special authority resorted to for the purpose of raising such funds and then transfer the same to its general fund for common expenses.—12/19/31.

WARRANTS:

A school district is limited to 95% of the income and revenue of the calendar year in the issuance of orders for warrants and the law does not contemplate registered warrants in addition to an amount equal to said 95%.—2/29/32.

School district warrants are not required to be paid consecutively, but such is the better practice. The second Monday of September is the beginning of the fiscal year in common and joint common school districts. In all other districts the fiscal year begins July 1.—1/22/32.

Our statutes do not require outstanding school warrants to be called in the order of their issuance and where funds on hand are insufficient to accomplish the redemption of the warrant next in order, but sufficient to pay a number of subsequent smaller warrants, they may be employed for the latter purpose.—3/15/31.

The term "calendar year" used in subdivision 26, Section 46, Chapter 215 of the 1921 Session Laws means the fiscal year of such district and applies to taxes levied for the maintenance and operation of the school within that fiscal year even though not actually received within the period of the fiscal year. Orders for warrants may be issued only against the revenues of the particular year, on a pay as you go basis, and not against delinquent taxes expected to be received. The latter items are not considered as income and revenue until actually paid into the treasury.—6/22/32.

Income and revenue as used in Subdivision 26, Section 46, Chapter 215 of the 1921 Session Laws, includes both taxes and moneys received from state apportionment, finance, etc., and orders for warrants issued against income are valid up to 95% thereof until the same is paid into the treasury of the district. In the event that the order for warrant is issued upon "income" and the income is not received, in all probability under C. S. 3559 the trustees would become liable therefor. "Income" used in this light has been interpreted as including revenues obtained from sources other than taxation.—4/8/32.

School warrants presented and not paid for want of funds draw 7% interest. County commissioners have no power to order payment of a lesser amount.—2/22/32.

When school district warrants are at a discount, it is the duty of the district to increase its warrants in such amount as is sufficient to cover the discount.—3/31/32.

School district warrants may be purchased with idle funds in the state treasury.—11/5/32.

Where the outstanding deficiency warrants of a school district exceed the amount of revenue which may be raised under the special levy which is provided by Section 4, Chapter 187, 1925 Laws, the trustees are not authorized to devote the current receipts from the levy for support and maintenance of the school to the discharge of such deficiency warrants, but must continue to make deficiency levies in successive years for such purpose.—11/9/31.

The board of trustees of a school district is not required to pay interest upon its registered warrants until such warrants are called for payment. It may be considered, however, that the board has power to make such interest payments if funds therefor are available.—1/6/32.

STATE OF IDAHO

IN GENERAL:

No liability exists on the part of the state for injury caused by the negligence of its employees. However, the legislature may recognize a moral obligation and make a valid appropriation for the relief of the injured person.—2/25/31.

The state cannot maintain an action against a corporation for recovery of excess freight charges contrary to contract after the expiration of four years.—11/14/32.

A provision in a public works' contract for retention of a sum to cover outstanding claims relates only to claims for labor or materials and not to claims for personal injuries.—8/31/32.

The salary or wages of a state employee may not be the subject of garnishment. The state is not subject to such process.—5/27/32.

Where under the provisions of C. S. 9386 prior to conviction, a sheriff offers to keep and care for prisoners sentenced to the penitentiary, there is no liability against the state for the cost of such maintenance in the county jail. No appropriation is made by the legislature therefor and state prisoners are not cared for now on a contract basis as was done in territorial days but in its own penitentiary.—11/18/32.

STATE OFFICERS:

It is the duty of the persons charged with the execution of the provisions of Chapter 83, 1931 Laws, to proceed in accordance with its directions, notwithstanding any doubt upon their part as to the constitutionality of any statute and until, upon proper procedure, it should be judicially determined that the statute is unconstitutional.—9/10/31.

No employee in the several departments of the state employed at fixed compensation shall be paid for any extra services unless expressly authorized by law. Where the legislature creates a new position within a department and this is filled by the appointment of one already in the department and engaged in other work for which he draws a regular salary, he cannot be paid a second salary for the services performed in such additional work in the absence of an express authorization in the statute.—11/25/31.

A public officer is entitled to the salary fixed by law for the office which he holds. Under the rule of law laid down in *Settle v. Sterling*, 1 Idaho 259, an agreement by an officer to take less than the sum allowed by law is illegal and void. The determination of the salary by the legislature must be considered to have been had with regard to the work to be done and the ability desired in the performance thereof. Public policy prohibits the executive bargaining with a candidate so as to exclude from consideration the whole class of men willing to take the office on the salary fixed by the legislature, but who would not accept a lesser amount.—7/13/32.

Members of the legislature, and state, county, city, and district precinct officers must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members. A surety bond written by such an officer for his own official bond is voidable at the instance of the bonding company and should not be employed.—3/26/31.

The state athletic commissioner has jurisdiction over all boxing matches held in the state and may make all regulations pertaining thereto.—4/1/32.

No vacancy exists in the office of district judge where the incumbent was appointed to fill a vacancy and the person elected at the next ensuing general election dies before qualifying, since the tenure of office of the person appointed extends until his successor is elected and qualified.—1/26/31.

The minutes, budgets, etc. of the state board of education are public records open to the inspection of any citizen of the state.—11/13/31.

The board of examiners is not called upon to perform any duty delegated to it by the constitution or the legislature in approving a contract prior to its execution, nor until a claim is made against the state for the payment of money due, and such claim has been certified by the state auditor. Where a contract has been entered into without authority in law, an action in equity for the recession of such contract upon the ground of fraud will not lie, for the reason that the grounds for such recession constitute an adequate defense to an action on the contract in a court of law. Nor would the board of examiners be a proper party to any such action when the board had not been called upon to act in pursuance of any legally constituted duty.—12/5/31.

There is no such office as "honorary deputy game warden" in this state. Before a premium on a bond of a deputy game warden is allowed the appointing officer must certify to his appointment.—10/28/32.

A member of the state predatory animal board is not entitled to receive a per diem for the time spent in the performance of his duties

as such member, but may be paid his actual expenses incurred in travel for the purpose of organizing county predatory animal boards.—4/1/32.

General oversight of the duties of the bureau of public accounts is vested in the state auditor. There is no statutory mention of a director for this bureau and its employees are not public officers. The work of the bureau is under the joint supervision of the governor and the state auditor under C. S. 285, and of the auditor as to remaining duties referred to in Chapter 164, 1923 Laws.—12/19/31.

The purchase of supplies for the university of Idaho is a power or authority vested in the state board of regents and not in the state purchasing agent.—8/22/32.

It is the duty of the purchasing agent to purchase machinery and equipment for the department of public works and such purchases must be made after ten days' notice that sealed bids may be submitted for such equipment. When immediate delivery of an article is required by public exigency, the equipment may be purchased on the open market under the direction of the state purchasing agent and with his approval. The question of whether or not such an emergency exists is primarily within the discretion of the purchasing agent.—12/17/31.

STATE LANDS

The state holds the title to the beds of navigable lakes and streams below the natural high water mark for the benefit of the whole people, and the state board of land commissioners has authority to grant an easement of right of way for trackage and docks as provided in C. S. 2954.—5/15/31.

State lands situated within a drainage district cannot be sold for delinquent drainage taxes so as to divest the interest of the state in such lands.—9/26/31.

The government is not entitled to a free right of way over state lands. The state may not dispose of its school lands for less than \$10 per acre and this applies to easements for permanent rights of way.—8/17/32.

The lessee of state lands is afforded protection under C. S. 2912 against the loss and destruction of the grass by cattle grazed by other persons, and may maintain an action for civil damages against the trespasser or a criminal suit may be instituted.—6/4/31.

Application to lease or renew a lease for state lands which expire December 31st of any year, must be filed between the 1st of October and November 30th preceding the date of such expiration. Upon an

auction held to dispose of such lease when more than one application has been filed, an applicant applying subsequent to November 30th is not entitled to participate in such auction.—1/12/32.

Notice of lien upon crops grown upon lands leased by the state, upon delinquency in payments due under lease, is required to be filed for record and need not be recorded.—2/19/32.

The statutory provision for an application for reinstatement on the part of the purchaser or owner of a sale certificate to state lands which has been cancelled upon default by the purchaser does not require the land board to await expiration of the period within which such application may be made before another sale of such land may be had.—9/23/31.

The state board of land commissioners may not refund any of the purchase moneys paid by a purchaser upon the cancellation of sale certificate of state lands for default of the purchaser, but the same must be forfeited to the state and placed to the credit of the permanent fund to which the land sold belonged.—12/22/31.

Certificates of purchase of state lands must contain a reservation of the mineral deposits in the land and of the right of the state to authorize other persons to prospect the same. A lease may be made of the mineral deposit sold under such a certificate of sale and the lessee has authority to occupy as much of the surface of the land as is required for the purpose of mining and removing the mineral deposits, subject to the restrictions and provisions for damages provided by Section 10, Chapter 220, 1925 Laws.—10/13/32.

The Idaho Admission Bill exempts mineral lands from the grants of lands to the state. The grant of Sections 16 and 36 is not effective until after identification of such sections by survey. Where at the time of such survey lands were known to be mineral in character and had been located and worked as such, the title to such mineral did not vest in the state and could not be made the subject of a mineral lease by it.—7/14/32.

The filing of a certificate of location with the state board of land commissioners is mandatory in order to the location of mineral claims upon lands belonging to the state and in which the mineral rights are reserved to the state.—5/4/32.

All lands, title to which is acquired by the state by escheat, are under the charge and control of the state board of land commissioners and the leasing of any such lands is within their control and not within the authority of the state treasurer.—3/19/31.

The board of land commissioners has no authority to sell real property which escheats to the state within the 18-month period in which

the same may be claimed by another person, except in case the board of examiners shall authorize such sale in order to the payment of the taxes, liens, or other expenses.—5/29/31.

Upon expiration of the sixty-day period after due notice given by the state land commissioner to a purchaser of state lands who is delinquent in his payments therefor, it is the mandatory duty of the board to annul said contract and declare a forfeiture of the sale certificate.—9/21/31.

TAXATION

ASSESSMENTS:

A line of railroad which has been abandoned is no longer classified as "operating property" and hence is not subject to assessment by the state board of equalization, but must be assessed by the county assessor.—1/22/32.

The county board of equalization may make such changes in the entire county tax roll as is necessary in order to equalize assessments and make them conform to full cash values, and in doing so may cut valuations in one group and not another. A county board of equalization is without jurisdiction to make any changes in the county tax rolls after the third Monday of July.—8/2/32.

The property of a widow was assessed \$1200.00 and deduction of the \$1000 exemption provided by statute, left a taxable value of \$200 to be placed upon the roll. Upon the subsequent action of the board of equalization in reducing all the property of that class in that county by 20% the county commissioners may correct the assessment of the property of this widow which, as equalized, was less in total amount than the exemption granted by statute by cancelling taxes upon the property in question.—9/26/31.

Real property belonging to federal land banks is taxable, according to its valuation, with other real property within the state.—10/17/32.

Taxes assessed on land owned by an Indian after patent had issued but which patent was cancelled during the taxing period, may be cancelled by the county commissioners as having been erroneously assessed.—9/9/32.

Property assessed as part of the realty is not subject to separate assessment upon its subsequent severance, since a lien representing the entire assessment has been imposed upon the realty. However, an injunction to restrain the removal of such property unless adequate security be provided may issue where necessary in protection of the interests of the county and no other adequate remedy is available.—3/21/31.

A lamb crop does not constitute personal property coming into the state from without the state after the second Monday of January and its value is supposed to be reflected in the assessment of the ewes.—4/17/31.

Mining claims which have escaped taxation during previous years, because of the failure of the owner to record his patent, may be considered as property wilfully concealed under the provision of C. S. 3115 and may be assessed and taxed as such.—2/25/31.

Goods imported from a foreign country and in the hands of importer, are not subject to taxation while in the original package.—6/7/32.

A bank making a return for taxation is not entitled to a deduction from its capital stock, surplus and undivided profits, of that portion which it has invested in non-taxable securities such as Liberty bonds. Neither may it deduct a reserve set up for depreciation or losses.—4/19/32.

Personal property of a highway contractor actually employed for profit in the county where the work is being done on the tax day would be assessable there regardless of the residence of the owner, but at the residence of such owner if the same was in transit on the tax day.—6/21/32.

The equity of a purchaser of state land may be sold for delinquent taxes although the land cannot be sold as long as the title remains in the state. The purchaser of the equity would stand in the same relation with the state that the original purchaser occupied and upon compliance with the terms of the contract become the owner in fee of the land. Equities in state land being assessed as personal property should be placed on the personal property assessment roll.—6/30/32.

Under C. S. 3268, as amended by Chapter 204, 1931 Laws, personal property brought into the state after the second Monday of January is subject to assessment and taxation for such year. The fact that such property has previously been taxed in another state for the same year effects no exemption from taxation by this state. The double taxation thus effected is not within the intent of the constitutional prohibition which forbids double taxation.—7/16/31.

EXEMPTIONS:

A veteran of the World War is not by virtue of such fact entitled to any exemption from taxation of real or personal property.—12/22/30.

A veteran of the Spanish American War who lives in Idaho does not lose his right to exemption from taxation because of a temporary absence from the state without intent to make his residence elsewhere.—1/3/31.

The property of a golf club operated for the social and physical benefit of its members is not within the statutory exemption from ad valorem taxes of property belonging to a fraternal, benevolent or charitable corporation or society.—7/17/31.

The limitation of exemption to a valuation of \$5000 under subdivision 4, Section 3099 C. S. applies only to taxable property including that exempted and does not include property which is not taxable.—2/25/32.

Where a widow owns property in two counties and applies for exemption thereon she is entitled to but one exemption on the aggregate property owned. It is the opinion of this office that she has the right to select the property to which the exemption should be applied.—1/19/32.

A widow's right to exemption from taxation is determined by her status as of the second day of January and if she were a widow on that date but later re-married she is entitled to the exemption. Where a widow owning real property dies after the second Monday of January leaving property to her daughter who is not entitled to an exemption, no exemption for such property is allowable because there could be no valid claim therefor by such widow.—10/17/32.

No exemption may be allowed to a widow, resident of Idaho, whose property in Idaho is assessed at \$4,000.00 and who in addition owns real estate in New York valued to \$1,000,000.00, and who owns non-taxable mortgages and securities elsewhere.—7/23/32.

A mutual cooperative irrigation company in which the land owners are the beneficial owners of the canals and water rights as appurtenant to their lands, may be exempt from taxation under Subdivision 14, Section 3099 C. S.—7/18/32.

The board of county commissioners is without authority to cancel a tax lien upon real property because of an executory contract of purchase entered into by a post of the American Legion. Nor would the deposit in escrow of such a contract, with covering deed, entitle such an organization to an exemption from tax for the ensuing year upon the property under contract to purchase. Upon a showing of some record title, the post would be entitled to a reduction in assessment proportionate to its ownership of the property.—12/29/30.

If a mortgagee fails to give notice as provided by Section 3304-B (Chapter 233, 1927 Session Laws), the mortgaged property is liable for the personal property tax of the owner of the land where the taxes do not exceed \$1000 of assessed valuation on such personal property.—2/3/32.

LEVIES:

Power to fix the state tax levy is vested by law in the legislature. The duty of the state board of equalization in determining the amount of the state ad valorem tax which each county must pay after the equalization of assessments is a mere matter of mathematical calculation. Authority to deduct savings in biennial appropriations has not been granted to the board and any attempt upon its part so to do would be unconstitutional and void as in contravention of Article VII, Section 2, of the Constitution. Such conduct would further subject each of the members of the board knowingly consenting thereto to a penalty of \$1000 to be recovered upon his official bond.—9/21/32.

A cemetery maintenance district is limited to a one-mill tax for maintenance purposes. The provisions of Section 20, Chapter 197, 1927 Laws, relate to the amount of indebtedness which may be incurred before making the tax levy in the first year and do not authorize an additional half-mill levy.—2/19/31.

The levy for the weed eradication tax is placed upon all property in the county and not merely the area affected and such levy is a part of the county tax levy for current expenses under Section 3213 C. S.—4/16/32.

Where a county has no outstanding warrants, a special levy for warrant redemption is improper, altho the facts disclosed show that current expense funds were used without authority for the redemption of warrants issued in the previous year.—12/11/31.

Airport levies provided for by Chapter 167, 1923 Laws, are subject to the general revenue limitation, and a tax in excess of the amount which the county is permitted to levy for general revenue purposes is legal to the extent of such excess. Taxes paid voluntarily and without protest cannot be recovered and, although illegally collected, where the county has this money and is unable to return the same, it may be employed for the purpose for which it was originally intended.—2/21/31.

C. S. 3217 requires the board of county commissioners to levy a tax for the redemption of outstanding county warrants issued prior to the second Monday of April, and was not amended by C. S. 3219 as amended by Chapter 106 of the 1931 Session Laws, to conform to the change of the fiscal year back to the second Monday of January as it is plain that the legislature did not intend that the dates for determining the amount of outstanding warrant indebtedness should coincide with the fiscal year, although all reason requires that they should so coincide.—3/8/32.

PAYMENT AND COLLECTION:

The county treasurer is not permitted to refuse payment of general taxes unless irrigation assessments upon the same property for the same year are also paid, but must accept payment of general taxes alone if tendered by the taxpayer.—9/21/31.

A delinquency entry for failure to pay the second installment of taxes is dated as of the first Monday in January in the year such taxes fall delinquent and interest must be charged from such date.—3/15/31.

County tax collectors may not refuse to accept payment of general taxes because forest protection taxes are not tendered at the same time.—2/16/32.

County commissioners have no authority to cancel the penalty and interest provided for by statute on delinquency in the payment of taxes.—4/21/31.

Personal property taxes are not payable in installments except where such taxes constitute a lien on the real property of the owner and have been extended on the real property roll.—12/21/31.

Delinquent taxes upon personal property are subject to a 10% penalty but no interest is to be collected in addition thereto.—2/19/31.

A county tax collector cannot accept only the first installment of taxes after the second installment becomes delinquent. At that time both are payable as one unit.—9/27/32.

If property is redeemed in 1932 for past delinquent taxes, the tax for 1932 is a lien upon that property but is not due or payable until the regular tax paying date.—3/19/32.

Where a state bank has been assessed upon its stock and thereafter fails and is taken over by the commissioner of finance for liquidation, taxes under such assessments may not be paid by the liquidating agents from its own assets, the stock in reality belonging to the stockholders. To require the bank from its own assets to pay the taxes due on the property of the shareholder prior to the payment of the claims of its depositors, etc. would no doubt be taking property without due process of law in that it would impose upon one person, the depositor, an obligation to pay the debt of another, the stockholder.—5/26/32.

An action for the recovery of taxes paid under protest must be instituted within sixty days after the payment or seizure of the money.—1/20/31.

TAX SALES:

The sale of lands acquired by a county for delinquent taxes is free of the incumbrance of subsequent taxes.—2/11/31.

A county tax deed would not transfer title to a water right unless it was appurtenant to the real estate involved.—3/10/32.

Tax deed service for 1928 and 1929 tax delinquencies should be made in 1932 in order that tax deeds may be issued to the county in January, 1933 for both years.—3/15/32.

Title to lands belonging to the state of Idaho cannot pass by a deed issued by an irrigation district for delinquent assessments.—12/23/31.

When property is sold by the county, which holds it under tax deed, for more than the taxes amounted to the property owner may not recover any excess of that amount.—1/22/32.

APPORTIONMENT—PAYMENT OF STATE TAX:

The proceeds of sale received by a county for lands acquired thru tax delinquency should be devoted first to the satisfaction of general taxes and an irrigation district having delinquent assessments upon such land is not entitled to share pro rata in the distribution of such taxes. A county does not incur any liability to the holders of bonds issued by such irrigation district by such procedure.—12/30/31.

The suit of a village against its county for the purpose of recovering 25% of the road tax collected by the county on property within the village is not a suit against the county so as to be barred under the provisions of C. S. 6614. In such instances the county acts as a mere agent of the municipality and the cause of action did not accrue until the demand made by the village, or until overt claim made by the county to such money, or plain refusal to pay over the same.—2/14/31.

A county may not deduct from its remittance of state taxes the portion of such tax levied upon lands mortgaged to the state and remaining uncollected because of the foreclosure of such mortgage.—10/5/32.

A county is required to pay the amount due the state for state taxes in full, and in the event the proceeds of the state levy are insufficient, resort must be made to other county funds in the hands of the county treasurer. County commissioners are directed by statute to increase the levy to counterbalance taxes unpaid for the previous year, so long as the amount of the levy for state purposes does not exceed the 10-mill limit provided by Section 9, Article VII, of our Constitution. A levy to cover the depletion of other funds drawn upon to pay state taxes may be made under Section 4, Chapter 187, 1925 Laws.—9/10/32.

The direction of statute, that the counties must pay state taxes in full, manifests the intent that such taxes shall be a primary charge. If necessary, it is directed to use for this purpose any county moneys in the hands of the county treasurer. Where the need appears, the county

must avoid making such expenditures as would render it unable to accomplish this payment to the state. Where, pursuant to the constitutional mandate, moneys have been collected pursuant to levies for bond interest and sinking fund requirements, such moneys must be excepted from the foregoing and resort may not be had thereto for the payment of state taxes. The employment of bond interest and sinking funds for the payment of general current expenses of a county is a plain and flagrant violation of law.—6/9/32.

When a county, because of delinquent taxes, is unable to remit to the state the full amount of state taxes, it may resort to the county school fund levy and the proceeds of other tax levies by the county for county purposes. The county budget law has nothing to do with the payment of state taxes. The purpose of the budget law was to limit the expenditures of the county to the amount fixed in the budget regardless of the amount of cash actually collected from the tax levy. No penalty for failure to pay the state tax attaches to a county but C. S. Sec. 3330 imposes a penalty on the county treasurer.—10/7/32.

EXCISE TAXES—IN GENERAL:

The exemption from taxation of electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Idaho is not applicable where the water pumped is sold or rented. Electrical energy employed for pumping water for drainage purposes is not within the scope of the exemption. This circumstance is not altered by the fact that a portion of such waters is subsequently picked up and used by individual landowners, where it does not appear that the district attempted, thru pumping, to provide water for the purpose of irrigation, or sought to exercise any control or direction over the water pumped, or to accomplish its delivery to landowners for irrigation purposes.—7/14/32.

The taxes imposed by Title IV (Manufacturers' Excise Tax) of the Federal Revenue Act of 1932 are not chargeable with respect to sales of articles made direct by the manufacturer to the state or its municipalities or political subdivisions where for use in the performance of a governmental function. The Federal Government and the several states are separate and distinct sovereignties and neither government may burden by taxation the instrumentalities employed by the other in the exercise of its legitimate powers of government. The construction, maintenance and supervision of our state highway system should be regarded as a governmental function. Such exemption is not available, however, where the state buys from a jobber and retailer instead of from the manufacturer. In such case, the incidence of the tax is not upon the sales to the state and the latter transaction is affected only remotely and indirectly.—8/30/32.

No tax is due or payable upon oleomargarine shipped directly from a manufacturer or dealer in another state to a consumer in this state, since the transaction is wholly in interstate commerce and may not be subjected to such a burden by the state.—1/31/31.

The state tax upon sales of commercial fertilizer within the state is intended to be charged upon sales made at retail, and not upon sales from manufacturer to retailer.—7/27/31.

INCOME TAXES:

A state may not tax a business operating in interstate commerce and where the sole activity within this state of a foreign corporation is in the conduct of an interstate business, no liability for income tax accrues.—5/12/32.

Federal officers and employees are not liable for the payment of state income tax upon their salaries.—12/18/31.

Interest received upon bonds of this state or a political subdivision thereof is excluded from gross income to be reported for income tax purposes, whether the owner of such bonds be a resident or non-resident of the state.—7/21/31.

Under the income tax statutes in this state, a husband and wife may make separate returns, each reporting one-half of the income which was, upon receipt, community property.—2/12/32.

Where payment of an income tax installment is attempted to be made with a check upon which payment is refused by the bank, the commissioner should consider the tax as due and unpaid, rather than to attempt collection thru suit upon the check.—3/17/32.

A dormitory building association is not a political subdivision of the state and payment of interest upon its bonds is not exempted from taxation under the federal income tax laws. Where the association has agreed to pay the income tax upon interest payments, it is required to withhold 2% of its payments in accordance with Section 144 of the Revenue Act of 1928.—6/22/32.

INHERITANCE TAXES:

Inheritance taxes are based on the privilege of receiving the inheritance of property under the laws of the state in which the property has its situs for purposes of probate. An exemption from inheritance tax does not arise by virtue of the fact that the devisee is a resident of another state.—10/13/31.

No inheritance tax may be collected in Idaho on intangibles belonging to a non-resident of this state.—1/26/32.

Where testamentary disposition is made of property in this state, inheritance taxes are to be computed upon the basis of such distribution and not in accordance with a different division of the property later agreed upon by the heirs and devisees.—3/4/31.

In the computation of inheritance tax due the state, shares of stock acquired by the trustees after death of the decedent are not subject to tax.—9/17/31.

The community interest of a wife is a vested interest and not subject to inheritance tax upon the death of a husband. However, the interest taken by descent from the deceased is subject to such tax.—3/20/31.

Where a proceeding is instituted under Section 7803-A, as finally amended by Chapter 257 of the 1929 Session Laws, upon the death of a wife for the transfer of her property to the surviving husband, the inheritance tax must be determined as is usually done in other probate proceedings.—1/13/32.

Where a wife dies intestate and no probate proceedings are had and the husband later died, the estates must be probated separately and two fees charged. Inheritance tax is due on both transfers.—3/31/32.

MOTOR VEHICLE FUELS TAX:

Refunds are not permissible on motor fuels consumed in vehicles operated on a public highway which is under repair or construction, and temporarily closed, as such facts do not alter its character as a public highway within the meaning of the statute.—5/8/31.

The statute providing for a motor vehicle fuels tax authorizes the commissioner of law enforcement to put into effect such regulations as in his judgment may be necessary to detect the uses and purposes to which gasoline, upon which refund of the tax is applied for, is put. The requirement of a dye of harmless character to be placed in such gasoline is authorized by this provision in order to assist such detection.—2/20/32.

Where a person has made a false claim for refund of taxes paid upon gasoline, he shall not, for a period of five years thereafter, be entitled to any refund and a subsequent claim by him should not be allowed by the board of examiners nor submitted as a deficiency claim to the legislature.—2/26/32.

A municipality is not entitled to a refund of the tax paid upon gasoline used in a city's equipment for street sprinkling and its fire department.—7/5/32.

The Motor Vehicle Fuels Tax Act makes provision for refund only with regard to motor fuels used in stationary gasoline engines, etc. or other commercial use unrelated to the operation of motor vehicles upon

the public highways. A provision in the original act authorizing a 2% deduction for shrinkage and loss was repealed. The present statute does not authorize a claim for refund for gasoline spilled and lost by evaporation.—10/7/32.

A tax paid upon gasoline used in a gasoline shovel employed in the repair of a public highway, as distinguished from fuel used in operation of the shovel or tractor over the highway, is subject to refund.—8/6/31.

Forest roads constructed by cooperation between the state and federal government are public highways as soon as opened to vehicular traffic by the public. Gasoline used in motor vehicles operating upon such roads is subject to tax.—8/6/31.

A person having a government contract for building roads on forest reserve property is not exempted by such fact from the payment of gasoline taxes. If the gasoline in question were used on the public highways as distinguished from private forestry roads, it is not tax exempt.—6/10/31.

WAREHOUSES

An essential qualification of a public warehouse is the storage of goods for other than the owner and for compensation. The storage of potatoes in a cellar of the owner is not a storage for hire and does not authorize the owner to issue negotiable bonded warehouse receipts thereupon.—10/26/32.

The operation of a building or structure for the receipt of agricultural products from the general public for storage or transfer for compensation is the operation of a public warehouse, which must be conducted under license and bond. An intent to transfer the product to a point outside the state does not exempt the operator from compliance with these statutes. The receiving of wheat in Idaho by a warehouseman in a building for storage would require the operator of the building to procure a license and give a bond, regardless of whether storage was to be in Idaho or Utah. The operator in such warehouse is required to conform to the rate schedule fixed by the public utilities commission.—10/17/31.

A warehouseman need not look into the title of products offered for storage but may rely upon the claim of ownership of the person delivering the produce and issue his negotiable warehouse receipt therefor, without incurring liability because of the existence of a mortgage upon such produce, of which it had no knowledge.—11/27/31.

WATERS AND WATER RIGHTS

Where the rights on a stream have not been decreed, the commissioner of reclamation is not required by statute to supervise diversion from such stream to the extent of adjudging the respective priorities of the different users. In such case the department is not required to supervise the installment of headgates and diversion works and to superintend the employment thereof.—5/11/32.

A water right does not include the right to the use of the current of an entire stream in order to divert the amount actually devoted to beneficial use. The department of reclamation may approve a change in point of diversion, altho such change is to the injury of a prior appropriator whose diversion works are of such character as to be inadequate except upon use of the entire stream flow.—6/24/32.

The water right of a water distribution system operated as a public utility passes to the county upon the issuance of a tax deed to the system.—6/27/32.

Where the character of a stream bed is such as to occasion excessive losses from the stream in the delivery of the amount of water decreed a lower right to its point of diversion, the department of reclamation may authorize the construction of a conduit by other parties in interest on this stream for the purpose of avoiding such losses in delivery to the lower appropriator, provided that the rights of the latter are fully protected, and the diversion by him of the full amount of water to which he is entitled is not interfered with.—6/2/31.

An application for a permit to appropriate public waters of the state of Idaho to the extent of 100 cubic feet per second to flow from six wells may be considered a single application for a permit, and not an application for six different permits, where the applicant intends to drill the wells upon certain lands diverting the waters therefrom into ditches and the winter flow into reservoir.—11/30/31.

Upon the interstate streams flowing through Wyoming and Idaho the respective rights of different appropriators are to be judged strictly according to their priorities.—8/11/31.

The commissioner of reclamation may not issue a permit to divert waters from an Idaho stream for beneficial use in Wyoming when the laws of Wyoming contain no reciprocal privilege.—5/12/31.

Under C. S. 2990, where the owner of a dam which is unsafe and threatens the destruction of life or property fails to repair the same upon notice given, and such repairs are caused to be made in accordance with the provisions of said section, the expense of such repair becomes a lien upon the said dam and other irrigation works appurtenant thereto,

and shall be placed upon the tax roll and collected in the manner provided by law for the collection of other taxes. The lien so provided for is not rendered ineffective by the fact that other statutes exempt such dam and irrigation works from taxation.—9/28/32.

Upon the failure of a permit-holder making proof of application of water for beneficial use to pay the license fee provided by statute, the department of reclamation should refuse to issue the license until such fees have been paid. Where license has issued without such payment, it is the duty of the auditor to institute suit for the collection of the delinquent fees.—1/8/32.

Where a permit to appropriate water to irrigate U. S. government land under entryman permit and the entryman died before proof of the application of the water to beneficial use was made, and Congress authorized and directed the issuance of a patent to the entryman's wife, the department of reclamation would not be authorized to transfer the water permit to the entryman's wife in the absence of a showing on behalf of the wife that the rights represented by such water permit were not lost or disposed of by the entryman in his lifetime and that they now have passed to her.—11/26/32.

The statutes providing for a hearing upon the filing of a protest against the granting of an application to appropriate water for power purposes contain no appropriation for the purpose of paying the expenses of the department attendant upon such hearing. In such circumstances, the commissioner of reclamation is not compelled to proceed with the hearing.—1/20/32.

A Carey Act operating company's delinquent assessments draw interest at the rate of 12% per annum.—4/5/32.

WORKMEN'S COMPENSATION

LIABILITY FOR:

An employer exempt by law from compliance with the provisions of the Workmen's Compensation Act, but who has elected under C. S. 6216 to come under the act, may thereafter revoke such election.—4/30/31.

The withdrawal of an employer from the state insurance fund does not void his liability to assessments upon account of an injury sustained prior to the time when such withdrawal became effective.—7/17/31.

A contract entered into between an employer, an employee and a hospital for medical care and attention is subject to the approval of the

industrial accident board; and the jurisdiction of the board extends to the amount of deductions from wages which may be made and the manner of making such deductions.—9/14/31.

Altho considered a federal instrumentality, a national bank is a private institution and not a branch of the national government. As such it is subject to the laws of the state, unless such laws interfere with the purpose of its creation or impair or destroy its efficiency as a federal agency. Its employees are not engaged in public employment and the bank is not excepted by any of the provisions of C. S. 6216 from the responsibility of providing workmen's compensation insurance covering its employees.—4/25/32.

A bank must carry compensation insurance altho its employees are all stock holders.—1/7/32.

The conduct of a fur farm is not an agricultural pursuit within the exemption from the requirement of workmen's compensation insurance. From the earliest date of authentic history a distinction has been recognized in law between the two classes of animals, *ferae naturae* and *domitae naturae*.—5/21/31.

Compensation insurance need not be procured for employees employed with funds furnished by the R. F. C. under the provision for disbursement of its funds in furnishing relief and work relief to needy and distressed people.—11/30/32.

The owner of a barber shop is not required to carry compensation insurance covering persons leasing chairs in his shop for a certain percentage of their gross receipts, where the latter persons have entire management and control of said chairs and their hours of work. The lessees are not employees within the intent of our Workmen's Compensation Act.—12/16/30.

Where the lessee and operator of mining property enter into contract authorizing another to sell the coal mined by the lessee and distribute the proceeds of sale in the payment of services and wages of operation in the liquidation of prior indebtedness of the lessee, the laborers working upon the property are employees and not co-adventurers, and the lessee or his agent must provide compensation insurance for the workmen so engaged, notwithstanding the fact that the contract provides that the lessee shall not be liable personally to workers for their labor.—10/10/31.

The employment of a janitor to clean and care for the offices of an attorney is an employment carried on by the employer for the sake of pecuniary gain within the intent of our workmen's compensation statute. Such janitor service is to be considered an essential aid to the maintenance of offices required for the conduct and practice of law.—4/25/32.

A form of release executed by a carrier and its employees would not relieve the employer of liability under the Workmen's Compensation Law unless, with the approval of the industrial accident board, a substitute system of compensation had been agreed upon.—4/17/31.

PAYMENTS:

An injured employee receiving hospitalization under the Workmen's Compensation Act at the expense of his employer may not leave the hospital designated by the employer in order to enter a veterans' hospital without forfeiting his compensation, unless it be shown that the employer had failed to provide proper treatment and care.—9/16/31.

The employee of a state department temporarily disabled from work by an injury received in the course of employment is entitled to compensation payments, altho carried on the payroll during the period of disability. Whether such employee was entitled to receive his salary for the same time is a question which must be answered by the board of examiners.—9/9/32.

Workmen employed within this state and injured on the Montana side of the line, while working in a tunnel which is entered in this state and extends across the line, are entitled to compensation under the provisions of the Idaho law.—2/23/31.

A foreign guardian may not collect compensation due his ward without guardianship proceedings in this state, where an employee was killed in the state, the employer is a Washington corporation, and the minor heirs reside in Washington.—10/27/32.

STATE INSURANCE FUND:

The state insurance fund is authorized to create a separate class and impose a higher rate for an individual risk where the company in question, through disregard of safety first methods or indifference to the safety of its employees, so conducts its work as to occasion losses far in excess of the common experience of the general classification in which such risks would normally fall.—11/13/31.

Professional members of the various examining boards constituted for the examination of candidates for licenses to practice as physicians, dentists, barbers, etc. should be classified by the state insurance fund in accordance with their duties as members of such board; that is, desk work of clerical or executive nature, rather than in accordance with the duties of their respective professions.—2/25/32.

DOCKET 1931-1932

UNITED STATES SUPREME COURT

(Pending)

- 402 **Oregon-Washington R. R. & Navigation Co. v. United States of America & Public Util. Com. of Idaho, Intervenor.** Re: Construction of 185 mile railroad thru Central Oregon.

(Closed)

- 434 **Louis P. Kielsen v. George G. Barrett, State Treasurer.** Alternative Writ of Mandate. Writ denied.
- 475 **Utah Power & Light Co. v. Pfost, et al.** Appealed from U. S. Statutory Court, Dist. of Idaho, Southern Division. Constitutionality of Ch. 3, 1931 Extraordinary Session (Kilowatt Tax Act). Decision for respondents.

UNITED STATES CIRCUIT COURT OF APPEALS

(Closed)

- 412 **P. H. Detweiler, et al. v. John S. Welch, et al.** Appealed from Federal Court, Idaho Southern Division. Constitutionality of Idaho Potato Grading Act. Decision for defendants.

UNITED STATES DISTRICT COURT

(Pending)

- 341 **In the matter of Kootenai Motor Company, Bankrupt.** Northern Division. State's claim for gasoline tax.
- 384 **R. W. Faris, Com. of Recl. v. Blaine County Investment Co., et al.** Southern Division. Little Lost River Suit.
- 471 **United States of America v. George Ladley. State, Intervenor.** Northern Division. Action to quiet title.
- 555 **United States of America v. Wm. E. Welsh, et al.** Southern Division. Distribution of water rights.
- 569 **Village of Shoshone v. Oregon Short Line R. R. Co.** Southern Division. Re: Opening of street over railroad property.
- 583 **United States of America v. American Ditch Assn., et al.** Southern Division. Re: water, ditch and canal rights on Eagle Island.

- 595 **Matter of Kountze Brothers, Bankrupts.** Southern Dist., U. S. Dist. Ct. of N. Y. Claim of State of Idaho.

(Closed)

- 239 **Insurance Finance Corp. v. Phoenix Securities Corp.** Eastern Division. Possession of assets of Idaho Fire Ins. Co. held by Director of Insurance. Dismissed.
- 357 **Alton & Southern R. R. Co., et al. v. United States of America,** Rate case. Dismissed with prejudice.
- 478 **Idaho Power Co. v. Emmitt Pfost, et al.** Southern Division. Constitutionality of Ch. 3, 1931 Extraordinary Session. (Kilowatt Tax Act). Decision for defendants.
- 479 **Chelan Electric Co. v. Emmitt Pfost, et al.** Southern Division. Same as Case No. 478.
- 480 **The Washington Water Power Co. v. Emmitt Pfost, et al.** Southern Division. Same as Case No. 478.
- 487 **Oregon Short Line R. R. Co. v. C. Ben Ross, et al.** Southern Division. Suit to enjoin assessment of O.S.L. property. Injunction denied and case dismissed.
- 543 **In the matter of the application of Stephen Vincent for Writ of Habeas Corpus.** Northern Division. Unlawful imprisonment of Indian, ward of U. S. Dismissed.
- 560 **Varney Air Lines, Inc. v. Fred J. Babcock, et al.** Southern Division. Suit to enjoin enforcement of gasoline tax statute. Decision for plaintiff.

HEARINGS BEFORE FEDERAL BOARDS AND COMMISSIONS

International Joint Commission

(Pending)

- 300 **Application of West Kootenai Power & Light Co.** Restraining condemnation of lands for power site.

Interstate Commerce Commission

(Pending)

- 401 **Public Utilities Com. v. Oregon Short Line R. R. Co.** Rate on petroleum products.
- 404 **Public Utilities Com. et al. v. Oregon Short Line R. R. Co.** Rate case on printed matter.
- 468 **Public Utilities Com. v. Oregon Short Line R. R. Co.** Rate case on automobiles.

- 474 **Public Utilities Co. v. Oregon Short Line R. R. Co.** Rate case on coal.
- 567 **In the matter of Application of Oregon Short Line R. R. Co. for Certificate of Public Convenience and Necessity.** Re: O. S. L. application for abandonment of Talbot Spur.
- 581 **State ex rel Gallet v. Pacific and Idaho Northern Ry. Co., et al.** Rates on petroleum road oil (liquid asphalt).
- 590 **Increases in Intrastate Freight Rates.** No. 25135, part 3.
- 598 **No. 17000, Rate Structure Investigation, Part VII.** Grain and Grain Products Within the Western District and for Export.

Interstate Commerce Commission

(Closed)

- 211 **State ex rel. Public Utilities Com. v. Oregon Short Line R. R. Co.** Rate case. Decision for state.
- 240 **Public Utilities Com. v. Oregon Short Line R. R. Co.** Rate case on deciduous fruits. Decision for state.
- 367 **Public Utilities Com. v. Oregon Short Line R. R. Co.** Rate case on peas and beans. Decision for state.
- 403 **California Growers' & Shippers Protective League v. The Atchison, Topeka & Santa Fe Ry. Co., et al. P. U. C., Intervenor.** Rate case on deciduous fruits. Decision for intervenor.
- 498 **In the Matter of Proposed Increases in Freight Rates and Charges. (Ex Parte 103).** P. U. C., protestant. Decision for protestant.

SUPREME COURT OF IDAHO

Original Proceedings

(Closed)

- 295 **State ex rel. Capital Investment Co. v. Lukens.** Writ of mandate granted.
- 297 **Boise-Kuna Irrigation Dist. et al. v. Clinton H. Hartson, District Judge.** Action for writ of prohibition for distribution of water. Dismissed.
- 330 **State v. Viola Lowe.** Twin Falls County. Forgery. Decision for plaintiff. Petition for Writ of Habeas Corpus quashed.
- 388 **Payette County v. H. C. Baldrige, Governor, et al.** Action to compel assessment of household goods and farm implements. Writ quashed.

- 397 **W. C. Pond v. Byron Defenbach, Treasurer.** Petition for writ of mandamus. Dismissed.
- 446 **In re Application of John McFayden & L. B. Denning for Ctf. of Convenience and Necessity and P. U. C. of Idaho v. Public Utilities Cons. Corp.** Order of P. U. C. granting certificate affirmed.
- 449 **Coeur d'Alene Auto Freight, et al. v. P. U. C., et al.** Matter of investigation by P. U. C. of operation of stage or bus lines over U. S. Highway No. 10 in Idaho. Appealed from order limiting size of busses and trucks affirmed.
- 451 **William T. Reed, et al. v. E. G. Gallet, State Auditor.** Petition for writ of mandate for mileage allowance to members of Extraordinary Session of 21st Legislature. Writ quashed.
- 489 **City of Pocatello, et al. v. C. Ben Ross, Governor, et al.** Proceeding for Writ of Review in connection with assessed valuation of railroad. Writ quashed.
- 499 **Western Hospital Assn. et al. v. Industrial Accident Board, et al.** Kootenai County. Re: Approval of contract. Decision for defendants.
- 506 **Application of Michael J. Tierney for Writ of Habeas Corpus.** Dipsomaniac restrained of liberty for sanitarium. Writ quashed.
- 508 **M. G. McConnell, Adjutant General v. E. G. Gallet, State Auditor.** Petition for Writ of Mandate for payment of salaries of Idaho National Guard for services during 1931. Writ granted.
- 513 **State ex rel. New Plymouth State Bank, et al. v. O. E. Bossen, Assessor of Payette County.** Petition for Writ of Prohibition. Dismissed by plaintiffs.
- 529 **Ben Diefendorf v. E. G. Gallet, State Auditor.** Ada County. Constitutionality of Ch. 2, 1931 Laws. (Income Tax Law). Act sustained.

Civil Appeals

(Pending)

- 325 **State ex rel. Hoover v. County of Minidoka, et al.** Action for cancellation of tax lien. Reversed with instruction to enter judgment in favor of state upon showing issuance of sheriff's deed.
- 488 **City of Idaho Falls v. Emmitt Pfof, et al.** Kilowatt Tax Case.
- 530 **Matter of claim of J. A. McDonald v. Treasurer and Industrial Special Indemnity Fund.** Appealed from I. A. B.
- 545 **Matter of application of T. R. Benedict for permission to operate motor propelled freight service in Idaho.**
- 558 **Harry B. Curtis v. Emmitt Pfof, Comr. of Law Enforcement.** Ada County. Re: Operating trucks in violation of Ch. 185, Laws of 1931.

- 561 **Verda Doolittle v. Amos H. Eckert, et al.** Ada County. Suit to collect salary as Chief Clerk in Game Department.
- 580 **Matter of Rates, etc. by Osburn Utilities Corporation v. P. U. C.** Appealed from P. U. C. rate case.
- 582 **W. C. Hall v. F. Lee Johnson, Comr. of Agriculture.** Twin Falls County. Re: Violation of law pertaining to farm produce brokers, dealers and merchants.

(Closed)

- 264 **James Turnbull, et al. v. Cons. School Dist. No. 31 of Blaine County, et al.** Restraining disbursement of insurance money. Affirmed.
- 286 **Harry T. West, et al. v. Dist. of Agriculture, et al.** Suit to restrain enforcement of Ch. 115, 1929 Laws. Dismissed.
- 338 **State ex rel. Gallet v. John L. Naylor and George N. Lamphere.** Inheritance Tax Case. Reversed.
- 351 **P. D. Pace v. I. W. Barlow.** Habeas Corpus proceedings. Appeal dismissed by appellants.
- 358 **Boise Street Car Co. v. Roy D. Leonardson, County Assessor.** Ada County. Mandamus proceeding. Reversed.
- 371 **Independent School Dist., Class A, No. 1, Cassia County v. Emmitt Pfost, Comr. of Law Enforcement, et al.** Suit for injunction against collection of gasoline tax. Affirmed.
- 375 **State of Idaho v. Idaho Improvement Co.** Custer County. Appealed from P. U. C. Re: Water service to Village of Mackay. Case dismissed.
- 376 **City of Burley, et al. v. Fred E. Lukens, Comr. of Law Enforcement, et al.** (Same as No. 371). Affirmed.
- 389 **Intermountain Lloyds, et al. v. Ben Diefendorf, Comr. of Finance, et al.** Petition for writ of mandate for admission to do insurance business in Idaho. Affirmed.
- 405 **State v. Itha Johnson, Guardian of Myrtle O. Woodfin, incompetent.** Appealed from Latah County. Maintenance charges for keeping in asylum. Affirmed.
- 580 **Matter of Rates, etc. filed by Osburn Utilities Corporation v. Public Utilities Commission.** Appealed from P. U. C. order requiring reconstruction of system and suspending rates and regulations filed by it. Order dissolved and matter remanded to Commission with instructions to take further evidence.

Criminal Appeals

(Pending)

- 265 **State v. Steinberg and Kimball.** Twin Falls County. Violation of potato regulation act.
- 514 **State v. O. E. Monteith.** Twin Falls County. Manslaughter.
- 521 **State v. Hugh Coppinger and John Bigley.** Jerome County. Murder.
- 526 **State v. Robert Noble, Jr.** Ada County. Commitment to Blackfoot as an inebriate.
- 554 **State v. Lee Clark.** Fremont County. Forgery.
- 576 **State v. Henry Gusman and H. F. Fox.** Nez Perce County. Making false certificates on state vouchers.
- 592 **State v. A. C. Carlson, otherwise known as Jack Cline, and Malcolm Bentley.** Bingham County. Forgery.

(Closed)

- 274 **State v. Cleo Bush.** Twin Falls County. Assault with a deadly weapon. Reversed.
- 342 **State v. Emmett Terry.** Gooding County. Crime of perjury. Affirmed.
- 359 **State v. J. B. Bernhardt.** Bannock County. Reversed.
- 362 **State v. John C. McClurg.** Gem County. Murder in the first degree. Affirmed.
- 372 **State v. Chris Carlson.** Custer County. Grazing sheep on cattle range. Reversed.
- 373 **State v. George Hirimatsu, Sen.** Franklin County. Appeal dismissed.
- 378 **State v. Chester G. Ward.** Benewah County. Murder in the first degree. Reversed.
- 391 **State v. Jones Frank.** Nez Perce County. Manslaughter. Reversed.
- 419 **State v. Albert Troutman.** Canyon County. Proceeding brought under Eugenics Act. Affirmed.
- 453 **State v. J. E. Beach.** Twin Falls County. Illegal possession of liquor. Affirmed.
- 455 **State v. Glen Wilmot.** Ada County. Judgment sustaining demurrer and granting motion to quash affirmed. Reversed.

- 456 **State v. William D. Cochran.** Nez Perce County. Obtaining money under false pretenses. Affirmed.
- 457 **State v. Charlie Cornish, et al. and Rulon Wilson.** Bannock County. Crime of injuring jail. Affirmed.
- 469 **State v. Kenneth Smailes.** Nez Perce County. Affirmed.
- 484 **State v. Arthur Farnsworth, et ux.** Bonneville County. Poisoning of silver black foxes. Affirmed.
- 486 **State v. John Reding.** Kootenai County. Murder. Affirmed.
- 494 **State v. Thomas Trathen.** Elmore County. Failure as County Assessor to keep public moneys as provided by law. Motion to strike granted and appeal dismissed.
- 505 **State v. James O'Neil, true name Seth Lee Morrison.** Valley County. Manslaughter. Affirmed.
- 517 **State v. Fred Copenbarger.** Twin Falls County. Murder in second degree. Reversed and remanded.
- 518 **State v. William Fox, et al.** Fremont County. Murder. Affirmed.
- 522 **State v. James Campanella.** Bingham County. Assault with deadly weapon. Dismissed appeal upon motion by state.
- 525 **State v. Robert Upham.** Fremont County. Crime of battery. Affirmed.
- 528 **State v. Arthur Lloyd Miller.** Bonneville County. Grand larceny. Reversed.
- 533 **State v. Del Ray Huff.** Fremont County. Forgery. Appeal dismissed upon motion by state.
- 534 **State v. Annie E. Arnold.** Madison County. Unlawful sale of intoxicating liquor. Affirmed.
- 542 **State v. C. G. McDermott.** Bonneville County. Forgery. Affirmed.
- 562 **State v. Earl Allen and Lyman Bannister.** Benewah County. Robbery. Appeal dismissed upon motion by state.
- 566 **State v. William Vernon Flitton.** Madison County. Affirmed.

DISTRICT COURTS OF IDAHO

Civil Cases Pending and Closed

Habeas Corpus Proceedings

(Closed)

- 452 **Application of J. S. Gibson for Writ of Habeas Corpus.** Ada County. Writ quashed.

- 495 **Application for Writ of Habeas Corpus for Belva Newby, a minor.** Fremont County. Writ quashed.
503 **Application for Writ of Habeas Corpus for Ernest Thomas, a minor.** Fremont County. Writ quashed.
578 **Application for Writ of Habeas Corpus for Gordon Lucas.** Fremont County. Writ quashed.

Criminal Cases

(Closed)

- 423 **State v. George Richards.** Idaho County. Murder. Acquittal.

Civil Cases

(Pending)

- 276 **State and Wood Livestock Co. v. A. A. Ziegler.** Custer County. Restraining diversion of water.
313 **State ex rel. Hoover v. Blaine County, et al.** Action for cancellation of tax lien.
314 **State ex rel. Hoover v. Blaine County, et al.** Action for cancellation of tax lien.
317 **State ex rel. Hoover v. County of Bonner, et al.** Action for cancellation of tax lien.
318 **Twin Falls North Side Investment Co. v. Henry O. Kissinger, et al.** Elmore County. Foreclosure of mortgage.
326 **State ex rel. Hoover v. Blaine County, et al.** Action for cancellation of tax lien.
333 **D. L. McClung, et al. v. Twin Falls North Side Canal Co.** Jerome County. Rights on water contract.
348 **State ex rel. McKelvey v. Eugene Looney, et ux.** Adams County. Condemnation proceedings.
349 **State ex rel. McKelvey v. J. H. Abshire, et ux.** Adams County. Condemnation proceedings.
356 **Mrs. Charles R. Hilding, et al. v. Lewiston Highway District, et al.** Nez Perce County. Condemnation proceedings.
366 **State ex rel. Macey v. H. Melgard, Administrator.** Latah County. Claim for confinement at asylum.
377 **Columbia Trust Co., et al. v. Blaine County Investment Co., et al.** Butte County. Restraining collection of gasoline tax.
386 **Norman G. Wells v. George N. Carter, Comr. of Recl., et al.** Lemhi County. Little Lost River suit.

- 424 **A. W. Warr v. S. H. Chapman, et al.** Blaine County. Action to quiet title.
- 429 **State v. Len Byington.** Blaine County. Re: Land department lease.
- 435 **Standard Oil Co. of California v. Burley Home Oil Co. State, Intervenor.** Cassia County. Claim of lien of state against assets of company for delinquent gasoline taxes.
- 443 **State ex rel. Harbour v. City of Burley.** Cassia County. Condemnation proceedings.
- 458 **First Security Bank of Hailey v. Blaine County, et al.** Bank tax case.
- 462 **J. J. Walling v. Village of Ashton, & Geo. Q. Brower.** Fremont County. Re: Unpaid village warrants.
- 463 **J. J. Walling v. Village of Ashton and Thos. B. Hargis.** Fremont County. Re: Unpaid village warrants.
- 472 **State ex rel. Harbour v. L. H. Sweetser, et al.** Cassia County. Condemnation proceedings.
- 476 **State ex rel. Ben E. Bush, State Forester v. Ambrose Codd.** Benewah County. Expenditures by Coeur d'Alene Tbr. Protective Assn. fighting fire caused by Codd's sawmill.
- 481 **State ex rel. Harbour v. Wood Livestock Co., et al.** Jefferson County. Condemnation proceedings.
- 485 **J. A. Miller v. Lela D. Painter, Treasurer of Canyon County. State, Intervenor.** Re: Will annexed of Estate of J. Herman Miller, deceased.
- 493 **State ex rel. Harbour v. Jefferson Pratt, et al.** Bannock County. Condemnation proceedings.
- 497 **State ex rel. Harbour v. Commercial Development & Investment Co.** Bannock County. Condemnation proceedings.
- 501 **U. S. Rubber Company, Inc. v. F. K. Maitland, et al. State, Intervenor.** Ada County. Collection of motor fuels tax.
- 512 **Garrett Trans. & Storage Co. v. Emmitt Pfost, Comr. of Law Enforcement.** Bannock County. Collection of trailer fees.
- 519 **State ex rel. Gallet v. Math Clasen, et al.** Twin Falls County. State won suit for collection of gasoline tax. Pending balance due under judgment.

- 535 **Standard Oil Company of California v. Idaho Community Oil Co. State, Intervenor.** Bonneville County. Collection of motor fuels tax.
- 537 **J. J. Walling v. Village of Ashton and O. W. Edwards.** Fremont County. Re: Unpaid village warrants.
- 538 **J. J. Walling v. Village of Ashton and George Kent.** Fremont County. Re: Unpaid village warrants.
- 539 **J. J. Walling v. Village of Ashton and W. A. Lansberry.** Fremont County. Re: Unpaid village warrants.
- 540 **J. J. Walling v. Village of Ashton and R. Marquardt.** Fremont County. Re: Unpaid village warrants.
- 541 **J. J. Walling v. Village of Ashton and Utah Pr. & Lt. Co.** Fremont County. Re: Unpaid village warrants.
- 544 **E. J. McKinley, et al. v. R. W. Faris, Comr. of Reclamation.** Fremont County. Correction of permit and application for writ of mandate.
- 547 **State ex rel. Babcock v. Mark Lyons.** Idaho County. Re: Enjoining from operation as auto transportation company.
- 549 **State ex rel. Gallet v. City of Burley.** Cassia County. Collection of motor fuels tax.
- 550 **People ex rel. Babcock v. A. C. Nave.** Idaho County. Re: Enjoining from operation as auto transportation company.
- 551 **Twin Falls Bk. & Tr. Co. v. Twin Falls County, et al.** Twin Falls County. Re: State Bank Tax Act.
- 552 **Clency St. Clair, et al. v. Citizens Bank & Tr. Co., et al.** Bannock County. Re: Classification of funds as trust funds.
- 553 **Vicente Lizaso Areitio v. Nelson M. Armstrong, et al.** Ada County. Quiet title action.
- 559 **State ex rel. Gallet v. M. H. Clasen.** Canyon County. Re: Collection of gasoline tax.
- 564 **First Security Bank of Boise v. Ada County, et al.** Bank tax case.
- 565 **Canyon County Water Co., et al. v. William E. Welsh.** Canyon County. Water case.
- 568 **H. P. Lowry v. Heirs of Daniel E. Crowley, et al.** Benewah County. Inheritance tax case.
- 570 **Matter of Gerald Neff, deceased.** Shoshone County. Appealed from I. A. B.

- 571 **Boise Trust Co. v. Ada County, et al.** Bank tax case.
- 572 **Camas County v. Debbie E. Hash.** Condemnation proceedings.
- 573 **Camas County v. C. H. Strouss, et al.** Condemnation proceedings.
- 585 **State ex rel. McKelvey v. Augusto Ceramicoli, et ux.** Bannock County. Condemnation proceedings.
- 586 **Homedale Highway District v. G. L. Graf.** Owyhee County. Condemnation proceedings.
- 587 **State ex rel. McKelvey v. Andrew Olson, et al.** Cassia County. Condemnation proceedings.
- 588 **State ex rel. McKelvey v. First Natl. Bk. of Brigham City, et al.** Cassia County. Condemnation proceedings.
- 589 **H. B. Rigby v. J. E. Bigler, et al.** Madison County. Re: Cancellation of lease on state lands and termination of priority of liens.
- 591 **State ex rel. McKelvey v. John F. Tobin, et ux.** Cassia County. Condemnation proceedings.
- 594 **First Trust Co. of St. Paul, Minnesota v. Martin H. Woods, et al. R. W. Faris, Comr. of Reclamation, et al.** Butte County. Water rights suit.
- 596 **State ex rel. Gallet v. George Lythgoe.** Cassia County. Gasoline tax case.
- 597 **State ex rel. McKelvey v. A. W. Call, et al.** Cassia County. Condemnation proceedings.

Civil Cases

(Closed)

- 162 **A. C. White Lbr. Co. v. Robert Coons, Treas. of Bonner County.** Recovery of forest tax paid under protest. Dismissed.
- 180 **State of Iowa v. Lela D. Painter, Treas. of Canyon County.** Tax question. Escheat sum paid state.
- 235 **Charles W. King v. Idaho Fire Ins. Co.** Ada County. Disposition of assets of Idaho Fire Ins. Co. in possession of Director of Insurance. Dismissed.
- 257 **Carl L. DeLong, Inc., et al. v. John S. Welch, Comr. of Agriculture, et al.** Twin Falls County. Suit to recover damages. Dismissed.

- 290 **F. H. Gifford v. Geo. N. Carter, Comr. of Reclamation.** Camas County. Water decree case. Dismissed.
- 294 **James Nelson, et ux. v. Thomas Larson, et al.** Latah County. Inheritance tax case. Dismissed.
- 301 **Hattie Rosa Lee Graves, et al. v. Alice Barns, et al.** Latah County. Inheritance tax matter. Dismissed.
- 302 **State ex rel. Wood v. John W. Hurlbert, et al.** Ada County. Condemnation proceedings. Dismissed.
- 304 **Elta M. Arnold v. State, Charles O. Workman, et al.** Cassia County. Quiet title suit. Demurrer sustained.
- 312 **State ex rel. Hoover v. County of Gem, et al.** Action for cancellation of tax lien. Taxes cancelled by county and suit dismissed.
- 316 **State v. Custer County, et al.** Action for cancellation of tax lien. Taxes cancelled by county and suit dismissed.
- 320 **State v. County of Idaho, et al.** Action for cancellation of tax lien. Judgment for state.
- 323 **State ex rel. Hoover v. County of Bonneville.** Action for cancellation of tax lien. Dismissed by plaintiff.
- 324 **State ex rel. Hoover v. Twin Falls County.** Action for cancellation of tax lien. Judgment for state.
- 334 **State ex rel. Hoover v. Power County, et al.** Action for cancellation of tax lien. Judgment for state.
- 335 **State ex rel. Hoover v. Lincoln County, et al.** Action for cancellation of tax lien. Taxes cancelled by county and suit dismissed.
- 336 **State ex rel. Hoover v. County of Bingham, et al.** Action for cancellation of tax lien. Dismissed.
- 337 **State ex rel. Hoover v. County of Cassia, et al.** Action for cancellation of tax lien. Judgment for state.
- 340 **State ex rel. Gallet v. Kootenai Motor Co., a corporation.** Ada County. Collection of gasoline tax. (Defendant admitted to involuntary bankruptcy.) Dismissed.
- 381 **Fred G. Miller, et ux. v. W. A. Whitted, et al.** Latah County. Inheritance tax case. Disclaimer filed by state.
- 382 **Agnes L. Weed, et al. v. State, et al.** Latah County. Quiet title action. Dismissed.
- 383 **Emma Neal v. Harley Pefley, et al.** Ada County. Inheritance tax case. Disclaimer filed by state.

- 385 **P. H. Whitaker, et al. v. H. C. Baldridge, Governor, et al.** Cassia County. Restraining highway dept. changing position of Burley-Declo State Highway. Order of non-suit entered.
- 387 **State ex rel. Gallet v. National Surety Company.** Ada County. Forestry matter, collection on bond. Dismissed.
- 392 **State v. Humbird Lbr. Co.** Bonner County. Re: Kenneth Darling, deceased. Appealed from I. A. B. Claim dismissed.
- 406 **E. M. Hoover v. Village of Ashton.** Fremont County. Collection of village warrants.
- 407 **E. M. Hoover v. Village of Ashton and O. W. Edwards.** Fremont County. Collection of village warrants.
- 408 **E. M. Hoover v. Village of Ashton and George Kent.** Fremont County. Collection of village warrants.
- 409 **E. M. Hoover v. Village of Ashton and W. A. Lansberry.** Fremont County. Collection of village warrants.
- 410 **E. M. Hoover v. Village of Ashton and R. Marquardt.** Fremont County. Collection of village warrants.
- 411 **E. M. Hoover v. Village of Ashton and Utah Pr. & Lt. Co.** Fremont County. Collection of village warrants.
- 415 **O. S. L. v. Franklin County, et al.** Tax suit. Judgment for defendants.
- 416 **People of Idaho ex rel. Babcock v. Wm. Smith, et ux.** Bannock County. Re: Unsatisfactory telephone service. Dismissed by plaintiff.
- 417 **Twin Falls Canal Co. v. J. D. Wood, Comr. of Public Works.** Twin Falls County. Injunction enjoining Dept. Public Works from constructing bridge over Low Line Canal. Dismissed.
- 418 **Matter of James O'Neil, deceased. State, ex rel. Gallet, et al. v. Fegles Construction Co., et al.** Appealed from I. A. B. Award to state.
- 421 **State ex rel. Wood v. R. Timmons, et ux.** Power County. Condemnation proceedings. Right of way decreed to state.
- 422 **State ex rel. Wood v. Addie E. Bunnell.** Power County. Condemnation proceedings. Right of way decreed to state.
- 427 **John C. Lundy v. State.** Minidoka County. Inheritance tax case. Consent decree.

- 428 **State ex rel. Wood v. Lillie T. Zimmerman, et ux.** Payette County. Condemnation proceedings. Deed given. Dismissed.
- 430 **State ex rel. Baldridge v. North Fork Reservoir Co., et al.** Fremont County. Action on contract for right of way. Settled and dismissed.
- 432 **Dairymen's Cooperative Creamery v. Tonette Kristianson, State, et al.** Quiet title suit. Dismissed. State not interested party.
- 433 **James H. McGee v. Mary G. Schultz, State, et al.** Nez Perce County. Quiet title suit. Disclaimer filed by state.
- 437 **State ex rel. Harbour v. Louis Wagenhoffer.** Minidoka County. Condemnation proceedings. Deed given. Dismissed.
- 438 **State ex rel. Harbour v. A. I. Myers, et al.** Canyon County. Condemnation proceedings. Deed given. Dismissed.
- 439 **State ex rel. Harbour v. Asa W. Andrews, et al.** Canyon County. Condemnation proceedings. Deed given. Dismissed.
- 440 **State ex rel. Harbour v. Minnie H. Martin, et al.** Canyon County. Condemnation proceedings. Deed given. Dismissed.
- 441 **State ex rel. Harbour v. James P. Welbourn, et al.** Canyon County. Condemnation proceedings. Deed given. Dismissed.
- 442 **First Security Bank of Boise v. Rupert Shaw, et al.** Quiet title case. Disclaimer filed by state.
- 444 **State v. E. I. Harrison.** Ada County. Foreclosure of lease. Settled and dismissed.
- 448 **John L. Porter v. Ada County, et al.** Ada County. Refund of taxes paid. Decision for defendants.
- 459 **Cruickshank Sheep Co. v. Howard H. Harvey, State, et al.** Boise County. Quiet title case. Disclaimer filed by state.
- 460 **Olive E. Merrill v. Patrick S. Byrne, State, et al.** Latah County. Quiet title case. Disclaimer filed by state.
- 464 **J. J. Walling v. Village of Ashton and J. J. Klamt.** Fremont County. Collection of village warrants.
- 465 **J. J. Walling v. Village of Ashton and F. de Stwolinski.** Fremont County. Collection of village warrants.
- 477 **Jacob Hendrickson v. Clearwater Tbr. Co., et al.** Clearwater County. Appealed from I. A. B. Decision for state.
- 482 **State ex rel. Harbour v. Benj. W. Osborne, et al.** Jefferson County. Condemnation proceedings. Deed given. Dismissed.

- 491 **Emmett Holding Co. v. Orpha Aldrich, State, et al.** Gem County. Quiet title case. Disclaimer filed by state.
- 492 **State ex rel. Harbour v. Mary J. Rice, et al.** Bannock County. Condemnation proceedings. Deed given. Dismissed.
- 496 **State ex rel. Gallet v. Maitland's Incorporated.** Ada County. Collection of gasoline taxes. Dismissed.
- 500 **May R. Baldwin v. Fanny S. Blake, et al.** Ada County. Quiet title case. Disclaimer filed by state.
- 504 **Mountain Home Irrig. Dist. v. Jane Howeth. State, Intervenor.** Elmore County. Inheritance tax case. Disclaimer filed by state.
- 507 **W. J. Dineer v. Agnes B. Reno, et al.** Bonneville County. Inheritance tax case. Dismissed.
- 510 **New World Life Ins. Co. v. Lee J. Mott, et al.** Lincoln County. Re: Notes and mortgages due plaintiff.
- 511 **R. E. Wagner v. M. Lester Harris, et al.** Canyon County. Quiet title case. Disclaimer filed by state.
- 516 **State ex rel. Harbour v. Charles J. Whiteside, et ux.** Idaho County. Condemnation proceeding. Right of way decreed.
- 523 **First Security Bk. of Boise v. Charles L. Annett, et al.** Ada County. Inheritance tax case. Disclaimer filed by state.
- 532 **State ex rel. McKelvey v. Charles W. Kempthorn, et ux.** Canyon County. Condemnation proceedings. Deed given. Dismissed.
- 536 **J. J. Walling v. Village of Ashton.** Fremont County. Collection of village warrants.
- 546 **State ex rel. Gallet v. Consolidated Freight Lines, Inc.** Ada County. Collision of cars and damage incurred. Payment made to state.
- 548 **Mary M. Clasen v. Mathias W. Clasen, et al.** Twin Falls County. Collection of motor fuels tax. Dismissed.
- 574 **Walter J. Hinton, State, et al. v. W. G. Little, et al.** To Ada County from Owyhee County. Quiet title case. Decree establishing water right of state.
- 577 **Mary Wills v. Anselmo R. Andola, et al.** Ada County. Quiet title case. Disclaimer filed by state.
- 579 **Ada County v. R. W. Goodman and Edwin Goodman.** Ada County. Suit under the Eminent Domain Act of Idaho to condemn property for use as State Highway. Dismissed.
- 584 **State ex rel. Gallet v. E. F. Long.** Ada County. Damage suit. Settled by payment

PUBLIC UTILITIES COMMISSION

(Pending)

- 445 **In the matter of Revocation of permit of Albert Haner to operate as an auto transp. co. in Idaho.**

(Closed)

- 426 **State ex rel. Dept. Law Enforcement v. Lorin P. Monson.** Re: Revocation of permit to operate truck in motor transportation. Amount due state paid and action dismissed.
- 490 **Village of Mackay v. Idaho Improvement Co.** Re: Investigation of water service of village. Dismissed.
- 531 **Emmitt Pfof v. Garrett Trans. & Stg. Co.** Re: Request for cancellation of permit as transportation company.

INDUSTRIAL ACCIDENT BOARD

(Pending)

- I-53 **State, claimant, v. St. Joe Lead Co.** Re: William J. Biswell, Deceased.
- I-55 **State, claimant v. Atlas Tie Company.** Re: Bruno Pahlke, Deceased.
- I-58 **State, claimant v. Bunker Hill & Sullivan & C. Co.** Re: Joe Krohn, Deceased.
- I-59 **State, claimant v. Boise-Payette Lbr. Co.** Re: Mane Drakulic, Deceased.
- I-62 **State, claimant v. Kellogg Power & Water Co.** Re: Ray Rowland, Deceased.

(Closed)

- I-14 **Ida A. Kannady & State, claimants v. Sullivan Mining Co.** Re: Joseph H. Hartley, Deceased. Award to State.
- I-33 **State, claimant v. Kaniksu Cedar Co. & State Dept. of Finance.** Re: Charles Wood, Deceased. Award to state.
- I-34 **State, claimant v. Tamarack & Custer Cons. Mining Co.** Re: Peter Johnson, Deceased. Award to State.
- I-35 **State, claimant v. Clearwater Tbr. Co.** Re: Issac Niemi, Deceased. Award to State.

- I-36 **State, claimant v. Clearwater Tbr. Co.** Re: George Lowe, Deceased. Award to State.
- I-37 **State, claimant v. Humbird Lbr. Co.** Re: William Gray, Deceased. Award to State.
- I-38 **State, claimant v. Clearwater Tbr. Co.** Re: John Philipson, Deceased. Award to State.
- I-39 **State, claimant v. Edward Rutledge Tbr. Co.** Re: Ed Brigham, Deceased. Award to State.
- I-40 **State, claimant v. Edward Rutledge Tbr. Co.** Re: Frank Domain, Deceased. Award to State.
- I-41 **State, claimant v. Clearwater Tbr. Co.** Re: Chas. Paulson, Deceased. Award to state.
- I-42 **State, claimant v. A. Klockmann.** Re: Gordon Klaus, Deceased. Claim of State dismissed.
- I-42b **State, claimant v. P. A. Nelson & Son.** Re: Gerald Neff, Deceased. Award to State. Appealed.
- I-43 **State, claimant v. Goldhunter Mines, Inc.** Re: Gust A. Larson, Deceased. Award to State.
- I-43a **Claim of J. A. McDonald v. Treasurer and Industrial Special Indemnity Fund.** Judgment for defendants. Appealed.
- I-44 **State, claimant v. Bd. of Control, Boise Project, et al.** Re: Maurice Albertson, Deceased. Award to State.
- I-45 **State, claimant v. D. F. Fletcher, et al.** Re: Chas. J. Wilkins, Deceased. Award to State.
- I-46 **State, claimant v. Chase A. Clark, et al.** Re: Simo Vunjak, Deceased. Award to State.
- I-47 **Burton Thomas and May Thomas and State, claimants v. Sutherland & Burns Construction Co., Inc.** Re: Elmo Thomas, Deceased. Claim of state denied.
- I-48 **Lula Hagadone and State v. Arnett & Son.** Re: Clayton S. Hagadone, Deceased. Claim for compensation denied on appeal to district court.
- I-49 **State, claimant v. Boise Payette Lbr. Co.** Re: Hector A. Beach, Deceased. Claim of state denied.
- I-50 **Marks Krpan and State v. Boise-Payette Lbr. Co.** Re: Mike Krpan, Deceased. Claim of state denied.

- I-51 **Jacob Hendrickson v. Clearwater Tbr. Co. State, Intervenor.** Claimant denied compensation. Appealed.
- I-52 **S. Yovanovitch, Royal Yugoslav Consul on behalf of claimants v. Edward Rutledge Tbr. Co.** Re: Dan Roseta, Deceased. Dismissed.
- I-54 **State v. Ohio Match Co.** Re: Fritz Eggen, Deceased. Award to State.
- I-56 **Sophie Gloubitz and State v. Smeed Bros.** Re: Paul Gloubitz, Deceased. State denied compensation.
- I-57 **Richard D. Malouf and State v. Morrison-Knudsen Co.** Re: Abraham R. D. Malouf, Deceased. Award to State.
- I-60 **State, claimant v. P. H. Smith, et al.** Re: Harry Cady, Deceased. Award to State.

CASES IN JUSTICES' COURTS

(Closed)

- 380 **State ex rel. Gallet v. Catherine M. Johnson, executrix of estate of Richard H. Johnson, deceased.** Ada County. Inheritance and transfer tax. Dismissed.

CASES IN PROBATE COURTS

(Closed)

- 405 **State v. Itha Johnson, Guardian of Myrtle O. Woodfin, incompetent.** Latah County. Maintenance charges for keeping in asylum. Decision for plaintiff. Appealed.
- 450 **Matter of Estate of B. Ethel Cranston, Deceased.** Ada County. Inheritance Tax Case. Dismissed upon payment.
- 467 **Matter of Estate of Isaac P. Bright, Deceased.** Franklin County. Inheritance tax case. No tax due. Dismissed.
- 483 **Matter of Estate of Emma Gilman, an incompetent person.** Clearwater County. State's claim for care at hospital. Dismissed upon payment.
- 502 **Matter of Estate of Emma Ritchie, Deceased.** Bonneville County. Inheritance tax case. Dismissed upon payment.
- 509 **State ex rel. Gallet v. Mehlhaff Cash Merc. Co., Ltd.** Ada County. Suit to collect money due state. Judgment for state.

- 515 **State ex rel. Gallet v. Bert Peed.** Ada County. Suit to collect money due state. Judgment for state.
- 593 **Matter of Estate of Charles M. Waller.** Ada County. Inheritance Tax Case. Decree in favor of petitioners.
-

HEARING BEFORE ATTORNEY GENERAL

(Pending)

- 556 **State v. Swift & Company.** Price discrimination on dairy products.
-

MORTGAGE FORECLOSURES IN DISTRICT COURTS

(Pending)

- 3284 **State v. Dunken, et al.,** Adams County. Default entered, ready for trial.
- 3828 **State v. Hoffman, et al.,** Bingham County. Judgment taken, sale pending.
- 3180 **State v. Fogarty, et al.,** Canyon County. Pending on demurrer.
- 5278 **State v. Maw, et ux.,** Canyon County. Default entered, ready for trial.
- 3643 **State v. Fuller, et al.** Fremont County. Pending on demurrer.
- 4416 **State v. Hawkes, et ux.,** Fremont County. Pending on demurrer.
- 4482 **State v. Hawkes, et ux.,** Fremont County. Pending on demurrer.
- 4626 **State v. Moore, et ux.,** Fremont County. Pending on demurrer.
- 5297 **State v. Fuller, et al.,** Fremont County. Pending on demurrer.
- 4660 **State v. Mehlhaff, et al.,** Power County. Pending on stipulation for dismissal. Loan extended.
- 3650 **State v. Mikesell, et al.,** Teton County. Proceedings withheld at request of Department of Public Investments.

FORECLOSURE REPORT

Dec. 1, 1930 to Dec. 1, 1932

Mortgage Foreclosures in District Courts

(Closed)

Loan No.

- 260 **State v. Myers, et al.**, Ada County. Judgment in favor of defendants.
- 3147 **State v. Munro, et ux.**, Ada County. Judgment taken, property sold.
- 4256 **State v. Price, et ux.**, Bear Lake County. Judgment taken, property sold.
- 4246 **State v. Halverson**, Ada County. Judgment taken, property sold.
- 5032 **State v. Hymas, et al.**, Bear Lake County. Judgment taken, property sold.
- 3114 **State v. Lindsay, et al.**, Bingham County. Judgment taken, property sold.
- 5017 **State v. Josephson, et al.**, Bingham County. Judgment taken, property sold.
- 3608 **State v. Weber, et al.**, Blaine County. Judgment taken, property sold.
- 3652 **State v. Shear, et ux.**, Bonner County. Judgment taken, property sold.
- 3203 **State v. DePuy, et al.**, Boundary County. Judgment taken, property sold.
- 4410 **State v. Young, et ux.**, Butte County. Judgment taken, property sold.
- 4069 **State v. Fischer, et al.**, Camas County. Judgment taken, property sold.
- 4782 **State v. Klein, et ux.**, Camas County. Judgment taken, property sold.
- 3148 **State v. Huston, et al.**, Canyon County. Judgment taken, property sold.
- 1283 **State v. Wilson, et al.**, Cassia County. Interest paid, action dismissed. New loan made.

- 2470 **State v. Critchfield, et al.**, Cassia County. Judgment taken, property sold.
- 4885 **State v. Hill, et al.**, Cassia County. Judgment taken, property sold.
- 4079 **State v. Hulse, et al.**, Custer County. Judgment taken, property sold.
- 4373 **State v. Brown, et al.**, Custer and Lemhi Counties. Loan placed in good standing. Action dismissed.
- 4624 **State v. Taggart, et al.**, Custer County. Judgment taken, property sold.
- 2760 **State v. Bosworth, et ux.**, Franklin County. Loan extended, action dismissed.
- 3109 **State v. Evans, et al.**, Franklin County. Closed by acceptance of deed. Action dismissed.
- 3533 **State v. Bosworth, et ux.**, Franklin County. Loan extended, action dismissed.
- 3624 **State v. Lavery**, Fremont County. Judgment satisfied.
- 3628 **State v. Smart**, Fremont County. Loan placed in good standing. Action dismissed.
- 4327 **State v. Hartvigsen**, Fremont County. Judgment taken, property sold.
- 4453 **State v. Moore, et ux.**, Fremont County. Judgment taken, property sold.
- 4254 **State v. Osborn, et al.**, Gooding County. Judgment taken, property sold.
- 4263 **State v. Brockman, et al.**, Idaho County. Judgment taken, property sold.
- 4264 **State v. Brockman**, Idaho County. Judgment taken, property sold.
- 2220 **State v. Fischbach, et al.**, Kootenai County. Judgment taken, property sold.
- 3641 **State v. Finlay, et ux.**, Lemhi County. Judgment taken, property sold.
- 2699 **State v. Ricks, et al.**, Madison County. Judgment taken, property sold.
- 4649 **State v. Murray, et al.**, Oneida County. Loan placed in good standing, action dismissed.
- 999 **State v. Brunzell, et al.**, Owyhee County. Judgment taken, property sold.

- 4351 **State v. Turmes, et al.**, Owyhee County. Deed accepted, action dismissed.
- 5199 **State v. Bailey**, Owyhee County. Deed accepted, action dismissed.
- 2196 **State v. Bowen, et al.**, Power County. Judgment taken, property sold.
- 2678 **State v. Bowen, et al.**, Power County. Judgment taken, property sold.
- 4503 **State v. Minear, et al.**, Power County. Judgment taken, property sold.
- 5102 **State v. Allen, et al.**, Power County. Judgment taken, property sold.
- 5103 **State v. Allen, et al.**, Power County. Judgment taken, property sold.
- 3503 **State v. Hamilton, et al.**, Twin Falls County. Judgment taken, property sold.
- 4338 **State v. Smack**, Twin Falls County. Judgment taken, property sold.
- 3277 **State v. Sater, et al.**, Washington County. Judgment taken, property sold.

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