

Attorney General's Biennial Report



STATE OF IDAHO



1933-1934



BERT H. MILLER, Attorney General

ATTORNEY GENERAL'S DEPARTMENT

Bert H. Miller	Attorney General
Leo M. Bresnahan	Assistant Attorney General
M. A. Thometz	Assistant Attorney General
Ariel L. Crowley	Assistant Attorney General
*D. Worth Clark	Assistant Attorney General
J. W. Taylor	Assistant Attorney General
*Ines Yturri	Secretary to Attorney General
*Grace Detweiler	Law Stenographer
*Alice Gladwin	Law Stenographer
Edna Matthiensen	Law Stenographer
*Lu Lu Shank	Law Stenographer
Ruth Davis	Secretary to Attorney General
Hildred Woodruff	Law Stenographer
Martha Jensen	Law Stenographer

* Resigned

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
Bingham	F. J. Cowen	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

‡Deceased.

ATTORNEYS GENERAL OF THE STATE OF IDAHO

Since Statehood

‡George H. Roberts	1891-1892
‡George M. Parsons	1893-1896
‡Robert E. McFarland	1897-1898
Samuel E. 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
Bert H. Miller	1933-

‡Deceased.

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
N. D. Wernette, Justice	Coeur d'Alene
Edwin M. Holden, Justice	Idaho Falls

Clerk of the Supreme Court — Clay Koelsch

‡Deceased.

REPORT OF THE ATTORNEY GENERAL

December, 1934.

Honorable C. Ben Ross,
Governor of the State of Idaho,
Boise, Idaho.

Dear Governor Ross:

In compliance with statutory requirements I have the honor to submit my report for the biennial period ending December 1st, 1934.

DUTIES

The Attorney General is the chief law officer for the state. His general duties are prescribed by Section 65-1301, Title 65, Chapter 13, Idaho Code Annotated, to-wit:

(Section 65-1301, Idaho Code Annotated.) Duties of Attorney-General.—It is the duty of the attorney-general:

“1. To attend the Supreme Court and prosecute or defend all causes to which the state or any officer thereof, in his official capacity, is a party; and 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. Also to prosecute and defend all the above-mentioned causes in the United States courts. And in all cases where he shall be required to attend upon the United States courts, other than those sitting within this state, he shall be allowed his necessary and actual expenses, all claims for which shall be audited by the state board of examiners.

“2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

“3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

“4. To keep a docket of all causes in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which

the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and, when prosecuted to judgment, a memorandum of the judgment; of any process issued thereon, and whether satisfied or not, and if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention.

“5. To 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 intrusted to their charge.

“6. To give his opinion in writing, without fee, to the legislature or either house thereof, and to the governor, secretary of state, treasurer, auditor, and the trustees or commissioners of state institutions, when required, upon any question of law relating to their respective offices.

“7. 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.

“8. To bid upon and purchase, when necessary, in the name of the state, and under the direction of the auditor, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

“9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance, taking precedence of the judgment in favor of the state, under the direction of the auditor, to redeem such property from such prior judgment, lien or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

"10. When in his opinion it may be necessary for the collection or enforcement of any judgment herebefore mentioned, to institute and prosecute, in 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; the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

"11. To discharge the other duties prescribed by law.

"12. To report to the governor, at the time required by this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket, and of the reports received by him from prosecuting attorneys."

In addition to the foregoing general duties the Attorney-General is required to perform other duties of a more or less special nature, as evidenced by the following statutory provisions, to-wit:

(Section 14-205, Idaho Code Annotated.) "Investigations and proceedings concerning property subject to escheat—Duty of attorney general—Duty of public administrator.—The attorney general, or such prosecuting attorney as he may designate, may make an investigation concerning, and may institute proceedings, if necessary, for the discovery or recovery of all real or personal property which has escheated or should or will escheat to the state and for such purposes the probate court, or other court of competent jurisdiction, is authorized to cite to appear before it any person or persons, trustee, administrator or executor, or firm, association, partnership, common law trust or corporation, or any member, official, or employee thereof and the attorney general, or such prosecuting attorney as he may designate, is authorized to take such proceedings as are necessary to reduce such real or personal property to the possession of the state. The public administrator of the county in which such property may be found or located, shall institute probate proceedings whereby the succession to such property may be established."

(Section 14-424, Idaho Code Annotated). "Duties of state auditor and other officers.—The duty of administering and enforcing the provisions of this act is hereby imposed upon the state auditor, and he is hereby given full power and authority to administer and enforce each and all of the provisions hereof. He is empowered to bring suit in any court of competent jurisdiction, necessary for such administration and enforcement. He shall provide a proper system of file, records, indexes, and accounts for the filing, keeping and preserving of all documents, papers and instruments of whatsoever nature filed or submitted to him in connection with the administration of this act, and of all moneys paid or collected under the provisions hereof."

(Section 19-2607, Idaho Code Annotated). "Governor may require opinion on statement.—The governor may thereupon require the opinion of the justices of the Supreme Court and of the attorney-general, or any of them, upon the statement so furnished."

(Section 43-1313, Idaho Code Annotated). "Duties of attorney-general.—The attorney-general shall be the legal adviser of the board and shall represent it in all proceedings whenever so requested by the board or any member thereof."

(Section 59-204, Idaho Code Annotated.) "Attorney-general attorney of commission.—It shall be the right and the duty of the attorney-general to represent and appear for the people of the state of Idaho and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the commission; to advise the commission and each commissioner, when so requested, in regard to all matters connected with the powers and duties of the commission and the members thereof; and generally to perform all duties and service as attorney to the commission which the commission may require of him."

(Section 61-2464, Idaho Code Annotated.) "Legal advisors of tax commissioner.—The attorney-general of

the state and the various prosecuting attorneys shall be the legal counselors and advisors of the commissioner."

(Section 57-601, Idaho Code Annotated.) "Reports to be printed and delivered to secretary.— All annual and biennial reports of state officers and state board of control, both elective and appointive, which are now authorized or which may be hereafter authorized by law to issue such reports, shall be compiled, printed and delivered to the secretary of state, on or before the first day of December of the last year which said reports cover, to be by him delivered to the persons hereinafter mentioned, said reports to be of uniform size, quality and print."

(Section 57-602, I. C. A.) "Distribution of reports.— There shall be delivered to the secretary of state on or before the first day of December of the said year, to be by him receipted for, at least 300 copies of each of the said reports for distribution as follows: One copy of each to the governor; one to each head of the executive departments of the government; one of each to each member of the legislature, on the first day of the session, or sooner if practicable, and the remainder to such citizens as the secretary of state may deem proper."

(Section 57-603, I. C. R.) "Failure to make report a misdemeanor.—Any failure to comply with the provisions of the two preceding sections by the person or persons charged by law with the duty of making, compiling and delivering said reports as in said sections provided for, shall be a misdemeanor, and upon conviction thereof in any court of competent jurisdiction the person so failing shall be fined in any sum not less than \$200.00, nor more than \$300.00, and upon notification from the secretary of state to the prosecuting attorney of any county wherein such offense shall have been committed, it shall be his duty to prosecute such person or persons, and collect such fine as may by such court be imposed, and upon the collection thereof to deposit the same with the secretary of state for the benefit of the general school fund."

Furthermore, by constitutional and statutory provision, the Attorney-General is made a member of the following boards, viz:

BOARD OF EXAMINERS:

It is the duty of the board of examiners to examine, pass upon and approve all claims against the state, except salaries or compensation fixed by law. As a matter of office detail it may be worth noticing that approximately 4500 claims pass through the office of the attorney general monthly for signature, independent of those that are questioned by the state auditor and come before the board of examiners for individual consideration.

BOARD OF EQUALIZATION:

The state board of equalization shall meet on the second Monday of August of each year; examine the abstracts of assessments of the various counties. Usually all the county assessors are called before the board of examination as to the county assessments. The values on operating property of all railroads, telegraph, telephone and electric circuit transmission lines for state, county, city, town, village, school district and other purposes are fixed by the board. This board is in session for two weeks, during which time complaints of over valuation of the various utilities are heard and considered.

STATE BOARD OF LAND COMMISSIONERS:

The state board of land commissioners have the general direction, control and disposition of all public lands within the state. It appoints the land commissioner who is its executive officer. It performs legislative functions not inconsistent with law and delegates to its executive officer and his assistants the execution of all policies adopted by the board. It reviews on appeal all decisions of the land commissioner in contested cases. It determines the policy, directs the work to be undertaken and appropriates from its fund the money necessary to carry out such work. It prescribes the regulations for the government of land department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use and preservation of the records, papers and documents pertaining thereto.

The Extra-ordinary Session of the Twenty-second Ses-

sion of the Idaho State Legislature amended Section 65-2902, Idaho Code Annotated, added additional duties by providing in substance that when the department of public investments sought to sell any securities purchased with permanent educational funds that the application for the sale thereof must be submitted to the state board of land commissioners for its approval and authorization. The same legislature amended Section 65-2901, Idaho Code Annotated, by further increasing the duties of the state land board in providing that the department of public investments, before investing the moneys of the permanent educational fund in any securities in which such money is authorized to be invested, must apply to the state board of land commissioners for authorization to loan and invest such permanent funds in such securities, as is designated by the State Constitution. It is, therefore, now made the duty of the state board of land commissioners to pass upon and authorize the investment of permanent funds in the class of securities in which said funds may be invested, and likewise to authorize the sale of any securities held in the permanent educational fund.

STATE CO-OPERATIVE BOARD OF FORESTRY:

The State of Idaho contains about twenty-three million acres of forest lands. Of said amount the state owns approximately one million acres. The largest white-pine forests on earth are within these areas. It is the most valuable of all commercial timber, except hardwoods. There are seven timber protective associations within the state. These associations were organized for the purpose of protective features. The state is a member thereof. The state co-operative board of forestry is composed of the five members of the state board of land commissioners; State Land Commissioner; Dean of the School of Forestry, University of Idaho; Commissioner of Reclamation; and four persons selected by the Governor; one from each of the North and South timber protective associations; one from the wool, cattle and horse growers association; and one from the U. S. Forest Service. The objects to be attained by the state and other agencies with which it is associated is the protection of forest resources, forest ranges, water conservation and sustained

stream flow. The state is divided into forest protection districts with a fire warden in each district. The Federal Government, under the terms of the Clark-McNary Act of 1924, and other acts, aids in forest fire prevention, detection and suppression, and other fire protective work. The work recently performed by the Civilian Conservation Corps was calculated to materially aid in forest fire prevention and the curtailment of the spread of blister-rust and other devastating diseases. The work was done under the supervision of trained and experienced supervisors and unquestionably will be of permanent and lasting benefit to the state and the other agencies with which it is associated.

The potential wealth of the state's timber holdings is incalculable. It is unfortunate that legislation is not enacted commensurate with the exigencies. The next legislature should give some heed to the pressing demands. The entire matter should be intrusted to some committee or board of long service duration whose whole time and undivided attention could be devoted to the formulation and the carrying into effect of a policy of administration somewhat equal with the needs of the situation, instead of leaving it to the ever changing caprices of political uncertainties.

STATE BOARD OF PRISON COMMISSIONERS:

The board of state prison commissioners has the control, direction and management of the Idaho State Penitentiary, and it is the duty of said board to provide for the care, maintenance and employment of all inmates confined therein. Said board shall meet quarterly and inquire into and examine all matters connected with the government, discipline and policy of the penitentiary and the punishment and employment of the prisoners confined therein. It may from time to time require reports from the warden as to any and all of said matters. It is the duty of said board to inquire into any improper conduct committed or alleged to have been committed by the warden or any other officer of the penitentiary, and for that purpose may compel the attendance of witnesses and the production of papers in connection with any such examination. It is the duty of said board to establish rules for the admission of visitors to the penitentiary.

On the first Monday of December of each year the board shall cause an audit to be made, and correct and settle the accounts of the warden with the penitentiary and the state for the year.

STATE BOARD OF PARDONS:

The board of pardons shall meet on the first Wednesday of January, April, July and October of each year. All applications for pardons, commutations and remittances are made to said board. It is the duty of the board when applications are presented to carefully consider them and make such examinations outside the application as it may deem proper. The time taken up in the consideration of applications and in interviews is quite considerable. During the biennium, 1933-1934, 322 pardons were granted. During the same period of time the board considered upwards of 600 applications and granted interviews to approximately 560 applicants. The pardons granted by the present board are far less than those granted by the preceding board.

The medical report for 1931-1932 shows a deplorable condition exists with respect to venereal diseases, and which, though somewhat improved for 1933-1934, are yet far from satisfactory.

I will have certain suggestions to make to you and the other member of the board in the near future, the adoption of which will, in my judgment, have a tendency to curtail and stamp out many of the vicious practices now indulged in and primarily responsible for the prevalence and spread of venereal disease.

STATE BOARD OF PAROLES:

The state board of paroles is composed of the same membership as that of the board of pardons and meets at a different time. Thus far during the present administration no applications for parole have been made to the board.

STATE LIBRARY COMMISSION:

The state library commission has the management and control of the state traveling library. Said library has been the scene of great activity during the past biennium. Heretofore the collection of some 25,000 books had never been

classified or catalogued. This work was undertaken at the beginning of the biennium and has progressed to an amazing extent. The state traveling library as originally contemplated and as now being conducted is a strictly mail order affair. Until recently the books were shipped in heavy wooden cases by freight or express—now the same are being sent out by parcel post at approximately twenty per cent of the original cost. The postman calls for and delivers the bags so that the drayage to and from the State House is entirely eliminated. A state library council composed of club members from the different state organizations has been formed to help carry a state-wide organization of library extension work into the outlying districts. It is hoped that in the near future affiliation with the American Library Association may be effected.

STATE BOARD OF CANVASSERS:

The state board of canvassers canvasses the election returns of state and district officers, and shall determine what persons have been by the greatest number of votes duly elected to the various state and district offices, and shall endorse and subscribe a certificate of their admission and deliver it to the secretary of state. The secretary of state thereupon notifies the various elected officials of that fact and issues a certificate of election.

LITIGATION

Two cases of far reaching interest were the hearings on the applications of the West Kootenay Power and Light Company, before the International Joint Commission, and the suit in the United States Supreme Court of the State of Alabama vs. Arizona and other states, including the State of Idaho.

Treaty - 1910 - Boundary Waters:

A treaty between the United States and Great Britain relating to boundary waters between the United States and Canada was signed at Washington, January 11th, 1909. Ratification was advised by the senate March 3rd, 1909. It was ratified by the president April 1st, 1910, and ratified

by Great Britain, March 31st, 1910. Ratifications were exchanged at Washington, May 5th, 1910, and the treaty was proclaimed and became effective May 13th, 1910.

Generally by its provisions, no further, or other uses or obstructions or diversions, either temporary or permanent, of boundary waters on either side of the line, effecting the natural level or flow of boundary waters on the other side of the line, shall be made, except by authority of the United States or the Dominion of Canada within their respective jurisdictions, and with the approval of a joint commission to be known as the International Joint Commission.

APPLICATION OF WEST KOOTENAI POWER & LIGHT CO. BEFORE INTERNATIONAL JOINT COMMISSION

In 1929 the West Kootenay Power and Light Company, a Canadian corporation, made application to the International Joint Commission for permission to construct a storage dam in the Kootenay River some few miles below Nelson, B. C. The Kootenay River rises in British Columbia, flows southerly into Montana, then westerly into Idaho, thence northwesterly into British Columbia, crossing the international boundary line at Porthill, Idaho. It is the main feeder of Kootenay Lake, which is wholly within British Columbia and which, including the west arm, is approximately seventy miles in length. It assumes its name again at Nelson, B. C., where it leaves the west arm. Below Nelson the west Kootenay Power and Light Company has four large power plants. Between Bonners Ferry, Idaho and the International Boundary line are a number of drainage districts, comprising upwards of 35,000 acres. All of said drainage districts are dyked along the river banks and the various creeks flowing into the river. During the low water season the districts are drained through gravity sluices, and during the high water season the sluices are closed, to prevent an inflow, and the districts are drained by pumping operations.

The aforementioned drainage districts were organized and created subsequent to the proclaiming of said treaty. The Canadian Government at Nelson, B. C., and the United States at Bonners Ferry have maintained water gauges for

many years. The highest water known was in 1894 when said guages showed a raise of water level of 32 feet plus—that mark has never been attained since though it was closely approximated in 1933. The greatest known volume is 201,000 cubic feet per second. A number of the drainage districts in 1933 were inundated. The object sought by the West Kootenay Power and Light Company was to check the outflow at Nelson, B. C., during the low water season when the guages registered six feet above normal low. It is claimed in its application that the company needs 10,400 cubic feet per second for power purposes, and that during the low water season and winter months the flow of the Kootenay River below Nelson, B. C., often drops to approximately 4,500 cubic feet per second. By checking the outflow at Nelson the Company would then draw on said reserve in order to augment the flow for power purposes during the low water season. By checking the water level at six feet below normal low at Nelson, B. C., would raise the water level approximately three feet at Bonners Ferry, Idaho, some 160 miles upstream, and would correspondingly raise the water levels along the drainage districts.

In November, 1929, the power company presented its application to the International Joint Commission at Bonners Ferry, Idaho, and submitted some proof in support thereof. Only sufficient proof was submitted from the American side to save the matter from going by default. By the raising of the water levels along the drainage districts a number of the, otherwise, gravity sluices would be submerged thereby necessitating continuous pumping in order to drain the same. The vital question, however, is what effect the raising of the water level along the drainage districts would have upon the water tables throughout said districts. It is only reasonable to conclude that a raise of the water levels would correspondingly effect a raise of the water tables, and to such an extent that it might make said lands valueless for agricultural purposes. After the hearing on the original application in 1929 the power company filed its amended application for permission to construct a storage and diverting dam as one unit and at a point farther down stream that was proposed in its

original application. Without permission from the International Joint Commission, or otherwise, the power company proceeded to construct said storage and diverting dam, and to erect and install a power plant thereat—at an alleged cost of approximately \$12,000,000.00. The final hearing on the amended application was set for June 14th, 1933, at Nelson, B. C., but on account of the death of one of the members of the Commission of the American section, the hearing was not had until August 24th, at which time the power company, the province of British Columbia, the Canadian government, land owners, bond holders, the State of Idaho, and the government of the United States submitted a vast amount of proof in support of their respective contentions as influenced by interests. Hearings on the foregoing application have been had before the Commission at Washington, D. C., and Ottawa, Canada.

ALABAMA vs. ARIZONA, ET AL.
STATE OF IDAHO, DEFENDANT

January 19th, 1929, the Congress of the United States and the President approved what is known as the Hawes-Cooper Act, effective five years after date of approval. In substance the Hawes-Cooper Act provides that all goods, wares and merchandise manufactured, produced or mined, wholly or in part, by convicts, and transported into any state or territory of the United States for use, sale or storage, shall, upon arrival and delivery in such state or territory, be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though such goods, wares and merchandise had been manufactured, produced or mined in such state or territory, and shall not be exempt by reason of being introduced in the original package or otherwise. By Chapter 216, Session Laws of 1933, the regular session of the Idaho legislature passed an act prohibiting the sale on the open market in this state of all goods, wares and merchandise manufactured or mined, wholly or in part, by any penal institution, whether manufactured within or without the state, on or after January 19th, 1934.

During the month of May, 1933, the State of Alabama, as plaintiff, commenced an action in the Supreme Court of the United States against all the states, including the State of Idaho, that had enacted local laws in anywise interfering with the unrestricted sale of prison made goods therein. The bill of complaint attacked the validity of the Hawes-Cooper Act and of the laws of the various states, on the ground that said act and laws violated the commerce clause of the Federal Constitution. It was alleged in the bill of complaint that during the year 1932 there were in the several penal institutions of the State of Alabama a total of 7,491 prisoners, and that a considerable proportion of the population of said prisons were employed in agricultural pursuits and in the manufacture of cloth and finished articles, and that considerable of the prison made goods in that state were sold and disposed of in those states that had passed laws prohibiting the free and unrestricted sale and disposal therein. The questions involved were extensively briefed, the final hearing had on the 8th of January, 1934, and the Supreme Court on the 7th of February, 1934, rendered its decision to the effect that it was a matter of which the State of Alabama could not be heard to complain.

CHAIN STORE TAX CASES

The 1933 Legislature of Idaho departed radically from precedent in taxation, and imposed a graduated tax upon the operation of multiple stores under a single ownership. In so doing it followed the example of Indiana, whose chain store tax had theretofore been upheld in the Supreme Court of the United States.

The Idaho law, differing from the Indiana law and the laws of the few other states having chain store legislation, allowed certain exemptions not found in the other states, and produced as a result an immediate assault upon the act charging violation of the state and federal constitutions.

Safeway Stores Inc., J. C. Penney Company and King & Co. prosecuted the attack in a series of suits consolidated for trial and directed against the Commissioner of Finance, who is administrator of the chain store tax, and the Attorney General.

Having few similar taxes in other states, and no taxing precedent upon which to rely in Idaho, the difficulties arising from provisions of the Idaho act permitting taxpayers to offset real property taxes, from the steeply graduated schedule of fees and from the character of outright exemptions allowed, entailed an enormous labor of research into collateral and parallel legal issues arising in sales taxes, inheritance taxes and a variety of other classes.

The district court of Ada County upheld the position of the State, and the act in detail, and upon the appeal to the Supreme Court the attack made in the District Court found elaboration and support from very numerous financial interests whose operations were within the scope of the taxing act. As a result, there is perhaps no more fully briefed or elaborately prepared prosecution or defense to be found in the reports of litigation in this State.

This may be readily observed by examination of the decision of the Supreme Court appearing in 32 Pacific Reporter (2nd Series) 784, wherein the multitude of authorities examined and submitted to the Court are collated and reviewed.

It is difficult to overestimate the importance of this case in view of the decided modern trend toward the elimination as far as possible of the burden of taxation formerly carried by the owners of real property by direct levy. Already the numerous states which have enacted or contemplated the enactment of chain store tax laws are engaged in a comprehensive study of the Idaho law and the theory of this office in defending it.

It may be said with justice that the successful defense of the chain store tax constitutes a monument to the wisdom and legal foresight by which the State of Idaho is attempting to shift and more nearly equalize the burden of governmental support.

CONSOLIDATED FREIGHT LINES INC. vs.
EMMITT PFOST, Commissioner of Law Enforcement.

During the present biennium two cases of far-reaching importance have arisen and been carried to successful com-

pletion in relation to constitutionality of the automotive transportation acts.

In the State Courts, the case of Garrett Transfer & Storage Company vs. Emmitt Pfof, Commissioner of Law Enforcement, was commenced in Bannock County, for the purpose of testing the method of enactment, constitutionality under the State Constitution, and application of the transportation acts to vehicles engaged in interstate commerce. This case was carried to the Supreme Court of Idaho, and an exhaustive study was made covering, so far as they may be foreseen, the legal objections which might be urged against these acts. The Supreme Court upheld the contention of this office on each of the litigated points, and upheld the transportation acts in general. The decision is now reported in 33 Pacific Reporter (2nd Series) 743.

Paralleling this case, and while it was yet pending, the Consolidated Freight Lines, Montana Consolidated Freight Lines, and Asbury Transportation Company launched a similar attack against the same laws, charging violation of the Constitution of the United States and the Interstate Commerce Act. A special court of three Federal Judges was assembled for the purpose of determining these questions. The office of Attorney General assembled and presented on the trial of this cause a great mass of technical and engineering data disclosing the construction costs, cost of maintenance and revenues from highway sources involved, together with their application and distribution. For the purpose of this case an examination was made into the report of every applicable decision known to have been rendered in any of the State or Federal Courts in the history of the United States. The decision in this case completely vindicated the position taken by the State, and is of paramount importance for the reason that it may be said to conclusively set at rest the last possible objection to the fundamental structure of the Idaho transportation acts.

As the Garrett case forever settled these issues in the State Courts, so the Consolidated Freight Lines case has terminated the uncertainties of Federal law which invariably arise when a burden is placed upon interstate commerce.

Immediately upon rendition of the decisions in these cases, a demand arose in sister States where major transportation issues are yet unsolved, for information upon the Idaho laws, and for the benefit of briefs and means of defense utilized by the State. It may be said with justice that the influence of these cases and the researches in law and fact made in their preparation will prove a powerful factor in directing current efforts being made in western United States to establish a uniform and lawful system of interstate transportation laws for the Pacific slope.

In view of the enormous revenues which accrue from transportation sources, and the disastrous effects which have arisen from loss of similar test cases (as in the case of Tennessee), this office has viewed the defense of our transportation acts in these cases as essential not only to the highway structure but the financial stability of the State itself. The successful defense of these cases is regarded as conclusively eliminating a hazard which yet attends the similar laws of our neighbor states, and consequently as placing Idaho foremost among western states in the stability of its highway structure.

Heretofore, as it appears and as I am informed, the legal work of the Public Utilities Commission has been performed by counsel engaged by it. During the past biennium this office has supplied said commission such service which has materially increased the demands upon this department. Various other conditions, such as the disturbances in the Lost River country, have necessitated close co-operation between this office and other departments, thereby drawing upon the time and energy of this office to an unusual extent. Legislation legalizing and licensing the manufacture, sale and transportation of 3.2 per cent beer, as well as the imposing of a privilege tax upon the sale, gift, exchange, barter, or disposition of malt syrup or malt extract, as well as the "Chain Store" licensing law, has imposed attending burdens and increased the activities of this office.

There are slightly in excess of 1,300 school districts within the State of Idaho. The regular session of the 1933

legislature enacted legislation providing an entirely new structural program applicable to the various classes of school districts within the state and amended or repealed all, or nearly all, of the former existing school laws.

Elementary schools, high schools, classroom units, public school income funds, apportionment of school funds to counties, determination of county levies, apportionment of forest reserve school funds, records of county superintendents, annual county tax levy for school purposes, apportionments by county superintendents, annual reports, tax levies for common school districts, tax levies for other school districts, pupils attending other than home districts, rates of tuition, billing of tuition, transfer of funds by county superintendents, school terms for school year beginning in 1932, and numerous other matters did not escape legislative attention and activities and finally emerged with but slight semblance of former existence.

A multitude of other laws by the regular and extraordinary session of the 1933 legislature caused an increased demand upon the attorney-general's office for interpretation. As evidencing this I respectfully call attention to the number of official opinions rendered during the period covered by this report. The opinions bespeak for themselves the amount of time and energy required of this department in their preparation. Many attorneys general have heretofore called attention to the fact that this office is only required to give opinions to the legislature, state officers and departmental heads when requested so to do in writing, and then only on such matters as relate to their duties, or matters in which the state is a party, or is directly interested. My immediate predecessor in office in his report correctly observes:

"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."

This office has not stood upon its statutory rights in the matter of rendering opinions to those only designated by statutory provision. While it is true that the law author-

izies those legal entities mentioned in the foregoing quotation to engage counsel, nevertheless, because of the lack of funds and the time and expense necessarily entailed in the securing of advice and counsel, has furnished a legitimate excuse for calling upon this office for such services.

This report will show the number of cases heard before the public utilities commission and the industrial accident board, and tried in the various district courts and heard in the supreme court of our own state. There has been more than usual activities in respect to escheated estates, and numerous investigations as to attempts to evade state inheritance taxes. Litigation incident to the rate of interest to be paid on public deposits, the sale of securities of the permanent educational fund, and the investment of those funds in securities, has necessitated considerable time and effort.

CONCLUSION

In conclusion I desire to express my appreciation for the friendly feeling, good will and co-operation that has existed between the various state departments and this office. If mistakes have been made, or misunderstandings have occurred I am constrained to believe it was unintentional or due to lack of careful analysis. The associations have been enjoyable and of keen interest to me. I desire to thank those men who have worked in this office as my assistants for their hearty co-operation, faithfulness, loyalty and support, and to commend my office clerks for the careful and painstaking attention and manifest loyalty they have rendered me and my assistants. I take this occasion of thanking Your Excellency for the considerations you have extended this department and the cordial relations that have prevailed.

Yours respectfully,

BERT H. MILLER,
Attorney-General.

APPROPRIATION

The department requests for 1933-34, by predecessor in office, and the amounts appropriated by the legislature are as follows:

	Request	Appropriated
Salaries and extra help	\$44,600.00	\$42,800.00
Services other than personal	4,615.00	3,070.00
Supplies	1,035.00	815.00
Equipment	2,160.00	1,450.00
Fixed charges	300.00	175.00
	<hr/>	<hr/>
	\$52,710.00	\$48,310.00

The appropriation for the biennium, 1933-34, was reduced \$6,190.00 below the preceding biennium.

AUDITOR'S REPORT

The auditor's report from January 1st, 1933, to September 30, 1934, show disbursements and appropriation balances as follows:

	Appropriation Balance	Per centum Expended
Salaries	\$6,075.00	85.60
Extra help	416.66	30.55
Services other than personal	547.75	82.15
Supplies	155.49	80.92
Equipment	645.75	52.16
Fixed charges	107.64	60.85
	<hr/>	<hr/>
Appropriation balances — Totals	\$7,948.29	83.54

SELECTED OPINIONS OF ATTORNEY GENERAL

I am including herein a few opinions in their entirety, not, however, on account of their importance but more especially for the purpose of showing the time and effort involved in the preparation of opinions generally, excerpts of which are permissible only because of expense entailed in printing.

March 31st, 1933.

Mr. D. E. Haddock,
Prosecuting Attorney,
Bear Lake County,
Paris, Idaho.

Dear Sir:

We submit the following opinion answering the questions presented in your letter of March 20th, as follows:

1. "Does the changing of the legal rate of interest from 7% to 6% change the rate of interest charged on registered county warrants from 7% to 6%?"
2. "Does the cancelling interest on delinquent county taxes affect special improvement taxes wherein the county acts as a collection agency for such special improvement taxes and where such taxes are included as regular charges on tax notices?"
3. "What rate of interest should be charged on delinquent taxes for the year 1932 in view of the change in legal interest rates?"

Answering the **first** question, I am of the opinion that changing the legal rate of interest from 7% to 6% does not change the rate of interest to be charged on registered county warrants. The legal rate of interest is the rate of interest to be charged when there is no contract in writing fixing a different rate. The statute (Sec. 30-1606) fixes 7% as the interest rate to be paid on registered county warrants, "unless the board of county commissioners shall have theretofore, by resolution, fixed a lesser rate of interest, in which event said warrant shall draw such lesser rate, to be indorsed thereon."

Answering the **second** question, House Bill No. 105, provides in part that "all property described in any delinquency entry made pursuant to the provisions of Section 61-1009, I. C. A. may be redeemed "by paying the amount of all delinquent taxes and penalty as shown by such delinquency entry, without interest," but with added penalties

as otherwise prescribed. I am of the opinion that the act intends that no interest shall be paid on delinquent special improvement taxes if they have been included in the delinquent tax entries as provided by Section 61-1009, for the new act expressly states redemption may be made by paying the amount of all delinquent taxes * * * without interest. My opinion is that "all delinquent taxes" as used in the act may not be construed to mean only state, county and municipal taxes but also special improvement assessments which, under the rule laid down in *Heffner v. Ketchen*, 50 Ida. 435, and authorities cited therein, are "taxes" within the meaning of Section 61-1009.

Answering the **third** question, I am of the opinion that the interest rate on taxes delinquent for 1932 should be the 10% now provided by statute (Sec. 61-1002). We have previously expressed the opinion that interest follows the contract according to the law in existence at the time and place of the contract, and where there has been a change in the rate of legal interest as declared by statute such a change cannot be retroactive, and the rate that was legal at the time the obligation was incurred will hold when the obligation matures, notwithstanding changes in the statute in the interim. Section 61-1014 provides that upon the making of the delinquency entry in the real property assessment roll as provided in Section 61-1009, the county is deemed to be the purchaser of the property described in such delinquency entry. Section 61-1009 provides that the entry by the tax collector of the first half year of delinquency shall be dated as of the first Monday in January and shall have the force and effect of a sale to the tax collector as grantee in trust for the county, and that the tax collector must make similar delinquency entries before the first Monday of July for the second half of the previous year's taxes, such entry to be dated as of the first Monday of January.

Our position, therefore, is that under the provision of the sections of the statute mentioned above a sale is made to the county as of the date of the first Monday in January, and that a contract is entered into as of the date whereby the property owner by payment of the amount of delinquency and penalty plus interest may repurchase the property. The contract must be construed as of the date of the first Monday in January both for the first half of the 1932 taxes not paid before the fourth Monday of December and for the second half not paid before the fourth Monday in June. A legislative change in the maximum rate of interest enacted after the first Monday of January does not have a retroactive application to any part of the interest to be paid on delinquent taxes, which entry of delinquency is dated as of the first Monday of January of that year.

Very truly yours,

BERT H. MILLER,
Attorney General.

January 1, 1934.

Hon. C. Ben Ross,
Governor of Idaho,
State House.

RE: Tax Holiday

Dear Governor:

Supplementing our conversation of yesterday incident to your authority to declare a holiday, extending the time for the payment of certain taxes, and answering the letter of Chase A. Clark, Esq., Idaho Falls, Idaho, relative thereto, I have this to say:

Chapter 124, Session Laws, 1933, among other things provides:

"That the governor of the state of Idaho be and he is hereby authorized and empowered, whenever, in his opinion, extraordinary conditions exist justifying such action, to declare legal holidays in addition to those now authorized by law, and to limit such holidays to certain classes of business and activities to be designated by him, but no such holidays shall extend for a longer period than sixty days, provided, however, that it may be renewed for one or more periods not exceeding sixty days each, as the Governor may deem necessary."

It will be observed from the above that the authority to declare legal holidays, in addition to those now authorized, is limited to "certain classes of business and activities to be designated".

Mr. Clark in his letter of December 30, 1933, says:

"I am writing you in reference to declaring a holiday to protect the people against the five per cent penalty on account of delinquent taxes for 1931 and other years."

Chapter 41, Session Laws, 1933, among other things, provides:

"If such property be redeemed from taxes for all or any of such years on or before the first Monday in January, 1934, redemption may be made by paying to the tax collector the amount of such delinquency and penalty, as shown by the delinquency entry for such year or years, without any additional penalty."

Mr. Clark and the foregoing statutory provisions had and has reference to the delinquent taxes for the years 1928, 1929, 1930 and 1931, inclusive.

This office has heretofore rendered an opinion to all tax collectors of the state that a penalty of 5% must be added and charged to and against all delinquency entries of any or all of the aforementioned years if the delinquent taxes are not paid on or before the first Monday of January, 1934.

The first Monday of January, 1934, is likewise the first day of

the month and is a holiday as provided by Section 70-108, Idaho Code Annotated. Because the last day for paying the delinquent taxes for the above mentioned years falls on a legal holiday, and because of statutory provision extending the time when the act to be performed falls on a holiday, I am of the opinion that the redemptioner would have until the close of business hours on the 2nd day of January, 1934, in which to redeem without being penalized.

Section 70-101, Idaho Code Annotated, provides:

"No part of these compiled laws is retroactive unless expressly so declared."

It is needless for us to express any opinion now as to whether or not, at this belated time, a proclamation declaring a holiday extending the time for paying taxes for the above mentioned years would be retroactive. Sufficient to say it would seem such and besides there are other considerations which would now make it impossible of performance, independent of still other vital conditions.

Mr. Clark in his letter did not have under consideration the matter of extending the time for the payment of the first half of the 1933 taxes. However, any condition as applied to the 1928-1931 taxes applies with equal force to the 1933 taxes.

The distribution of powers of the departments of government, as provided by section 1, article 11, of the constitution provides:

"The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers property belonging to either of the others, except as in this constitution expressly directed or permitted."

The paying of taxes is not a "business" or a "class of business" as contemplated and provided in Chapter 124, Session Laws, 1933, over which the Governor is authorized and empowered to exercise any discretion, and he may not extend or suspend the payment of taxes, the due date of which is already fixed by the legislature.

The legislature, by Chapter 41, Session Laws, 1933, has fixed the date when a penalty will attach and become effective if "or or before" said date said taxes are not paid.

It is true, that the supreme executive power is vested in the governor. He, however, may not exercise any of the powers properly belonging to the legislative or judicial departments of government. To attempt to exercise powers properly belonging to either of the other departments of government would be a plain violation of constitutional authority, and any such pretended act would be a nullity.

We are not unmindful of the fact that a further extension of the due date for the payment of the delinquent taxes for the years 1928

to 1931, inclusive, so as to relieve the property owner from the penalty that attaches on the first Monday of January, 1934, would be beneficial and advantageous to a considerable number of the property owners within the state; it might even now be an incentive for some to pay said taxes which they otherwise will not do immediately if the penalty has attached and become effective.

Nevertheless, the legislature, as the legislative department of government, has fixed the "dead line" and it is not within the power of the executive department to change the same.

By legislative act the proper county officials have been directed as to their duty and to perform certain acts in regard to the collection of certain taxes. This may not be altered or set aside by executive order.

In conclusion, then, it is my opinion that any act or attempted act by you, as Governor, proclaiming a holiday extending the date for the payment of delinquent taxes for the years 1928 to 1931 inclusive, would be null and void.

Respectfully submitted,

BERT H. MILLER,

Attorney General.

March 10, 1934.

Hon. Lawrence Quinn,
Prosecuting Attorney,
Idaho City, Idaho.

Dear Sir:

Replying to your inquiry of March 9, 1934, as to whether the County Assessor can use motor vehicle license fees for his actual and necessary expenses under the provisions of Section 30-2601, I. C. A., and Constitution Article 18, Section 7, you are advised:

The statutory provision involved here is as follows:

Section 30-2601: "The salaries of county officers as full compensation for their services must be paid monthly from the county treasury, upon the warrants of the county auditor, and it shall not be necessary for the board of commissioners to allow or audit the claims for such salaries when the salaries of such officers are fixed by law or have been fixed or approved by action of the board of commissioners. No officer or deputy must retain out of any money, in his hands belonging to the county, any salary, but all actual and necessary expenses incurred by any county officer or deputy in the performance of his official duty shall be a legal charge against the county, and may be retained by him out of any fees which may come into his hands. All fees

which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treasury at the end of each quarter. He shall, at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied with proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts."

Constitution, Article 18, Section 7:

"All county officers and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid monthly out of the county treasury, as other expenses are paid. All actual and necessary expenses incurred by any county officer or deputy in the performance of his official duties, shall be a legal charge against the county, and may be retained by him out of any fees which may come into his hands. All fees which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treasury at the end of each quarter. He shall at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts."

In the memorandum submitted, attention is called to rather numerous cases defining the word "fee". The cases of *Collman v. Wana-maker*, 27 Ida. 342, and *McRoberts v. Hoar*, 28 Ida. 163, and *Hudson v. Bertsch*, 38 Ida. 52, are not in point for the reason that the provisions of Section 19-4215 relating to fees are limited by inclusion of the qualifying clause "for services rendered or to be rendered in his office". Examination of these cases makes it readily apparent that the definitions therein set forth are dependent upon this clause for their meaning. The true meaning of the word "fee" as used in Section 30-260, here for construction, seems rather to be contained in the Constitution, Article 18, Section 7 and Section 30-2602, I. C. A. in which latter section it is said:

"Any county officer or deputy who shall neglect or refuse to account for and pay into the county treasury any money received as fees or compensation in excess of his actual and necessary expenses * * *."

It is manifest upon the face of these statutes that there is a clear distinction between fees having the meaning of compensation and fees for services rendered or to be rendered in his office.

It is a fundamental rule of statutory construction in Idaho that

words must be construed in accordance with their general usage and common significance among the people.

Adams v. Landsdon, 18 Ida. 483.

In re: Bossner, 18 Ida. 519.

State v. Morris, 28 Ida. 599.

State v. Cosgrove, 36 Ida. 278.

It is likewise a fundamental of statutory construction that statutory enactments should be read and construed in the light of conditions of affairs and circumstances existing at the time of their adoption.

State v. Abbott, 38 Ida. 61.

State v. Fite, 29 Ida. 463.

It is likewise a well established rule of construction that every statute is to be construed with reference to the general system of laws of which it forms a part and construed in the light of other statutes on the same subject and of the decisions of the courts.

Moody v. Morris, 38 Ida. 414.

Presumptively, having these rules in mind and having in mind that Section 30-2601 specifically authorizes retention of proper expenses from any fees which come into the hands of the county treasurer belonging to the county, the legislature enacted Section 48-109 in which it called the license tax for registration of automobile a fee, and in 1933 amended and re-enacted the same section using the word "fees" repeatedly as relates to this tax. In the same manner the legislature by Section 48-126 designated the tax as registration fees. By Section 48-127, the same thing was repeated and under the term "fees" specific amounts were set down for various classification of trucks and the term "fee" repeated in each of the classifications. This section was likewise re-enacted and amended in 1933 by Chapter 214, repeating the term "fees" many times. To the same effect may be cited Section 39-2111 and the 1933 act amendatory thereof.

Stepping aside from the statutes and into the decided cases, reference is had to the case of Power County v. Fidelity and Deposit Company, 44 Ida. 609. This case was decided upon the statute here involved, and seems to extend, at least by implication, the meaning of the word "fees" to include all money received by an officer *virtute officii* and to reference to all money received under the designation of fees by an officer as part of his duties. In the case of Hartman v. Meier, 39 Ida. 261, having reference to the motor vehicle code, the word "fee" as relates to the registration tax is repeated time and again.

From the foregoing considerations, it is my opinion that the word "fee" as used in the motor vehicle code relative to the registration tax was advisedly used by the legislature in the light of Sections 30-2601 and 30-2602, and accordingly must be held to be included

within the term as there used. It is likewise my opinion that in the common and accepted usage both in the courts and among private persons, the term "fee" is applicable to the tax paid for registration of motor vehicles. The opinion rendered by the prosecuting attorney of Boise County should be approved.

It could result only in misunderstanding and confusion and would in fact create a confusion of terms and render our whole motor vehicle code unintelligible if the assessors of the counties within the state were to be forbidden to stand upon the actual words of the statute, especially in view of the common acceptance of the term by the courts and the public in general. The statute says he may retain his expenses from fees and the legislature calls the money he receives from motor vehicle licenses, fees. In the absence of some controlling reason why a contrary construction should be set up, it is my view that the language of the statute should prevail.

Respectfully yours,

BERT H. MILLER,
Attorney General.

December 18, 1933.

Hon. E. B. Schlette,
Probate Judge,
Boundary County,
Bonners Ferry, Idaho.

Dear Sir:

This acknowledges receipt of your letter of December 6th, submitting the following questions for the opinion of this office.

1. May county officials take from the fees they collect money for necessary expenses such as postage and other miscellaneous expenditures?
2. Is it legal to transfer from one budget unit to the other to meet obligations until all the budget is gone?

Section 7, Article 18, of the Constitution, provides:

"All county officers and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid monthly out of the county treasury, as other expenses are paid. All actual and necessary expenses incurred by any county officer or deputy in the performance of his official duties, shall be a legal charge against the county, and may be retained by him out of any fees which may come into his hands. All fees which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treas-

ury at the end of each quarter. He shall at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers showing all expenses incurred and all fees received, which must be audited by the board as other accounts."

This constitutional provision was enacted as a general law and is found in Section 30-2601, I. C. A. Section 30-1205, I. C. A., of the County Budget Law provides in part as follows:

"Said budget as finally adopted shall specify the fund or funds against which warrants shall be issued for the expenditures so authorized, respectively, and the aggregate of expenditures authorized against any fund shall not exceed the estimated revenues to accrue to such fund during the current fiscal year from sources other than taxation together with any balances and plus revenues to be derived from taxation for such current fiscal year, within the limitations imposed by chapter 8 of title 61, Idaho Code, or by any statutes of the state of Idaho in force and effect. * * *"

Section 30-1206, I. C. A., of the County Budget Law, with reference to the limitations on expenditures, provides in part:

"The estimates of expenditures as classified in each of the two general classes, 'Salaries and wages' and 'Other expenses', required in section 30-1202, is finally fixed and adopted as the county budget by said board of county commissioners, shall constitute the appropriations for the county for the current fiscal year. Each and every county official or employee shall be limited in making expenditures or the incurring of liabilities to the respective amounts of such appropriations. * * *"

In view of the constitutional provision therefor I would advise that county officials may retain from fees they collect their actual and necessary expenses incurred in connection with the collection of such fees. The legislature, of course, has the power to legislate with respect to expenditures which county officials are permitted to make and ordinarily, under the budget law, the expenditures of each county office must be kept within the amount as provided by the budget. Irrespective of that fact, however, I would say that county officers may retain from the fees they collect their actual and necessary expenses incurred in the collection thereof—in so far as the retention of said actual and necessary expenses relates exclusively to the matters and things incident thereto. Naturally, a proposition of accounting will of necessity be involved but that should entail no complications or difficulties not easily overcome if the plain provisions of the constitutional and statutory requirements relative to the sworn

statement, which must be filed with the clerk of the board of county commissioners, are complied with. If, then, the miscellaneous expenditures of which you speak, such as postage, are a part of the actual and necessary expenses incurred in the specific instance, such expenses would become a part of the actual and necessary expenses and could be retained.

In answer to the second question as to whether it is legal to transfer from one budget unit to another to meet obligations until all the budget is gone, I would advise that this office has previously rendered an opinion to the effect that the County Budget Law does not permit such transfers, except as expressly provided in Section 30-1206 from road and bridge appropriations, and that the provision of Section 30-1206 that "Each and every county official or employee shall be limited in making expenditures, or the incurring of liabilities, to the respective amounts of such appropriations," in effect prohibits transfers from one budget unit to another.

Very truly yours,

BERT H. MILLER,
Attorney General.

July 6th, 1933.

Hon. Harry C. Parsons,
State Auditor,
State House.

Dear Mr. Parsons:

This will acknowledge receipt of your letter of July 5th with reference to the county payment of state tax, in which you submit the following questions for the opinion of this office:

1. If a county is delinquent in a portion of the amount due the state on the second Monday in July, should an amount equal to their current fees plus delinquent tax collections for all county purposes for each month be paid to the state on the second Monday of each month until said delinquency is all paid?
2. Under the provisions of Section 61-802, would balances on hand to the credit of Common School Districts in the County treasury be considered county money in the sense that it could be used to pay the state tax charge, if necessary?
3. County Treasurers in many of the counties are compelled to register warrants against all of their county funds; would the delinquent state charge take preference over payment of registered warrants?

We quote in full the provisions of Section 61-802, I. C. A., with reference to the liability of the county for state taxes, as follows:

"Each county in this state is liable to the state for the full amount of all state taxes apportioned to such county by the State Board of Equalization, and such taxes must be paid to the state in full, without deductions, before the second Monday in July in the succeeding year. All state taxes must be collected and paid into the county treasury and apportioned to the state fund. If, on account of uncollected taxes, there is not sufficient money in the county treasury to the credit of the state fund to pay such state taxes in full within the time prescribed by this Act when such taxes must be paid, the same must be paid within the time prescribed therefor by warrants not to exceed \$1,000.00 in denomination, to be drawn on the state fund and registered by the county treasurer."

Attention is called to the mandatory provision of this section that, "such taxes must be paid to the state in full, without deductions, before the second Monday in July." Also, that if there is not sufficient money in the state fund to pay the state taxes in full, "the same must be paid within the time prescribed therefor out of any county money in the hands of the County Treasurer."

This office has previously ruled in the absence of a statutory definition that "county money" refers to any money raised by county levy for county purpose, except that the proceeds of a levy for bond interest and sinking fund purposes may not be used for the payment of state taxes. In this connection we also advise that it has been held by this office that moneys raised by the school fund levy, provided by Section 61-806, as amended by Chapter 205 Session Laws of 1933, may be used to satisfy the state tax apportionment.

I am of the opinion, therefore, that the state is entitled to receive the cash proceeds of the county tax levies to the amount needed to satisfy the county apportionment, and that if there is any county money available that all such money must be used as provided by Section 61-802 to pay the state taxes before the second Monday in July. If there is no county money for such July settlement then I know of no action that may be taken by the State Auditor other than to insist that the monthly settlement provided by Section 61-1805 be continued until the whole amount of the state tax has been paid, and that after the second Monday of July all county moneys be used for the monthly settlement. The duty of making the monthly settlements with the state rests on the County Treasurer and default in such monthly settlement renders the County Treasurer liable on his bond as provided in Section 61-1808.

With reference to your third question I am of the opinion that delinquent state taxes would take preference over payment of reg-

istered county warrants. I believe it is the intention of Section 61-802 that the state has first claim to all taxes collected and that after the full amount of the state tax has become due then receipts from tax levies cannot be used for the payment of registered warrants drawn against a county fund until the county apportionment of state taxes is paid.

Yours truly,

BERT H. MILLER,
Attorney General.

September 18, 1934.

Hon. C. Ben Ross,
Governor of the State of Idaho,
State House.

Dear Governor:

Yesterday you submitted to this office a letter to you from Earl W. Evans, President of the American Bar Association, together with CRIMINAL LAW RECOMMENDATIONS attached thereto, recommending or requesting that you appoint a committee of nine as a permanent committee on criminal law justice, to be composed of lawyers and laymen, and charged with the duty of systematically following, improving and criticizing the enforcement of the criminal law, etc., and which said recommendations specify points of various proposals probably necessitating changes in our constitutional and statutory law. I have examined the same as requested by you, particularly the recommendations, and submit the following:

1. Giving the accused the privilege of electing whether he shall be tried by jury or the court alone.

We already have a provision that cases involving misdemeanors may be tried in this manner, I. C. A. 19-1802. It is my opinion that this provision should not be extended further. Judicial history, especially in England, abounds with many abuses under the system whereby the courts tried criminal cases without juries, and the proceedings under the notorious Star Chamber court, were such that the words Star Chamber have come to be a synonym for oppressive and unjust procedure of almost any kind. Human nature, on the bench as elsewhere is too prone to the abuse of power for the people to turn back to such a system. The fundamental idea of this government is that power and authority should be to the largest extent possible reposed in the people. It may be that the results in many criminal trials are not what could be desired, but in my opinion the remedy for this situation, especially in a democratic government is not to adopt the undemocratic principle of concentrating greater power in the hands of judges, but rather in a more careful selection of the individuals

who constitute our juries. If the general run of citizens do not measure up to the responsibilities of jurymen, it would perhaps be better to exclude certain classes by requiring higher qualifications in those who serve, thus excluding the undesirables. The tremendous power, often involving the decision of life or death, is still susceptible to the same abuse above referred to, if placed in too few hands.

Moreover, in many cases, persons charged with serious crime are unable to employ counsel, and must rely upon attorneys appointed by the courts. It is a matter of personal experience with almost every lawyer that too often such unfortunate defendants do not receive such service, and as the pay to these appointed defenders is very small, there would be a temptation to waive the extra work of examining and selecting jurymen. Frequently, under such circumstances, the defendant himself would not be able to understand the situation and the questions involved, and his attorney, so appointed, would not be inclined to render service beyond the amount of his remuneration. We have an unfortunate practice on the part of many prosecuting attorneys of inducing defendants without lawyers to plead guilty to crimes greater than they have committed, often upon the representation that the prosecutor will see to it, or request, that the court will exercise leniency—a representation too frequently overlooked or forgotten after the defendant has entered his plea of guilty. This is a fair illustration of the manner in which human rights are sometimes lost sight of, and any system which would tend in the same direction does not meet with my approval.

2. Permitting the impanelling of alternate or extra jurors to serve in the case of disability or disqualification of any juror during trial.

Idaho already has such a provision in the trial of felonies, where it appears that the trial will be protracted, I. C. A. 19-1804. There would seem to be no real objection to such provision being extended to the trial of misdemeanors, except that such trials are very seldom protracted, and extra jurors would seem to be unnecessary.

3. Permitting trial upon information as well as indictment. Where indictment by grand jury remains a constitutional requirement, waiver should be allowed. The Association recognizes that in sound practice a grand jury indictment may be desirable on some occasions.

We already have this provision in Idaho, I. C. A. 19-801.

4. Providing for jury verdicts in criminal cases by less than a unanimous vote except in the case of certain major felonies.

We already have such a provision in Idaho for misdemeanors. Constitution, Article 1, Section 7. With regard to felonies, I am not prepared to endorse such a provision. The law requires that a defendant be proven guilty beyond a reasonable doubt, and it would appear that if the state can not produce enough evidence to secure

a unanimous decision from twelve reasonable and impartial men, there must be something wrong with the case. The state has a decided advantage in the selection of the jurors, and has a much better opportunity to investigate the qualifications of all the panel. If two or three of the twelve men are not satisfied of the guilt of the defendant, it can hardly be said that he has been proven guilty beyond a reasonable doubt. The average layman does not appreciate how easy it is to send a man to the penitentiary, and it is a well-known fact that even under the present requirement of unanimous verdicts, there are not infrequent convictions of innocent persons, and this is especially true in cases based upon circumstantial evidence. There is too much chance of a mistake to rely on anything but a unanimous verdict in cases involving felonies. Here again I suggest that if the average citizen is not properly qualified, the desired result can be obtained by requiring higher standards of selection.

b. The adoption of the principle that a criminal defendant offering a claim of alibi or insanity in his defense shall be required to give advance notice to the prosecution of this fact, and of the circumstances to be offered, and in the absence of such notice a plea of insanity or a defense based on an alibi shall not be permitted upon trial, except in extraordinary cases in the discretion of the judge.

Part of the facts in a criminal case consist of the presence of the defendant at the scene of the crime, also his mental condition. The defendant, particularly if innocent, does not know the facts in the possession of the state. If it can not be proved that the defendant was at the scene of the crime, the state has no case. It seems to me that if the defendant were required to state in advance the facts regarding his defense, it would only be fair to require the state to make a detailed statement of the facts in its possession, and submit them to the defendant. In the information, or the indictment, the state makes a mere allegation of the commission of a crime, with practically no details. As for instance, that the defendant at a certain time and place "did then and there, willfully, wrongfully, feloniously and with premeditated malice aforethought, kill and murder one John Jones." It is not necessary to state the method or means or any other circumstances, and the defendant should not be required to make any fuller disclosure than the state. Insane persons are always at a disadvantage. The dividing line between sanity and insanity is pretty well described as a twilight zone, with very indefinite boundaries. Sometimes a person may be perfectly sane except on one or two subjects. The insane person may be confined in jail for a long time before his trial. Here the state has ample power to investigate his condition of mind, and the state certainly has opportunity to decide whether or not there is much ground to suspect insanity. Ample opportunity is given for the state to investigate. In this respect the state has a decided advantage. The appalling

rotteness, which so frequently makes its appearance in the testimony of medical experts, and makes many fair minded men condemn such testimony altogether, would in my opinion be one reason for not favoring this proposition. My own personal experience with psychiatrists who testify for the state constrains me to have a pretty healthy contempt for it. A physician friend of mine once made the remark that expert testimony is the disgrace of the medical profession. I can not endorse the proposition.

c. Permitting court and counsel to comment to the jury on the failure of a defendant in a criminal case to testify in his own behalf.

There are many persons who by reason of physical and mental infirmities are unable to tell their own story under most any circumstances; those who are diffident, nervous and excitable, and therefore always at a disadvantage. On the witness stand they are peculiarly handicapped. They may never have testified or even been in a courtroom before. They may be so constituted that unusual surroundings or conditions may make them forget even the little they know, and the circumstances of a crowded courtroom, and the ruthless and sometimes unfair tactics of prosecuting attorneys may utterly destroy their ability to state the facts. To permit a prosecutor to comment upon the reasons which he may imagine for the defendant's failure to testify would place the accused at a serious disadvantage. Evidence can not very well be submitted to establish infirmities of the defendant or his inability to represent himself on the witness stand, and consequently the comment of the court or the prosecutor would have to be based upon their imaginary views on that point, views which may be entirely wrong, and often absolutely unfair. It would be going only a little further to have witnesses testify as to what they thought or imagined about the facts of the case without really knowing.

For the foregoing reasons, together, perhaps, with many others that could be urged, I suggest that the request of Mr. Evans, of the American Bar Association, be denied, as in my opinion there is no occasion to incur the attending expense, nor is there need therefor.

We are returning herewith the letter, together with the recommendations.

Respectfully,
BERT H. MILLER,
Attorney General

January 23, 1934.

Attention: Dr. F. W. Call, Secretary

Idaho State Chiropractic Examining Board,
Boise, Idaho.

Gentlemen:

Replying to your inquiry of recent date as to whether or not the provisions of Sections 53-1501 and 53-1502, I. C. A. operate to prohibit the Department of Law Enforcement from licensing chiropractors graduating from chiropractic schools which require graduation from an accredited high school as a prerequisite for students intending to practice in Idaho but do not make such requirements as to students intending to practice in states where high school graduation is not a prerequisite, you are advised:

For clarity the particular section involved is quoted here at length:

"53-1502—Diploma From High School Before Professional Course.—The department of law enforcement shall not issue or grant a license to practice the science or art of healing sick or afflicted human beings to any person who, after July 1, 1929, enters a professional school or college teaching the science or art of healing sick or afflicted human beings, which does not require as a prerequisite qualification at the time such person enters such professional school or college, graduation from an accredited high school or other school of equal standing as defined in the preceding section of this chapter."

This matter was passed upon by Attorney General Babcock, November 22, 1932, and in concluding his opinion General Babcock said as follows:

"From an examination of these statutes it appears that the prerequisites are upon the school and not upon the individual. The intent of the statute is to determine the standard of the school."

And the statute was construed accordingly to prohibit the granting of a license under such circumstances.

This question was assigned by General Babcock to one of his assistants who prepared a memorandum favoring the allowance of licenses in such cases. Two of his other assistants, however, dissented and the opinion was written upon the basis of the dissenting opinions.

The effect of the construction given by the opinion of November 22, 1932, is well demonstrated by an actual case now pending before the State Board of Chiropractic Examiners which has requested a

review of the former opinion. A citizen of Idaho, being a graduate of Pocatello High School and of the University of Idaho, entered one of the approved schools listed in the departmental regulations and as a prerequisite was required to produce certificates covering his educational attainments as hereinbefore set forth. Nevertheless, and notwithstanding the high educational attainments of this applicant, the Board is directed to deny his application for the reason that the school involved allows students from foreign countries and jurisdictions not maintaining a high school prerequisite, to study in the same institution.

From a perusal of the opinion of November 22, 1932, and the memorandum prepared before its compilation, it appears that several fundamental considerations were omitted in preparation of that opinion.

I.

As a primary consideration it is to be remembered that the right to practice any of the healing arts is a constitutional right of which no man may be deprived without due process of law. To put it in the language of the Supreme Court of California in the case of *Brecheen v. Riley*, 200 Pac. 1042, 1044:

"It is firmly established that it is the right of every person to pursue any lawful business or vocation he may select, subject to such legal restrictions and regulations as the proper governmental authority may impose for the protection and safety of society, and that such right is valuable and must be protected and secured, and cannot be taken from those who possess it, without 'due process of law'. *Hewitt v. Board of Medical Examiners*, 148 Cal. 592, 84 Pac. 40, 3 L. R. A. (N. S.) 896, 113 Am. St. Rep. 315, 7 Ann. Case. 750; *Suckow v. Alderson*, 182 Cal. 207, 187 Pac. 965/"

In administering laws in derogation of, or limitation upon, this constitutional right, it is well established that state boards, such as the State Board of Chiropractic Examiners, act in a quasi-judicial capacity.

Ex Parte Whitley, 77 Pac. 879.

Abrams v. Jones, 35 Ida. 532.

And it is further well established that the acts containing such provisions are adopted in the exercise of the police power in the interests of the public welfare and are highly penal in their nature.

Dent v. W. Va., 32 L. Ed. 623.

In Re Inman, 8 Ida. 398.

Raaf v. State, 11 Ida. 707.

Barton v. Schmershall, 21 Ida. 562.

Accordingly our Supreme Court has held that such acts must be strictly construed in favor of the practitioner.

Abrams v. Jones, 35 Ida. 532, 544.

II.

Our Constitution, Article III, Section 16, contains the mandatory provision that a legislative act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title, and further that if a subject is embraced in the act which is not embraced in the title, the act is void as to the part not embraced in the title.

The title of Chapter 27, page 29, 1929 Session Laws is:

"An Act Providing For The Prerequisite Qualifications Of Applicants For A License To Practice The Science Or Art Of Healing Sick Or Afflicted Human Beings; * * * Prohibiting The Department Of Law Enforcement From Issuing A License To Persons Not Possessing The Qualifications Prescribed Herein; * * '."

Nowhere in this title does there appear any reference whatever to standards for schools. The whole tenor is "**Prerequisite Qualifications of Applicants.**" The view that this section fixes the standards for schools is interpolated by construction in violation of Article III, Section 16 above set forth.

It is to be remembered that our fundamental rule of statutory construction is that where there are open two constructions, one of which would render the act in violation of the Constitution and the other of which would sustain it under the Constitution, the latter must be adopted.

State v. Morris, 28 Ida. 599.

L. R. A. 1916 D. 573, 155 Pac. 296.

Lawrence v. Defenbach, 23 Ida. 78.

Bellevue v. Lilya, 35 Ida. 278.

Aberdeen v. Bashor, 36 Ida. 818.

III.

The question involved here has been more or less directly before every court in the United States, including the Supreme Court of the United States. The Court of Criminal Appeals of Texas—285 S. W. 317—in the case of *Larson v. State*, an action brought under the Texas Law corresponding to our educational law, quotes from *Dent v. W. Va.*, 32 L. Ed. 623 (approved by our court in *Re Inman*, 8 Ida. 408) a significant paragraph as to the basis upon which educational requirements are sustained as against the constitutional right to practice any profession as hereinbefore set forth. The following paragraph is quoted by the Texas court in italics:

"The power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as deception and fraud. As one means to this end it has been the practice of different states, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualification required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty."

It is upon this theory of personal qualifications that the statutes are universally sustained. We cite as demonstrating this beyond question the following cases:

Ex Parte Whitley, 144 Cal. 167, 77 Pac. 879.
Minn. v. Vandersluis, 43 N. W. 789.
Gothard v. People, 74 Pac. 890, 32 Colo. 11.
Ex Parte Gerino, 66 L. R. A. 349, 77 Pac. 166.
Larson v. State, 285 S. W. 317, and cases there cited.

The correct position would seem to be that taken by the Supreme Court of the United States in *Collins v. Texas*, 56 L. Ed. 440, and the Supreme Court of Texas in *Johnson v. State*, 267 S. W. 1057, where it is said:

"It is a matter of common knowledge that few, if any, professions require more careful preparation by one who seeks to enter it than does that of medicine. It deals with all those subtle and mysterious influences upon which health and life depend ' * * '. In order that assurance may be had that one who treats diseases has this requisite qualification, the state has the undoubted right to prescribe a general preparation to be made by one entering such profession, and also to prescribe that he shall have a knowledge of what the legislature may deem the necessary and scientific branches of such profession."

IV.

Attention is called to the fact that by the provisions of Section 53-903, Subdivision 3, the Department of Law Enforcement has the following power:

"3. To prescribe rules and regulations defining, for the chiropractors what shall constitute a school, college or university, or department of a university, or other institution, reputable and in good standing and to determine the reputability and good standing of a school, college or university, or department of a university, or other institution, by reference to a compliance with such rules and regulations."

And attention is also called to the fact that in pursuance of the power conferred by this section, the Department of Law Enforcement has compiled and officially published as Section 7 of the Board regulations contained in the official publication "Chiropractic Laws and Regulations for Idaho" a list of the approved schools for chiropractors.

Section 53-903, I. C. A., gives to the Department of Law Enforcement the power "to establish a standard of preliminary education deemed requisite to admission to a school, college, or university, and to require satisfactory proof of the enforcement of such standard by schools, colleges and universities.

Section 65-2802 contains an identical provision and both sections contain the restriction that the action of the Department in relation to fixing of standards as to schools must be taken upon the written directions of the State Board of Chiropractic Examiners. There is contained in Sections 53-903 and 65-2803 the express prohibition following:

"None of the above enumerated functions and duties shall be exercised by the Department of Law Enforcement except upon the action and report in writing of persons designated from time to time by the Commissioner of Law Enforcement to take such action and to make such report."
(There follow then the directions for creating the state board).

Statutes relating to the same subject matter must be construed together as in *pari materia*, and, as declared in *State v. Anderson*, 31 Ida. 514, "must be so construed as to give effect to all where there is no necessary conflict between them." Upon the former construction given the act here involved, Sections 53-903, Subdivisions 3 and 4, and 65-2802, Subdivisions 3 and 4 must stand as modified if not repealed; whereas, by the construction here placed upon Section 53-1502, and enforceable without modification or repeal.

V.

An examination of Chapter 15, Title 53, I. C. A., within which the section here involved is contained, is enlightening on the legislative intent. Section 53-1501 provides as a mandatory requirement that before issuance of a license to any healer, he must produce to the Department a diploma or certificate showing graduation from an accredited high school. The section here involved immediately follows and requires that in effect the high school education must be obtained prior to entry into a professional school. That is to say, instead of being an attempt to dictate what persons shall be permitted to study in the schools recognized as reputable and of high standing or attempting to fix the standard of the school, the actual legislative intent went to the qualification of the applicant and first required him to present, before securing a license, a certificate showing his high school education, and then required that such education must be obtained prior to his professional education, and that in effect the school must, as a prerequisite, insist upon his production of this proof of education prior to this matriculation.

As I view it, the legislature and the State Board of Chiropractic Examiners are concerned solely with the educational attainments of those who intend to practice this profession within the State of Idaho and are not vested with jurisdiction over the persons of students from other jurisdictions or affairs of other states, nor the conduct of schools except insofar as they relate to the State of Idaho and persons intending to practice chiropractic herein.

From the foregoing considerations the conclusion is inevitable that Section 53-1502 prescribes a prerequisite of personal qualification for those applying for license in Idaho and does not attempt to fix the standard of the school as applied to persons not intending to practice within the State of Idaho.

Respectfully yours,

BERT H. MILLER,
Attorney General.

EXCERPTS FROM OPINIONS

The hereinafter selected excerpts of opinions constitute about twenty per cent of the opinions written, exclusive of any opinions relative to examination of abstracts of title, official bonds, sale of tax anticipation notes, investments of permanent educational funds in securities, and purchase of properties for various State Institutions:

AERONAUTICS FUND

The State Aeronautics Division is not limited to the amount specified in Chapter 66, 1933 Session Laws, for expenditures, and all moneys available in the fund are, under the provisions of Section 21-207, subject to use.—6/16/34.

ADULTERATION

It is within the power of the Idaho Department of Public Welfare to promulgate rules and regulations with reference to the poisonous residue on whole fruit similar or identical with the regulations of the U. S. Department of Agriculture to regulate the tolerance of poison residue in the State of Idaho.—10/5/34.

The provision of our statute intends that milk shall not be adulterated within the generally accepted meaning of that term. The addition of vitamin D, which would in no way dilute the milk, but would introduce a substance enhancing its value and quality, would not constitute adulteration, and is permissible under the law.—8/20/34.

BANKS

A debt due the United States has priority over the claims of other creditors, and as to such claims our statute, which attempts to classify in class 3, Section 25-915, all public funds, including those of the United States, is wholly ineffectual.—11/20/33.

Where a claim has been filed by a depositor of public funds, such claim should be allowed in the full amount of such deposit at the time of suspension of the bank, and dividends applied thereon, regardless of any possible or appraised value of the securities deposited to secure the public funds. The bank under the law would have a right to protect such securities, and where they are sufficient to protect the amount of the deposit, payment would be made in full, and payment of dividends would cease at any time that the payment of dividends and or sale of the securities or other liquidation of them should be equal to the amount of such deposit.—11/20/33.

National Banks have the power to pledge their assets to secure deposits of public funds of the state, in accordance with the Public Depository Law.—4/28/34.

If a director of a bank is a debtor only within the limitations provided by law, he is not ineligible to hold a directorship in the bank. The fact that the person may be a debtor to the bank in an amount not exceeding the limitations provided does not make him ineligible.—1/13/34.

BEER LAWS

A person purchasing beer from a wholesaler or dealer in another state and imports it into Idaho, where it is disposed of by him as a retailer, must procure two licenses: one as a dealer and one as a retailer.—7/11/33.

The board of county commissioners may not enact an ordinance prohibiting the sale of beer between certain hours, and may not make a violation thereof a misdemeanor. The legislative power to regulate places of business within the limits of incorporated cities is vested in the municipal corporation and not in the county.—7/16/34.

It appears that the legislature intended that the fee of \$300.00 provided by Section 7 of the law is sufficient to permit both the manufacture and sale from the brewery of its products, without an additional wholesaler's license. This applies only, however, to cases where but one establishment is involved.—1/12/34.

BONDS

Bonds issued by cities, villages, irrigation districts, private irrigation corporations, school districts, and drainage districts are subject to taxation as long as such securities remain within the State of Idaho, since the legislature of the State has not expressly exempted the legal entities enumerated.—10/27/33.

Bonds are required of public contractor when the surety has been placed in hands of receiver: (a) Where the projects are completed, but not paid for in full, a bond is required in an amount equal to sixty per cent of the total contract price before making final payment, the law providing that no claims can be legally paid until such bond has been filed. (b) Bond in the full amount—sixty per cent of the contract price—must be furnished before any payment can be made to the contractor. Where full payment has been made by the state and the contracts fully performed (including payment for all labor and material), no further bond should be required from the contractor.—1/17/33.

The surety cannot secure the cancellation of the bond by merely serving notice on the obligee. As a general rule, the principal cannot

by any act of his, except one which will extinguish the obligation, discharge the surety. Some act of the creditor or obligee is required in order to discharge him. In some cases of statutory bonds, provision is made for the discharge of the surety when counter-security is not given to them upon their request and compliance with specified conditions. Failure of the principal to pay the premium to the surety is not a ground for discharging the surety as against the creditor or obligee.—1/9/33.

There is no statute prohibiting a bond issue for waterworks in excess of the ten per cent limitation. The legislature early decided that bonds for waterworks should not be limited to any certain percentage of the value of the property in the municipality, as waterworks is not specified as one of the purposes for which the ten per cent limitation is applicable (Sec. 49-2401) but that the municipality should have power and authority to issue bonds in any amount sufficient to acquire a waterworks plant.—1/26/34.

CAPITOL GROUNDS

The Commissioner of Law Enforcement may deputize some person or persons to act as police of the capitol building and grounds. Such officer would have the power to arrest any person found committing any criminal offense on the property.—1/3/34.

CHAIN STORE LAW

Warehouses or depots maintained by a company at various points in the State, from which its agents distribute products by truck, no sales being made from the warehouses or depots, they being maintained solely for the purpose of providing a point from which service can be given, would not come within the provisions of the Chain Store Law. Maintaining a warehouse merely for storage would in no sense constitute the operation of a store within the meaning of the law.—5/11/33.

The question of whether goods are sold upon consignment or bought direct by the dealer has no bearing upon the question of liability for the chain store tax. The question is, primarily, whether the taxpayer is, in fact, operating a store or conducting a store or mercantile business within the meaning of the act.—9/28/34.

Where a store is added to the chain after the beginning of the year, and after the tax has been paid, the additional rate should be charged for the additional store only. After the tax has once been paid, the rate may not be increased during the year on the stores for which the tax has been already paid, as that would give the law a retroactive effect.—9/21/34.

COLLECTION AGENCY

The provisions of the collection agency law do not apply to "any realtor licensed under the laws of this state." In view of the decisions by courts of last resort, however, and having regard to the legislative intent, there is but one reasonable construction of the statute, namely: The exemption of realtors applies only insofar as such persons are engaged in making collections within the scope of their regular business and within the provisions of the particular acts regulating such occupation, in other words, realtors may make the collections incidental to their business transactions, when acting within the scope of their licensed profession—buying, selling, exchanging, leasing or renting real estate.—3/14/33.

COMMERCE

Section 35-803, I. C. A., providing that "it shall be a misdemeanor for any person to transport or ship, either out of this state to another point, by airplane or any mechanical propelled flying device, any game, animals, fur-bearing animals, or parts of such animals," is not constitutional. It violates the interstate commerce clause of the United States Constitution; also Section 1 of the 14th amendment to the United States Constitution, providing for the equal protection of the laws, being clearly discriminatory, and, further, is contrary to Section 16, Article I of the Idaho Constitution. In addition, it might easily constitute an attempt to interfere with the transportation of United States mail, having in mind that some part of a fur-bearing or game animal might lawfully be transported by air mail.

A state has no power to prohibit, regulate or tax the right to purchase and sell articles of commerce imported from other states while those goods are in the original packages and in the hands of the importer for sale. This right to sell goods in the original package is not personal, but may be exercised through an agent of the importer, and extends to sales to consumers as well as to wholesale or retail dealers.

A municipal corporation cannot impose a license fee in the nature of a tax upon the act or occupation of engaging in interstate commerce within its limits, since this is a power which the state itself does not possess.

COUNTY COMMISSIONERS

According to the provisions of the statutory and adjudicated law of the State of Idaho, a board of county commissioners may legally make an order for the issuance of a warrant, or warrants, to be paid to the state treasurer and converted into the state highway fund, for the county's proportionate amount of the cost of construction of road relief work, as provided by the terms of the Federal Emergency Relief Act.—9/26/33.

The county commissioners have no authority to cancel special improvement district taxes.

The bondholders would have no recourse against the official bonds of the commissioners if the commissioners cancelled the taxes and sold the property, nor would the bondholders have recourse against the county, except that they could force the county to prorate the proceeds of sale to the various governmental subdivisions of the county and taxing districts.—4/6/33.

If the board of county commissioners has been directed (as in the case under consideration) by the board of education to make a levy of .04 mills in excess of five mills, the board of county commissioners would not be justified in arbitrarily making a higher levy, regardless of the amount. A failure of the county board to follow the direction of the State Board of Education in this respect would amount to a failure "to make the levy required in Section 61-806," and would justify the state board withholding the state apportionment to such county, as provided in Section 32-805, I. C. A., as amended.—9/12/33.

The National Industrial Recovery Act, and particularly Title 16, Chapter 3, U. S. C. A., provides that the funds to be used in the civil works program constitute an outright gift to the states and municipalities, and the gift embodies as one of its terms the availability of local relief agencies in the administration of the fund. This, apparently, contemplates services in return for the relief afforded to the county by way of reduction of unemployment and construction of public works. The benefit accrues to the county itself, and the services rendered, accordingly, are not being rendered to the United States, since the position of the United States is merely that of the donor of a gift.

Accordingly, it is inconsistent with the provisions of the Constitution and the adjudicated cases, and against the public policy of the State, for county commissioners to receive salaries from the funds allotted for civil works and reduction of unemployment within the municipal units. County Commissioners should not be so employed.—11/22/33.

COUNTY FUNDS

Securities pledged by a bank for the payment of county funds shall be deposited with and held by the county auditor, and he shall list each and every security placed in his custody. In lieu of depositing such securities with the county auditor, however, the designated depositor may deposit them to the same effect in any other bank or trust company within or without the state, having a combined capital stock and surplus of not less than \$250,000.00, on compliance with certain terms and conditions.

COUNTY RELIEF

Under Chapter 29, Title 30, I. C. A., residence is not a condition precedent to the authorization for payment, or payment to one who is an applicant for aid under the Indigency Act. Any order by the Board of County Commissioners, or from any other source, refusing to recognize the application of an applicant for aid, unless the applicant has been a resident of that county for at least six months, would be ultra vires and arbitrary. The sole and only question is whether or not the applicant can and does qualify as an indigent. This would not preclude the Board of County Commissioners, or the officer certifying the condition of the indigency from arranging for the return of the indigent to some other place, but any such arrangement must, of necessity, be by mutual agreement.—1/2/34.

COURT REPORTERS

While there is no previous opinion to the effect that court reporters may not perform services for other state departments and receive pay therefor, a person may not draw more than one salary from the state, and this rule should prevail as to court reporters. If a court reporter should perform services for the Public Utilities Commission it would be the performance of a service for the State of Idaho, and the receipt of additional payment for such services would amount to double payment for services to the state.—12/20/33.

DISTRICT JUDGE

Under the laws of this state, a district judge may or may not charge a fee for the solemnization of a marriage. If he makes no such charge, then he cannot be held for the accounting therefor. If a district judge makes a charge for the solemnization of a marriage, as provided by statute, the fee should be paid into the state treasury. Refusal, failure or neglect to do so would subject the judge to accountability therefor.—1/12/34.

DRAINAGE DISTRICT

The final sale by the county at public auction, and the issuance by the county of a deed to the purchaser, cancels all past delinquent drainage district assessments to the date of sale, but does not release the land from future drainage district assessments.

State, county and city taxes are prior to special assessments. If the sale does not bring more than enough to cover state, city and county tax delinquencies, the drainage district will receive nothing. If there is a surplus after discharging the tax obligations to state, county and city, the drainage district may receive its share of the overplus.—4/1/33

The names of those benefitted by the improvement and the

amount of the assessment shall be filed with the auditor of the county, who shall enter the same upon the tax rolls the same as other taxes; and they shall be subject to the same interest and penalties in case of delinquency as general taxes and shall be collected in the same manner as other taxes, and subject to the same right of redemption. Therefore, the time for redemption from drainage district assessments is extended by House Bill No. 105, and the district cannot have the land put up for sale at this time, or take any action for the sale of such lands for the payment of delinquencies since 1928.—4/5/33.

ELECTIONS

While contracts for county printing and providing books and stationary for county officers are made by the board of county commissioners, the authority for ordering the printing of election ballots is given to the county auditor by Section 33-803, I. C. A., in the following language: "It shall be the duty of the county auditor of each county to provide printed ballots." This conforms to the ruling of a former attorney general, and no authority is found for giving the statutes a different interpretation.

From a consideration of Senate Joint Resolution No. 2, providing for a constitutional amendment with reference to the election of supreme and district judges, it appears to be fatally defective by its failure to provide for or direct publication of the question to be submitted, as provided by the Constitution, Article XX, Section I, and the Secretary of State would not be justified or warranted in causing the same to be published, nor in certifying it to the auditors of the various counties in the state for submission to the electors at the next general election.—4/6/34.

Under the provisions of existing laws there is no manner nor method by which any person may become a candidate, and have his or her name placed upon the official ballot at the ensuing general election, unless there has been strict compliance with one or the other of the methods of being nominated for public office, that is, either at a primary election, or at a convention, as provided by law.—9/28/34.

The person, nominated to fill a vacancy at any time, must pay the same filing fee as the original nominee paid.—10/20/34.

In view of the fact that elections to select delegates to a constitutional convention and special elections follow the same procedure as provided for general elections, also with respect to registration of voters, the status of those who registered before the election last September is the same as of those who registered at the last general election.

The delivery of the register, after canvass of the votes, to the Clerk of the Board of County Commissioners, is one of the general

election duties necessary to be performed by the election judges. Such register would necessarily be preserved by the clerk of the county board, the same as after a general election, and will be used by him in the preparation of a register for the next primary and general elections. The name of the person who registered before the constitutional convention election will appear on the register and be as much a part thereof as that of the person who registered before the last primary or general election.

It is unreasonable to suppose that the legislature intended that those registering at the last special election should be put to the necessity of registering again before the next primary or general election, or that the county should be put to the added expense of again registering such persons, as long as their names appear on the register in the hands of the Clerk of the Board of County Commissioners.—12/29/33.

The registration lists for the next general election must be made up from the registers of both the last general election and the special election in September, 1933. Those who registered for the special election should be considered as having been registered for the last general election. The general election register should be used in making up the next election registration lists, and the names of those who registered for the special election should be added thereto.—12/29/33.

EMBARGO

An embargo may not be placed on hay in this state, to prevent Utah and other drouth-stricken states from coming into Idaho and purchasing the same as no authority exists for interfering with the sale of any man's products in the state in this manner. The Constitution of the United States provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states," which carries the right to acquire and possess property of every kind, hold and dispose of it.

ESCHEATS

Since it is impossible for the public administrator to receive money except from unclaimed assets of estates of deceased persons, it must be assumed that it was received in the regular course of administering an estate, the residue of which was unclaimed.

After a final settlement of the affairs of any estate if there be no heirs or other claimants thereof, the administrator must pay into the state treasury any and all moneys and effects in his hands belonging to the estate. The probate judge must order the same paid over.

All moneys held by a public administrator, the ownership of which is not subject to identification, must be paid over to the State.—3/14/34.

EXTRADITION

Is it permissible for the State of Idaho to agree with another state that the "Law Department" of the State represent the executive power of the demanding state on extradition in habeas corpus proceedings after the Governor of Idaho has granted a requisition for extradition of a fugitive from another state?

The duties of the attorney general are limited to questions arising upon the requisition itself, and not to questions arising after the granting of the Governor's warrants, and, since under the provisions of Section 19-4610, I. C. A., it is made the duty of the court in habeas corpus proceedings to give notice of such proceedings to the public prosecuting officer of the county in which the arrest is made and to the agent of the demanding state, it appears that the statute has delegated to the prosecuting attorneys of the respective counties the duty of representing the executive authority of the demanding state upon habeas corpus hearings.

* * * No binding contract or agreement can be made between Idaho and any other state of the Union on this subject, by which the Attorney General can be required to represent the authority of the demanding state in habeas corpus proceedings.

The office of the Attorney General will co-operate with the authorities of any of the other states of the Union, subject to the statutory and constitutional limitations in effect, but, in so doing, must be governed by the facts in each particular case, and cannot be bound to take either an affirmative or negative stand as to the extradition of any particular person.—6/20/33.

FISH AND GAME DEPARTMENT

The State Game Warden is not obligated by law to designate the expiration date of a closed season in his order suspending the season in any of the streams of the state. An order of suspension, issued without designating the expiration date, remains in full force, until rejected by the state game warden, or his successor, as the case may be, in the manner prescribed by statute.—2/4/33.

A resident alien, who has declared his intention to become a citizen, may be classed as a resident citizen only during the period of seven years prescribed by congress as the time within which a declaration of intention to become a citizen is of any validity. At the expiration of such time, unless petition for naturalization is made, the resident alien reverts to the status of an alien, and no license may be

issued to him while he remains in that latter status.—2/4/33.

Resident licenses should not be issued to any army officer or CCC employee, unless he is and has been a bona fide resident of the State of Idaho for the period of six months immediately preceding the application for the license.—5/29/34.

The Department of Agriculture has presumed upon the alleged authority of 33 Statutes 628 and 34 Statutes 11 to withdraw from the control of the states the game within the national forests by regulations Nos. G 20A and T8½ T, under date of March 29, 1934. These regulative orders are wholly invalid because in direct violation of the express provisions of Section 480, Title 16, U. S. C. A.—5/28/34.

GOVERNOR

The Governor of the State of Idaho may not offer a reward to be paid out of state funds to stimulate the search for a missing person.—9/7/34. —

HIGHWAY DISTRICTS

The Federal Deposit Insurance Act mainly aims to protect the class of depositors not otherwise protected, and under the provisions of the Idaho law all public moneys, including that of highway districts, must be protected by the depository bank furnishing securities or a depository bond.—3/13/34.

After the dissolution of a highway district the board of county commissioners shall make a levy sufficient to raise by taxation funds for the payment of all remaining unpaid current claims against such district, together with funds for payment of current and accruing outstanding bonds and warrants of such district.

The motor vehicle license money should be apportioned in the same manner as prior to the dissolution, until such time as the bonded indebtedness and other obligations of the district are paid in full. The board of county commissioners act instead of the commissioners of the highway district in liquidating the indebtedness of the district, and after dissolution the funds are handled through the county treasurer until all indebtedness is paid.—3/25/33.

INCOME TAX

Income tax returns are open to inspection only upon order of the Governor and Attorney General, or a duly authorized committee of either branch of the legislature, under rules and regulations prescribed by the Commissioner and approved by the Governor. * * * The need of an assessor for the information sought is not one of the

instances coming under the exceptions to the strict provisions for secrecy so clearly shown as the legislative intent in passing the sections referred to. In view of the foregoing, the Tax Commissioner may not furnish information contained and included in income tax returns merely for the purpose of aiding and assisting assessors in the discharge of their official duties.—3/23/34.

INSURANCE

Securities deposited with the state treasurer by fidelity and casualty companies should be registered in the name of the state treasurer of the state of Idaho, without restriction or limitations. The statute is designed to protect the holders of obligations of these companies in Idaho, wherefore bonds should be registered in such a way as to effectively achieve the intended purpose. An unrestricted registration in the name of the state treasurer does this best.—3/17/33.

The reciprocal code contains no provision exempting solicitors, or so-called subagents of attorneys-in-fact from the requirements of the uniform insurance code relating to soliciting agents in general. The chapter on reciprocal insurance in our code provides an exception to the general operation of the insurance laws so far as the exchange of indemnity contracts between attorneys-in-fact holding a reserve deposit in custody is concerned, but neither in terms nor by implication are the provisions of this chapter extended to exempt agents other than the attorney-in-fact from the operation of the general insurance laws. Such agents are, accordingly, required to be licensed by the Department of Finance.—7/24/34.

INTEREST

Changing legal rate of interest from 7% to 6% does not change rate to be charged on registered county warrants.

Cancelling interest on 1928, 1929, 1930 and 1931 delinquent taxes includes special improvement taxes if they are included in the delinquent entry.

Delinquent 1932 taxes shall bear 10% interest.—3/30/33.

IRRIGATION DISTRICTS

One who occupies land in an irrigation district under a contract, resides thereon, and makes yearly payments on such contract, though he holds no deed, is entitled to vote at any district election, and if he is so qualified, his wife, if married, would likewise be qualified.—10/26/33.

Under the laws of this state an irrigation district can not be organized within the boundaries of a pre-existing irrigation district.

The boundaries of an irrigation district are limited, and that part which already lies within a district can not be included in another irrigation district.—9/28/34.

JUSTICE OF THE PEACE

The power of a Justice of the Peace to solemnize marriages, in the absence of express statutory limitation, is not confined to the territory of the county in which the justice has jurisdiction in other cases.—5/25/34.

KILOWATT TAX

Power generated by the Idaho Power Company in the government plants, under contract with the government of the United States, is generated as a private enterprise and not as an enterprise of the United States government, and for that reason such power is subject to the kilowatt tax.—2/18/33.

As there is no judicial decision upon the question of free interchange of power, the position taken must rest upon grounds of reason. The purpose of the tax is to reach all power generated, and the purpose of generation is to be determined at the instant of generation and not by subsequent distribution. If power is generated for sale, and no sale occurs, the power being wasted through defective transformers or equipment, the tax, nevertheless, is due upon the power generated. If a power company should furnish power, without compensation and for the mere purpose of rendering a gratuitous supply to another company or to individuals, the tax is not collectible to the extent of such power, but the company must, nevertheless, report such power in its statement, since it is engaged in the production of power for "barter, sale or exchange," in addition to the power it claims to give away.

Where a power company rents houses to employees with lights furnished, such current is subject to the tax. At all events, the statement of power produced is to be furnished.—3/27/33.

The revenue derived from the income and kilowatt taxes may, and should be apportioned to the Treasury Note Redemption Fund.—4/1/33.

LEGISLATURE

Removal by a state senator from the county where elected, even though he remains within the state, creates a vacancy in the office. The vacancy may be filled by the governor in the event the need for filling such office occurs.—4/9/34.

The employees of the house and senate are expressly designated by statute, and there is no provision for any legal counsel. The at-

torney general is required to render his opinion in writing to the legislature, when requested to do so, upon any question of law relating to their respective offices.—1/10/33.

LICENSE

Payment by automobile dealers of dealer's license does not exempt them from payment of personal property tax on their stock.—12/13/33.

The Commissioner of Law Enforcement has issued an administrative order to the effect that an assessor receiving an application for an automobile license by a person residing in another county must transfer such application and any license fee received to the county in which the applicant resides, and the license issued shall bear the county license number of that county.—3/6/33.

A broker, dealer or commission merchant who pays for farm produce in cash on delivery, is not required to obtain a license.—5/7/34.

MINING

The legislature of the State of Idaho has never enacted any legislation authorizing the location of mining claims upon the beds of navigable streams, therefore a placer mining claim cannot be located upon any such beds.—2/11/33.

MORATORIUM

The Governor may not, under existing authority, declare a holiday extending the time for the payment of certain taxes. The legislature, by Chapter 41, Session Laws of 1933, fixed the date when a penalty will attach and become effective, if "on or before" such date the taxes are not paid. The legislative department of government has thus fixed the "dead line," and it is not within the power of the executive to change the same. Any act, or attempted act, by the Governor, proclaiming a holiday extending the date for the payment of the delinquent taxes for the year 1928 to 1931, inclusive, would be null and void.—1/1/34.

It is the duty of the sheriff to issue his deed, where a mortgage foreclosure has proceeded to judgment during the pendency and effect of the Governor's Moratorium, if no appearance was made on the part of the defendant, and no application was made and filed asking for an order suspending the proceedings, and no such order was made, and a decree of foreclosure was entered and the property sold and the sheriff's certificate of sale issued. His failure to do so, under such circumstances, would make the sheriff personally liable, as well as the surety on his official bond.—5/18/34.

MOTOR FUELS

Having reference to motor fuels imported by railroads for their own use: The legislative intent, disclosed by the Gasoline Tax Act is that all those, whom it is possible to include are included within its operation. Railroads are entitled to no refund, except in cases where refunds are allowable to other persons subject to the act. Gasoline transportation engines are vehicles within the act, and railroads are public highways within its meaning.—4/29/33.

Distillates not consumed or handled for the purpose of propelling motor vehicles upon the public highways must be reported to the Department of Law Enforcement for the purpose of governmental records, but not for the purpose of taxation. No duty is imposed upon the Department of Law Enforcement to collect motor fuels tax on distillate not sold or consumed for the purpose of propelling motor vehicles upon the public highways.—8/22/34.

MOTOR VEHICLES

No dealer is permitted to move or allow to be moved any motor vehicle or trailer upon any of the public highways without displaying his dealer's license thereon, except under certain extraordinary circumstances, none of which relate to demonstration for sale. The rule is absolute that dealers' plates must be displayed during demonstration for sale.

Where there is a transfer of title by any means, the registration expires; the old plates are a nullity, as if the car bore no plates whatever. A dealer's license must be obtained.

It is unlawful for a dealer to operate in any city, town or village other than the one in which the place of business of the dealer is located. If his agent or subagent operates within any village, city or town, other than that in which the licensed dealer has his place of business, the right to use the dealer's plates at all is at once forfeited, so far as relates to such agent.—3/22/33.

A farm truck license gives to the licensee the right to haul farm products, farm commodities, or livestock of other farmers for hire, and without the necessity of procuring a commercial truck license.—5/1/34.

PENSION

The law intends to provide security for the payment of the amount of the pension advanced, if property is available, and in the event the county has been reimbursed, the commissioners clearly have the right to make a transfer of the property to the pensioner, or, in case of his death, to his estate. The amount of the pension is

a claim against the estate, and when that claim is paid, the county would have no further right to retain the property.—9/28/34.

The statute leaves to the discretion of the commission whether they should demand an assignment of the applicant's property at the time the Old Age Pension is first granted. If the applicant's property is real estate, the assignment should be in the form of a warranty deed to the county, to be recorded in the office of the county recorder. If the property is personal, it should be assigned by bill of sale, delivery made to the county, and the bill of sale recorded. There would then be no question about the right of the county to dispose of the property and convey title thereto.

The law provides: "Such certificate shall be required to be renewed or issued each subsequent year after satisfactory investigation." This indicates that at least some investigation should be made by the Probate Judge or the Commission to satisfy itself that the qualifications of the applicant still entitle him to the Old Age Pension.—11/21/33.

PROHIBITION

By the provisions of the "Beer Act" the sole penalty provided for possession of beer of not more than 3.2 per cent alcoholic content by weight is the penalty incidental to the failure to procure licenses. There are no license requirements as to fermented fruit juices having an alcoholic content of not more than 3.2 per cent.

No penalty and no regulation having been provided by the legislature for manufacture, possession, distribution, or sale of any beverage containing not over 3.2 per cent alcohol by weight (excepting beer) all beverages containing not more than 3.2 per cent alcohol by weight are both non-intoxicating in law, and their manufacture, use, possession and sale unrestricted.—7/10/33.

Any uninterrupted interstate shipment is permissible, but any attempted interstate shipment, interrupted and stopped in the State of Idaho for re-transportation, would be a violation of the laws of this state.—12/13/33.

The right to manufacture denatured alcohol in conformity to the license and permit regulations provided by law is not limited by the general prohibition of intoxicants, and is, therefore, permissible upon compliance with such license and permit regulations.—10/30/33.

PROSECUTING ATTORNEY

The provisions of Section 30-2609, I. C. A., classifying counties for the purpose of fixing salaries of prosecuting attorneys is not affected by Chapter 125 of the 1933 Session Laws.—5/3/33.

PUBLIC MONEYS

Reconstruction Finance Corporation Funds, being distributed direct from the Governor to the relief committees, it is doubtful that they constitute public moneys within the meaning of the statute. Were they distributed to the county treasurers, they would be public moneys in the hands of such treasurers. Only public moneys within the meaning of the statute are entitled to preference in the event of a bank being closed for liquidation.—3/27/33.

PUBLIC UTILITIES

A certificate of convenience and necessity need not be applied for to establish a warehouse. Although a warehouse is a public utility within the provisions of Section 59-129, it is not included in the classification for which such a certificate is required.—3/23/34.

PUBLIC WORKS

A public works contractor, within the meaning of the act, includes any person who submits a proposal to or enters into a contract with the State of Idaho, or any board, commissioner, department official, or representative thereof, authorized to let contracts for the construction of public works, when the estimated cost or price thereof exceeds \$5,000.00.

The construction of market or feeder roads is contracted through the department of Public Works of the State of Idaho, under agreement with the Federal authorities, and bidding for or taking such contract would come within the provisions of the license act.—11/8/33.

RECLAMATION

Where the objection presented to the Commissioner of Reclamation is that the transfer of older rights from a ditch would impose additional transportation losses upon the remaining water users, and upon the grounds that if such water were taken from the ditch, seepage, evaporation and transportation losses would be increased upon the remaining water users through such canal, the transfer should (not) be denied. Such objections do not set up any proper objection to the transfer of such water within the intent of the statute.

The Department of Reclamation has no right or authority to grant a limited or restricted transfer of water right, requiring the owner to leave such a portion or amount of his water in the canal as may be found and determined sufficient to compensate others for the loss and injury sustained on account of increased transportation losses they will sustain in case the applicant's water is transferred and taken out of the canal. If the parties protesting have any right to compensation, it must be reached through an action

in a court of equity. Such questions are not before the Department of Reclamation for consideration.—4/12/33.

The Governor's Emergency Drouth Committee having allotted funds for the removal of beaver dams from certain natural water courses to increase the flow of water for irrigation purposes, such beaver dams may not be removed by the watermasters. Not only has the Department of Reclamation, acting by or through watermasters, or otherwise, no authority to order destroyed or to destroy beaver dams along natural streams, but in so doing would be committing a misdemeanor carrying a severe penalty. Even the State Fish and Game Warden would have no such authority.—7/6/34.

SCHOOL DISTRICTS

Where a district has more than one school building available for school purposes, the Board of Trustees has full power, without submitting the matter to an election to determine that one or all of such buildings shall be used. However, if the question is presented for determination at the annual meeting under the head of "other business pertaining to schools and school interests," the matter need not be specifically mentioned in the notice, but when the matter is so presented and voted upon at the annual meeting, the Board must follow the result of the election.—5/25/34.

An examination of the statutes discloses no authority for a school district to make a levy for the payment of outstanding warrants of the district.—10/9/33.

The statutes, apparently do not contemplate that a surplus shall be left in any of the various funds for which the school levies are made. So long as there is any possibility that the amount raised by special levies shall be needed for the purpose for which it was levied, no part of the fund may be transferred to another fund. However, the statutes are silent upon the proposition of whether or not any transfer may be made at the end of the year. If, at the end of the year, a surplus remains in a special fund, and there can be no further possibility that it will be needed for the purpose for which the levy was made, a transfer may be made to the general fund. Likewise, if a fund has accumulated over a number of years, and it is no longer needed for a special purpose, it might be transferred to the general fund.—12/6/33.

Transportation of school children to and from school by a school district is a governmental function of the district, and the district is not liable in case of injury. If an injury results from a bus driver's negligence, he may be held liable. It is within the power and discretion of the school district to require a bus driver to carry such insurance for the protection of the children and the public generally.—9/22/33.

Independent districts may provide transportation for pupils within the district, and, in view of the fact that there is no express limitation or restriction upon the furnishing of such transportation, it is within the power and discretion of the board of trustees to prescribe conditions for the furnishing of transportation to children, and the trustees may prescribe the distance from school that children must reside in order to obtain the benefit of the transportation service.—10/13/34.

Where there is a failure to elect a member of the Board of Trustees by reason of a tie vote, the County Superintendent is required to complete the board by appointment.—4/28/34.

House Bill No. 176 passed by the last legislature, provides for the recall of county and state officers, but does not apply to school trustees.—3/22/33

The board of trustees may allow compensation to the clerk of the board for his services as such clerk. No other school officer shall receive any pay or compensation for his time or services, or in any way make any pecuniary gain or profit by reason of his office. There is no statutory provision for a member of the election board receiving compensation for such services. The statute does not prohibit the appointment of the clerk as a member of the election board, but the better practice would probably be to avoid appointing to that board any member of the school board.—3/22/33

STATE DEEDS

The Idaho general laws with reference to recording transfers do not apply to state deeds.. The record kept in the office of the Land Commissioner is sufficient, and affords the same notice as if recorded with the county recorder.—7/3/34.

STATE FORESTER

Insofar as expenditures of Clark-McNary moneys are concerned, the State Forester, subject to the approval of the Board of Examiners and the Land Commissioner, has almost blanket authority, so long as he does not exceed the purposes named in the Clark-McNary Act, namely: "Protection of timber and cut-over lands from fire." He has the discretion as to the exact way in which such moneys should be spent, and may buy tools or other fire-fighting equipment on behalf of the State of Idaho, and mark them accordingly.—3/13/34.

STATE LANDS

It appears that the legislature intended that a conflict shall occur and an auction shall be held when two or more applications for leases have been filed during the period from October 1st to November 30th.

If only one application has been filed during the designated time, but another is filed before the land board has acted upon the application, no conflict would be created such as to necessitate an auction. However, if no applications were received during October and November, but prior to October 1st and November 30th, the land board might use its discretion, and, where a conflict occurs, auction the same to the highest bidder.—12/27/33.

STATE OFFICERS

There are no express statutory provisions made for the appointment of deputies, clerks, or assistants by executive officers. However, there seems to be evidence throughout the statutes, having reference to department assistants and clerks, of a legislative intent that the executive officers have the right to appoint their own employees. Moreover, the general practice and custom has recognized the right of executive officers to make their own appointments, and former opinions of this office have held that such right exists, in considering proposed appointments of other department heads with reference to the provisions of the Anti-Nepotism Act.—5/25/33.

TAXATION

Tax Collector may accept payments for taxes for any one year when other years are delinquent, but may not issue redemption deed until all delinquent taxes are paid.—6/29/33.

Costs required to be collected in Section 61-1029, I. C. A., are to be added to and included with the amounts to be collected by the County Treasurer under Chapter 41, Session Laws of 1933, in connection with delinquent taxes for the years when such costs were incurred.—11/1/33.

In the payment of delinquent taxes for 1928, 1929, 1930 and 1931, the added penalties shall be charged on the full amount of the delinquent entry—that is the original tax plus the two per cent general penalty.—12/12/33.

In the absence of an express change in the special statutes, and since special statutes control over general laws, with reference to penalty and interest on delinquent taxes, the general law with reference to the maximum rate of interest that may be charged on contracts does not effect the rate to be charged on delinquent taxes, and two per cent penalty and ten per cent interest must be charged on all delinquent taxes except those for the years 1928 to 1931, inclusive.—12/19/33.

Section 61-1023, I. C. A., the regular redemption statute, does not mention the payment of the additional costs enumerated in Section 61-1029 as a prerequisite of redemption, but provides that redemp-

tion may be had "by paying the amount of all delinquent taxes and penalties as shown in such entry, together with such taxes as shall have accrued from the date of the issuance of the tax deed to the county up to the date of the redemption of said property, together with interest accrued thereon." While in the section it might have been construed as definitely stating the only sums necessary to be paid to entitle the person to a redemption deed, nevertheless, where additional costs were incurred in the service or publication of notice of the issuance of tax deed, the payment of these additional costs has been required on redemption under the regular statute. Even though no reference is made to Section 61-1029 in Chapter 41 of the 1933 Session Laws, the same practice, with respect to the payment of additional costs under the old law, should be followed. When redemption is sought under Chapter 41, and tax deed has issued to the county, and additional costs have been incurred by reason of service or publication of notice, then such additional costs must be paid by the redemptioner, even though no reference is made thereto in the new law. This would be true of additional costs which might have been incurred with respect to the 1928 and 1929 delinquencies, before the enactment of Chapter 41, Session Laws of 1933, and also those which may be so incurred in the issuance of tax deed to the county after the second Monday in January, 1935, for delinquencies of 1928, 1929, 1930 and 1931.—1/23/33.

Exemption from taxation does not carry with it exemption from special assessments. Forest protection charges are in the nature of a special assessment, and a widow, who is exempt from the payment of state and county taxes, which are taxes for the general purposes of government, is not exempt from forest protection charges.—11/7/33.

When taxes are delinquent for years prior to 1932, redemption may be had from 1932 delinquency so long as tax deed for that year has not been issued.—6/6/33.

TAXES

The exemption provided for by the Agricultural Adjustment Act apply only where the commodities are furnished the poor and indigent, and do not apply to those furnished charitable institutions or state institutions except insofar as they are actually furnished by such institutions to the poor and indigent. In view, therefore, of the limited exemptions expressly provided for in the Act, and in view of the foregoing, there appears to be no way in which the state may be relieved of the payment of the process tax on goods or materials purchased for use in the various state institutions.—9/21/33.

The commissioner of law enforcement, being the official with whom the bond for the dealer's permit must be filed, and such com-

missioner being the custodian thereof, securities deposited in lieu of a bond to secure the payment of gas tax would follow the same procedural course as the bond itself, and should be deposited with and retained by the commissioner of law enforcement.—1/13/34.

Where a county sells real property acquired by tax deed, against which there are unpaid assessments for Forest Fire Protection, and where the proceeds derived from such sale are more than sufficient to pay all general state and county taxes, and also to pay the amount of the fire protection assessment, the State Forest Protection Fund is entitled to share pro-rata in the surplus with all other taxing units.

Where the proceeds of the sale are insufficient to satisfy in full general state and county taxes, then the State Forest Protection Fund is not entitled to share in any of the proceeds.—3/10/33.

An assessor may assess the undivided interest in property, taxed as a unit, to the individual owners, and as a unit, to the individual owners, and the owner of any undivided interest may pay the tax assessed against such undivided individual interest, and, by so doing, his undivided interest is discharged from all liens attaching to such undivided interest on account of such taxes.—9/23/33.

TEACHER'S CERTIFICATE

During the period 1915 to 1921 there was no provision in our laws for the annulment of life certificates by reason of non-use; but life certificates issued during that period are not exempt from such annulment. The license or certificate of qualification issued to a teacher to render him or her eligible to teach in the public schools has none of the elements of a contract, and the use or employment of the certificate after its issuance is subject to such restrictions as may thereafter be reasonably imposed, and that, therefore, the provisions of the 1921 law now apply to all life certificates, regardless of the time of their issuance. The provisions of Section 32-1129, I. C. A., providing that the 1921 law shall not be construed to impair or disturb the validity of the term of any certificate issued by the State of Idaho, and outstanding at the date the 1921 act became effective, do not apply to life certificates not used for the period prescribed in Section 32-1106.—8/20/34.

WARRANTS

A warrant redemption fund shall be created and an assessment made thereof only if there are outstanding warrants, and no other provision has been made for their payment, otherwise, no assessment for such purpose shall be made until the necessity therefor exists.

There is no mandatory provision in the statutes for a transfer of a balance remaining in the warrant redemption fund to the gen-

eral fund after all outstanding warrants have been paid. In view of the provision of Section 49-1715 it would seem to lie within the discretion of the city council to make such transfer if they desire.

—5/22/33.

WORKMEN'S COMPENSATION LAW

Compensation should be based upon normal full-time wages, instead of on actual part-time wages. The compensation is based upon earning power or capacity to earn, and not upon the amount of temporary employment the employee may have secured. This holding is in strict conformity to the statute involved and upon its construction by our supreme court.—5/10/33.

DOCKET

1933 - 1934

UNITED STATES SUPREME COURT

(Closed)

- 402—Oregon-Washington R. R. & Navigation Co. v. United States of America & P. U. C. of Idaho, Intervenor. Re: Construction of 185 miles railroad through Central Oregon.
- 615—State of Alabama v. State of Arizona, et al. Re: Sale of prison made goods. Application to file bill of complaint denied.

UNITED STATES DISTRICT COURT

(Pending)

- 567—State of Idaho and P. U. C. v. United States of America Interstate Commerce Commission and Oregon Short Line Railroad Co. Central Division. Re: Abandonment of Talbot Spur.
- 595—In the Matter of Kountze Brothers Bankrupts. Southern Division.
- 644—American Falls Reservoir Dist. No. 2 v. Lynn Crandall, et al. Water Rights.

UNITED STATES DISTRICT COURT

(Closed)

- 241—In the Matter of Kootenai Motor Company. Northern Division. State's claim for gasoline tax.
- 384—R. W. Faris, Comr. of Recl. v. Blaine County Investment Co., et al. Southern Division. Action to quiet title.
- 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. Dismissed.
- 569—Village of Shoshone v. Oregon Short Line R. R. Co. Southern Division. Opening of street over railroad property. Order of dismissal filed.
- 583—United States of America v. American Ditch Assn., et al. Southern Division. Water, ditch and canal rights on Eagle Island. Dismissed.

- 679—Consolidated Freight Lines, Inc., et al. v. Emmitt Pfost, Comr. of Law Enforcement, et al. Southern Division. Re: Licensing of Carriers. Decree denying application for interlocutory injunction and perpetual injunction.

INTERNATIONAL JOINT COMMISSION

(Pending)

- 300—Application of West Kootenay Power & Light Co., Ltd. Re: Restraining condemnation of lands for power site.

INTERSTATE COMMERCE COMMISSION

(Pending)

- 598—No. 17000, Rate Structure Investigation, Part VII. Grain and grain products within the Western District for export.

(Closed)

- 401—Public Utilities Com. v. Oregon Short Line R. R. Co. Re: Rate on petroleum products. Orders for reparation.
- 404—Public Utilities Com., et al. v. Oregon Short Line R. R. Co. Rate case on printed matter. Lowered rates.
- 468—Public Utilities Com. v. Oregon Short Line R. R. Co. Rate case on automobiles. Lowered rates.
- 474—Public Utilities Com. v. Oregon Short Line R. R. Co. Rate case on coal.
- 590—Increases in Interstate Freight Rates.
- 581—State ex rel Gallet v. Pacific and Idaho Northern Ry. Co., et al. Rates on petroleum road oil (liquid asphalt).

PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO

(Closed)

- 445—In the matter of the Revocation of Permit No. 92 to ALBERT HANER to operate as an auto transportation company in the State of Idaho. Denied.
- 545—In the matter of the Application of T. R. Benedict for Permission to operate motor propelled freight service between Idaho Falls, Idaho, and Salmon, Idaho, under the provisions of Chapter 267, Session Laws, Idaho, 1929. Application granted.

669—Emmitt Pfof, Comr. of Law Enforcement v. Inland Motor Freight. Dismissed.

678—Emmitt Pfof, Comr. of Law Enforcement v. Consolidated Freight Lines, Inc. Application denied.

SUPREME COURT OF IDAHO

Original Proceedings

(Closed)

628—Harry C. Parsons and Harry C. Parsons as Auditor of the State of Idaho v. Ben Diefendorf as Comr. of Public Investments of the State of Idaho. Motion to quash is denied and peremptory writ is issued.

634—Union Pacific Railroad Co. v. Emmitt Pfof, Commissioner of Law Enforcement. Re: Motor fuels tax. Writ granted. Preemptory Mandamus.

642—State of Idaho on the relation of C. Ben Ross, Governor, Bert H. Miller, Attorney General, Franklin Girard, Secretary of State, Harry C. Parsons, State Auditor, and John W. Condie, State Superintendent of Public Instruction, constituting the State Board of Land Commissioners, and Ben Diefendorf, Commissioner of Public Investments. Re: Investment of Educational Fund. Dismissed.

654—Franklin Girard, Secretary of State v. Ben Diefendorf, Comr. of Public Investments. Re: Tax anticipation notes. Alternative Writ of Prohibition granted.

684—Charles F. Koelsch and Charles E. Winstead v. Franklin Girard, Secretary of State. Re: Non-partisan judiciary. Alternative Writ made Peremptory.

SUPREME COURT OF IDAHO

Civil Appeals

(Pending)

606—Lewiston Orchards Irrigation Dist. v. Mary E. Gilmore, Treasurer of Nez Perce County.

685—First Security Bank of Idaho & First Security Bank of Ashton v. Fremont County, et al. Re: Bank tax act.

704—In the Matter of the Death of M. F. Smith, deceased. Appealed from the I. A. B.

- 708—**Mountain View Rural Telephone Co. v. Interstate Utilities Company, et al.** Re: Fixing rates on telephones. Appealed from order of P. U. C.

SUPREME COURT OF IDAHO

Civil Appeals

(Closed)

- 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 Pfost, et al.** Kilowatt Tax Case. Judgment in favor of plaintiff.
- 512—**Garrett Transfer & Storage Co. v. Emmitt Pfost, Comr. of Law Enf.** Bannock County. Collection of trailer tax. Judgment in favor of defendant.
- 333—**D. L. McClung, et al. v. Twin Falls North Side Canal Co.** Jerome County. Rights on water contract.
- 530—**Matter of claim of J. A. McDonald v. Treasurer and Industrial Special Indemnity Fund.** Appealed from I. A. B.
- 558—**Curtis v. Emmitt Pfost, Comr. of Law Enf.** Ada County. Re: Operating trucks in violation of Ch. 185, Laws of 1931. Judgment in favor of respondent Pfost.
- 561—**Verda Doolittle v. Amos H. Eckert, et al.** Ada County. Suit to collect salary as Chief Clerk in Game Department. Judgment in favor of plaintiff.
- 580—**Matter of Rates, etc. by Osburn Utilities Corp. v. P. U. C.** Appealed from P. U. C. rate case.
- 582—**W. C. Hall v. F. Lee Johnson, Comr. of Agriculture.** Twin Falls Co. Re: Violation of law pertaining to farm produce brokers, dealers and merchants. Decision in favor of plaintiff.
- 631—**Nez Perce County v. Harry Dent and Fidelity and Deposit Co. of Maryland.** Judgment in lower court reversed with instructions to overrule demurrer. Costs to appellant.
- 632—**J. C. Penney Co. v. Ben Diefendorf, Comr. of Finance and Bert H. Miller, Attorney General.** Re: Chain Store Tax. Decision in favor of defendants.

- 633—**Safeway Stores, Inc. v. Ben Diefendorf, Comr. of Finance and Bert H. Miller, Attorney General.** Re: Chain Store Tax. Decision in favor of defendants.
- 643—**First National Bank of Idaho, et al. v. Myrtle P. Enking, et al.** Interest rate on Public Funds deposited in public depositories. Judgment of law court affirmed. Int. rate to be $1\frac{1}{2}\%$.
- 673—**Intermountain Agricultural Credit Corp. v. Payette County, et al.**
- 674—**State ex rel Gundlach, Prosecuting Attorney of Shoshone Co. v. Albert H. Featherstone.** Judgment for defendant.
- 689—**Nez Perce Roller Mills, et al. v. Public Utilities Commission.** Judgment of Lower Court affirmed.
- 706—**Matter of the death of Ray Rowland.** Appealed from I. A. B.
- 703—**Matter of the death of Lucille Williams.** Appealed from I. A. B. States appeal dismissed.

SUPREME COURT OF IDAHO

Criminal Appeals (Pending)

- 629—**State of Idaho v. Fred Hoskins.** Re: Rape.
- 649—**State of Idaho v. Cleo Calico.** Re: Manslaughter.
- 652—**State of Idaho v. K. B. Stratford.** Re: Obtaining money under false pretenses.
- 664—**State of Idaho v. Lewis Hunter.** Re: Second Degree Murder.
- 667—**State of Idaho v. John Hopper.** Re: Receiving stolen property.
- 672—**State of Idaho v. Ira Emory.** Re: Bribery.
- 676—**State of Idaho v. Gust Parris.** Re: Furnishing intoxicating liquor to a minor.
- 677—**State of Idaho v. Steve Cacavas.** Re: Furnishing intoxicating liquor to a minor.
- 681—**State of Idaho v. W. C. Griffith.** Re: Assault with a deadly weapon.
- 694—**State of Idaho v. Louie See Bow.** Re: Murder.
- 695—**State of Idaho v. Guy E. Gould.** Re: Rape.

699—**State of Idaho v. Fay and Oscar Cox.** Re: Stealing cattle.

706—**State of Idaho v. Alex Jacobsen.** Re:

709—**State of Idaho v. Jess B. Totterdell.** Re:

SUPREME COURT OF IDAHO

Criminal Appeals

(Closed)

265—**State of Idaho v. Steinberg and Kimball.** Re: Violation of Potato Regulations. Dismissed.

514—**State of Idaho v. O. E. Monteith.** Re: Manslaughter. Affirmed.

521—**State of Idaho v. Hugh Coppinger and John Bigley.** Re: Bank Robbery. Bigley released; Coppinger sentenced.

526—**State of Idaho v. Robert Noble, Jr.** Re: Commitment to Black-foot as an inebriate. Opinion of court that it is without jurisdiction to enter the appeal. Appeal dismissed on state's motion.

542—**State of Idaho v. C. G. McDermott.** Forgery. Affirmed.

554—**State v. Lee Clark.** Forgery. Affirmed.

592—**State of Idaho v. A. C. Carlson, alias Jack Cline, and Malcolm Bentley.** Re: Forgery. Judgment affirmed as to Carlson. Reversed and new trial granted as to Bentley.

602—**State of Idaho v. Harry Orr.** Resisting an officer. Dismissed on state's motion.

603—**State of Idaho v. W. O. Johnson.** Re: Selling real estate without a license. Affirmed.

608—**State of Idaho v. Otto D. Burns.** Re: Refusal to pay over funds collected as attorney. Dismissed.

613—**State of Idaho v. Ernest Freitag.** Re: Manslaughter. Reversed and remanded.

614—**State of Idaho v. Harry Orr.** Re: Robbery. Affirmed.

616—**State of Idaho v. James Brown.** Re: Arson. Affirmed.

617—**State of Idaho v. C. C. Olsen.** Habeas Corpus. Petition Denied.

623—**Matter of the Application of H. Howard Speer for Writ of Habeas Corpus.** Violation of the 18th Amendment. Writ Denied.

624—**State of Idaho v. Edward Allen.** Re: Murder. Affirmed.

- 625—State of Idaho v. J. H. Fulmer.
- 627—State of Idaho v. Frank Allen, E. C. Baldwin and Claude Beasley. Re: Robbery. Reversed and remanded with instructions to enter judgment exoneretur, discharge the appellants and dismiss the action.
- 630—State of Idaho v. Clint Allen. Re: Forgery. Affirmed.
- 638—State of Idaho v. Charles Raymond Smith. Re: Rape. Dismissed.
- 647—State of Idaho v. Noble Parsons.
- 651—Tom Wagner. Murder -- criminally insane -- writ of habeas corpus.
- 655—State of Idaho v. Malcolm Bentley. Re: Forgery. Affirmed.
- 656—State of Idaho v. Mrs. Elmer Stokes. Re: Possession of intoxicating liquor. Affirmed.
- 693—State of Idaho v. Jim Jones. Re: Assisting Prisoner to escape. Affirmed.

DISTRICT COURTS

Civil Cases

(Pending)

- 318—Twin Falls North Side Investment Co. v. Henry O. Kissinger, et al. Elmore County. Foreclosure of mortgage.
- 377—Columbia Trust Co., et al. v. Blaine County Investment Company, et al. Butte County. Restraining collection of gasoline tax.
- 458—First Security Bank of Hailey v. Blaine County, et al. Bank tax.
- 462—J. J. Walling v. Village of Ashton and George 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.
- 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.
- 497—State ex rel Harbour v. Commercial Development & Investment Co. Bannock County. Condemnation proceedings.

- 535—**Standard Oil Company of California v. Idaho Community Oil Co., State, Intervenor.** Bannock 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. Re: Correction of permit and application for writ of mandate.
- 551—**Twin Falls Bank & Trust Co. v. Twin Falls County, et al.** Re: State Bank Tax Act.
- 564—**First Security Bank of Boise v. Ada County, et al.** Re: Bank Tax case.
- 571—**Boise Trust Co. v. Ada County, et al.** Re: Bank tax case.
- 607—**Sam Gagon v. Walter J. Scott, et al.** Caribou County. Foreclosure of lien.
- 635—**James Laidlaw v. R. W. Faris, et al.** Blaine County. Summary adjudication.
- 637—**Nampa & Meridian Irrigation Dist. v. W. E. Welsh, et al.** County of Ada. Water adjudication.
- 657—**State ex rel McKelvey v. R. O. Robison, et al.** Jefferson County. Condemnation proceedings.
- 659—**Department of Public Works and Department of Finance v. Tom Watson.** Ada County. Condemnation proceedings.
- 660—**State ex rel Miller v. Beneficial Protective Assn.** Bannock County. Quo warranto proceedings.
- 661—**State ex rel Bert H. Miller v. Christian Mutual Benefit Assn.** Canyon County. Quo warranto.
- 662—**Washington, Idaho and Montana R. R. Co. v. Latah County, et al.**

- 666—**State ex rel Miller v. The Family Mutual Benefit Assn.** Ban-
nock County. Quo warranto.
- 668—**Carey Lake Reservoir Co. v. R. W. Faris, Comr. of Reclama-
tion.** Blaine County. Summary adjudication.
- 670—**State ex rel Harry C. Parsons v. Evans, et al.** Oneida County.
Inheritance tax.
- 675—**State ex rel Miller v. Intermountain Building & Loan Assn.**
Ada County.
- 683—**Blaine Co. Canal Co., et al v. R. W. Faris, Comr. of Recla-
mation.** Butte County. Summary adjudication.
- 686—**State ex rel Industrial Accident Board v. Ralph Hensley, et ux.**
Canyon County. Re: Default in not procuring compensation.
- 688—**Idaho Mutual Benefit Assn. v. W. H. Bakes, Director of In-
surance.** Ada County. Re: Death benefit associations.
- 691—**State ex rel M. G. McConnel, Adjutant General v. Great Ameri-
can Indemnity Co. and Emil J. Therkildsen.** Ada County. Re:
Idaho National Guard accounts.
- 692—**State ex rel M. G. McConnel, Adjutant General v. Great Amer-
ican Indemnity Co. and Daniel H. Owen.** Ada County. Re:
Idaho National Guard accounts.
- 696—**First Trust Co. of St. Paul, Minn. v. M. H. Woods, et ux.**
Butte County. Re: Bonds.
- 701—**B. M. Rogers v. E. Milton Christensen, et al.** Bonneville County.
Re: Water rights.
- 707—**Laura Johnson, et al. v. State of Idaho.** Latah County. Re:
Inheritance Tax.

DISTRICT COURTS

Civil Cases

(Closed)

- 276—**State and Wood Livestock Co. v. A. A. Ziegler.** Custer County.
Restraining diversion of water. Payments being made under
settlement.
- 313—**State ex rel Hoover v. Blaine Co., et al.** Action for cancella-
tion of tax lien. Dismissed on request of state.
- 314—**State ex rel Hoover v. Blaine Co., et al.** Action for cancella-
tion of tax lien. Dismissed on request of state.

- 317—**State ex rel Hoover v. County of Bonner, et al.** Action for cancellation of tax lien.
- 326—**State ex rel Hoover v. Blaine Co., et al.** Action for cancellation of tax lien. Dismissed on request of state.
- 348—**State ex rel McKelvey v. Eugene Looney, et ux.** Adams County. Condemnation proceedings. Final order of condemnation.
- 349—**State ex rel McKelvey v. J. H. Abshire, et ux.** Adams County. Condemnation proceedings. Final order of condemnation.
- 356—**Mrs. Charles R. Hilding, et al. v. Lewiston Highway Dist. et al.** Nez Perce County. Condemnation proceedings.
- 366—**State ex rel Macey v. H. Melgard, Administrator.** Latah County. Claim for confinement at asylum.
- 386—**Norman G. Wells v. George N. Carter, Comr. of Recl., et al.** Lemhi County. Little Lost River Suit. Closed by death of Judge Adair.
- 424—**A. W. Warr v. S. H. Chapman, et al.** Blaine County. Action to quiet title. State withdrew from case.
- 429—**State v. Len Byington.** Blaine County. Land Department lease. Judgment on default.
- 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. Dismissed.
- 443—**State ex rel Harbour v. City of Burley.** Cassia County. Condemnation proceedings. Dismissed.
- 472—**State ex rel Harbour v. L. H. Sweetser, et al.** Cassia County. Condemnation proceedings. Case settled by taking deed.
- 481—**State ex rel Harbour v. Wood Livestock Co., et al.** Jefferson County. Condemnation proceedings. Settled out of court. Dismissed.
- 485—**J. A. Miller v. Lela D. Painter, Treasurer of Canyon County, State Intervenor.** Re: Will annexed of Estate of J. Herman Miller, deceased. \$4,406.86 paid to state.
- 493—**State ex rel Harbour v. Jefferson Pratt, et al.** Bannock County. Condemnation proceedings. Settled out of court. Dismissed.
- 501—**U. S. Rubber Co., Inc. v. F. K. Maitland, et al. State Intervenor.** Ada County. Collection of motor fuels tax. Judgment in favor of plaintiff.

- 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. Partial satisfaction of judgment.
- 613—**Matter of the Estate of Stena Austin, deceased.** Shoshone County. Re: Reclamation of escheat. Refund of escheated property directed to be made.
- 626—**State ex rel Eckert v. Idaho Power & Mines Co.** Custer County. Destruction of Sunbeam Dam as public nuisance. Settled and case dismissed.
- 636—**State ex rel Parsons v. Clearwater County, et al.** Ada County.
- 639—**State ex rel Community Service Bureau v. Franklin Girard, Secretary of State.** Ada County. Application for Alternative Writ of Mandate.
- 640—**State ex rel Jump Creek Sheep Co. v. Franklin Girard, Secretary of State.** Ada County. Application for Alternative Writ of Mandate. Writ denied.
- 641—**Verda Doolittle v. Myrtle P. Enking, Treasurer.** Ada County. Petition for Writ of Mandate. Writ issued.
- 648—**Consolidated Indemnity & Insurance Co. v. Myrtle P. Enking, et al.** Ada County. Dismissed.
- 653—**State of Idaho v. C. H. Bryan and E. L. Liedkie.** Lewis County. Collection of money due State Forestry Department. Damages paid and case dismissed.
- 658—**M. H. King Company v. Ben Diefendorf, et al.** Ada County. Dismissed.
- 665—**Emmitt Pfof, Comr. of Law Enf. v. J. L. Armstrong, et al.** Washington County. Re: Registration and License fees of residents of adjoining states employed in Idaho. Judgment in favor of plaintiff.
- 671—**State ex rel M. G. McConnell, v. Great American Indemnity Co. and John C. Jeness.** Ada County. Collection of money due the state. Judgment in favor of plaintiff.
- 680—**Boise Trust Co. v. Tonette Kristianson, et al.** Canyon County. Quieting title.
- 687—**Boise Motor Car Co., et al. v. Emmitt Pfof.** Ada County. Re: Dealers' License Plates and Operating territory. Judgment in favor of plaintiffs.

- 690—**Independent School Dist. No. 1 v. Emmitt Pfof, et al.** Twin Falls County. Re: Licensing of school busses. Declaratory judgment in favor of plaintiff.
- 698—**B. M. Rogers v. Lynn Crandall, Watermaster of Dist. No. 36, et al.** Bonneville County. Dismissed.
- 547—**People of the State ex rel Babcock v. Mark Lyons.** Idaho County. Re: Enjoining from operation as auto transportation company. Judgment in favor of defendant.
- 549—**State ex rel Gallet v. City of Burley.** Cassia County. Collection of motor fuels tax. Tax paid.
- 550—**People ex rel Babcock v. A. C. Nave.** Idaho County. Re: Enjoining from operation as auto transportation company. Dismissed.
- 552—**Clency St. Clair, et al. v. Citizens Bank & Trust Co., et al.** Bannock County. Re: Classification of funds as trust funds. Defendants' demurrer sustained.
- 553—**Vicente Lizaso Areitio v. Nelson M. Armstrong, et al.** Ada County. Action to quiet title.
- 559—**State ex rel Gallet v. M. H. Clasen.** Canyon County. Re: Collection of gasoline tax.
- 565—**Canyon County Water Co., et al. v. William E. Welsh.** Water case.
- 568—**H. P. Lowry v. Heirs of Daniel E. Crowley, et al.** Benewah County. Inheritance tax case. Judgment quieting title in plaintiff.
- 570—**Matter of Gerald Neff, deceased.** Shoshone County. Appealed from I. A. B. Judgment in favor of claimants.
- 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. Settled.
- 586—**Homedale Highway Dist. v. G. L. Graf.** Owyhee County. Condemnation proceedings.
- 587—**State ex rel McKelvey v. Andrew Olson, et al.** Cassia County. Condemnation proceedings. Settled and case dismissed.

- 588—**State ex rel McKelvey v. First Natl. Bank of Brigham City.** Cassia County. Condemnation proceedings. Settled and case dismissed.
- 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. Order of sale on judgment.
- 591—**State ex rel McKelvey v. John F. Tobin, et ux.** Cassia County. Condemnation proceedings. Settled and case dismissed.
- 594—**First Trust Co. of St. Paul, Minn. v. Martin H. Woods, et al.** Butte County. Water rights suit.
- 596—**State ex rel Gallet v. George Lythgoe.** Cassia County. Gasoline tax case. Dismissed.
- 597—**State ex rel McKelvey v. A. W. Call, et al.** Cassia County. Condemnation proceedings. Settled and case dismissed.
- 609—**State ex rel Harry C. Parsons v. Tarr's Garage, et al.** Ada County. Failure to pay gasoline tax. Sheriff's return to the effect that no property could be found on which to levy.
- 610—**State ex rel Parsons v. Better Service, Inc., et al.** Ada County. Failure to pay gasoline tax. No property could be found on which to levy.
- 612—**Myrtle P. Enking, Treasurer, v. Union Indemnity Co., et al.** Ada County. Treasurer ordered to deliver bond to Clerk of Court and Sheriff ordered to sell said bond.

INDUSTRIAL ACCIDENT BOARD

November 1st, 1934

(Pending)

- I-62—**State, claimant vs. Kellogg Power & Water Company.** Re: Ray Rowland, deceased.
- I-64—**State, claimant vs. Sunshine Mining Company.** Re: John Weigley, deceased.
- I-65—**State, claimant vs. Intermountain Fire Works Company.** Re: Lucille Williams, deceased.
- I-68—**State, claimant vs. The Ohio Match Company.** Re: Even Ellison, deceased.
- I-69—**State, claimant vs. Gnome Gold Mining Co.** Re: Jack A. Hyde, deceased.

- I-70—State, claimant vs. American Falls Canal Securities Company and Rockford Canal Company. Re: Paul W. Corum, deceased.
- I-71—State, claimant vs. F. H. De Atley & Co. Re: Andy Rausenhgr, deceased.
- I-72—State, claimant vs. Ralph Davis and Tony Marrazzo, Contractors. Re: William Hutton, deceased.
- I-73—State, claimant vs. A. C. Cummings. Re: Lars Brun, deceased.
- I-74—State, claimant vs. McHan Hardware Company. Re: M. F. Smith, deceased.
- I-75—State, claimant vs. F. Lee Johnson. Re: Vernor N. Crawford, deceased.
- I-77—State, claimant vs. L. O. Larson & Richard Johnson, Co-partnership. Re: Charles Benson, deceased.
- I-78—State, claimant vs. L. O. Larson & Richard Johnson, Co-partnership. Re: Albert Erickson, deceased.
- I-79—State, claimant vs. White Pine Lumber Company. Re: Albert Berg, deceased.
- I-80—State, claimant vs. Utah Construction Company. Re: Jess M. Kipp, deceased.
- I-81—State, claimant vs. Idaho Bureau of Highways. Re: Robert R. Reynolds.

INDUSTRIAL ACCIDENT BOARD

November 1st, 1934

(Closed)

- I-53—State, claimant vs. St. Joe Lead Co. Re: William J. Biswell, deceased.
- I-55—State, claimant vs. Atlas Tie Company. Re: Bruno Pahlke, deceased.
- I-58—State, claimant vs. Bunker Hill & Sullivan & Co. Co. Re: Joe Krohn, deceased.
- I-59—State, claimant vs. Boise-Payette Lbr. Co. Re: Mane Drakulie, deceased.
- I-60—State, claimant vs. P. H. Smith and Panhandle Lumber Company, Ltd. Re: Harry Cady, deceased.

- I-61—State, claimant vs. Potlach Forests, Inc. Re: Maxwell Dunville, deceased.
- I-63—State, claimant vs. Clearwater Timber Protective Association. Re: Glen Frazier, deceased.
- I-66—State, claimant vs. Independent Transfer and Storage Company. Re: Dave Jeffries, deceased.
- I-67—State, claimant vs. Hecla Mining Company. Re: Charles Stromquist, deceased.
- I-76—State, claimant vs. Sibyl Hartley Smith, as E. & E. Transfer and Storage Company. Re: Payment of compensation insurance.

MORTGAGE FORECLOSURES

(Closed)

- 3503—State v. Hamilton, et al., Twin Falls County. Receivership proceedings had after judgment and property sold. Receiver discharged.
- 3284—State v. C. A. Dunken, et al., Adams County. Judgment taken property sold.
- 3643—State v. H. G. Fuller, et al., Fremont County. Judgment taken property sold.
- 3828—State v. Edward Hoffman, et al., Bingham County. Judgment taken property sold.
- 4222—State v. J. L. Eberle, et ux., Cassia County. Loan repaid. Case dismissed.
- 4246—State v. Dorothy Yates Halverson and Alford R. Halverson, her husband, Ada County. Judgment taken property sold.
- 4626—State v. Ira W. Moore, et ux., Fremont County. Judgment taken property sold.
- 5097—State v. S. R. Johnson, et al., Minidoka County. Receivership proceedings. Judgment taken property sold.
- 5297—State v. Hiram G. Fuller, et al., Fremont County. Judgment taken property sold.
- 5300-1—State v. C. C. Moore and H. G. Fuller, Executors, et al., Fremont County. Judgment taken property sold.
- 3169—State v. Kelly, et al., Owyhee County. Judgment taken property sold. (11/2/34)

MORTGAGE FORECLOSURES**(Pending)**

- 3169—**State v. Kelly**, (see closed cases).
- 3180—**State v. Fogorty, et al.**, Canyon County. Proceedings suspended by Mortgage Moratorium.
- 3469—**State v. R. D. Merrill, et al.**, Fremont County
- 3650—**State v. Mikesell, et al.**, Teton County. Proceedings suspended by Mortgage Moratorium.
- 3950—**State v. Merrill, et al.**, Fremont County.
- 4416—**State v. Hawkes, et ux.**, Fremont County. Proceedings suspended by Mortgage Moratorium.
- 4482—**State v. Hawkes, et ux.**, Fremont County. Proceedings suspended by Mortgage Moratorium.
- 4689—**State v. Isenburg, et al.**, Fremont County.
- 5278—**State v. Maw, et ux.**, Canyon County. Proceedings suspended by Mortgage Moratorium.

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